

# 2011 IOWA CODE SUPPLEMENT

Containing

Sections of the Laws of Iowa  
of a General and Permanent Nature  
Enacted, Amended, Repealed or  
otherwise affected by the  
2011 Regular Session  
of the

GENERAL ASSEMBLY OF THE  
STATE OF IOWA



Published under the authority of Iowa Code chapter 2B

by the

Legislative Services Agency  
GENERAL ASSEMBLY OF IOWA

Des Moines

—  
2011



# PREFACE TO 2011 IOWA CODE SUPPLEMENT

This 2011 Iowa Code Supplement is published pursuant to Code chapter 2B. The Supplement includes sections of the laws of Iowa enacted, amended, repealed, or otherwise affected by the 2011 regular session of the Eighty-fourth Iowa General Assembly or by an earlier session if the effective date was deferred, arranged in the numerical sequence of the 2011 Iowa Code. The Supplement does not include temporary sections, such as appropriation sections, which are not to be codified.

**EFFECTIVE DATES.** Except as otherwise indicated in the text or in a footnote, the new Code sections, amendments, and repeals were effective on or before July 1, 2011. See the 2011 Iowa Acts to determine specific effective dates not shown.

**HISTORIES AND NOTES.** Bracketed material at the end of many Code sections traces the history of the subject matter of those sections up through 1982. An amendment to or enactment of a section which occurred during or after the 1983 Legislative Session is indicated by the addition of an Acts citation at the end of the section. If a section is transferred to a new location, the section history at the new location will indicate the Code or Code Supplement in which the transfer took place. Following the history for a new or amended Code section is an explanatory note to indicate whether the section or a part of it is new or how it was changed.

**EDITORIAL DECISIONS.** If multiple amendments were enacted to a Code section or part of a Code section, all changes that were duplicative or otherwise did not appear to conflict were harmonized as required under sections 2B.13 and 4.11 of the Code. If multiple amendments conflicted, a strike or repeal prevailed over an amendment to the same material. If multiple amendments were irreconcilable, the amendment that was last in the Act or latest in date of enactment was codified as provided in sections 2B.13 and 4.8 of the Code. At the end of this Supplement are Code editor's notes which explain the major editorial decisions made when multiple amendments were codified. Section 2B.13 of the Code governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of editorial changes.

**INDEX AND TABLES.** A subject matter index to new or amended Code sections, a table of the disposition of this year's Acts and any previous years' Acts codified in this Supplement, a table of corresponding sections from the 2011 Code to this Code Supplement, and conversion tables of 2011 Senate and House enactment numbers to Acts chapter numbers also appear at the end of this Supplement.

**RETENTION OF CODE SUPPLEMENT VOLUMES.** Users who maintain libraries of hardbound Codes of Iowa should also retain the Iowa Code Supplement volumes, as the Code Supplements contain Code editor's notes, footnotes, and other aids which may not be included in the hardbound Code. The Supplement also serves as the only printed record of the original codification of statutes effective in an odd-numbered year if those statutes are amended or repealed in the next even-numbered year.

Glen P. Dickinson  
Legislative Services Agency Director

Richard L. Johnson  
Legal Services Division Director

Leslie E. W. Hickey  
Iowa Code Editor

Roger B. Karns  
Tables and Indexing Unit Supervisor

**ORDERS FOR LEGAL PUBLICATIONS, INCLUDING THE CODE SUPPLEMENT, SHOULD BE DIRECTED TO:**

**LEGISLATIVE SERVICES AGENCY  
1112 E. GRAND AVENUE  
MILLER BUILDING  
DES MOINES, IOWA 50319**

**TELEPHONE (515)281-6766**

Printed with Soy Ink



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# IOWA CODE SUPPLEMENT

## 2011

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### CHAPTER 1C

#### PUBLIC HOLIDAYS AND RECOGNITION DAYS

This chapter not enacted as a part of this title;  
sections 1C.1 and 1C.2 transferred from sections 33.1 and 33.2;  
sections 1C.3 through 1C.9 from sections 31.4 through 31.10;  
and section 1C.10 from section 186A.1 in Code 1993

#### **1C.16 Purple Heart Day.**

The governor of this state is hereby requested and authorized to issue annually a proclamation designating the seventh day of August as Purple Heart Day and to encourage all governmental bodies in the state to observe the day in a manner that honors the sacrifice of those men and women who shed their blood and gave their lives in service to the United States of America.

2011 Acts, ch 54, §1

NEW section

### CHAPTER 2

#### GENERAL ASSEMBLY

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

1. The legislative capital projects committee shall do all of the following:
  - a. Receive the recommendations of the governor regarding the funding and priorities of proposed capital projects pursuant to section 8.3A, subsection 2, paragraph “b”.
  - b. Receive the reports of all capital project budgeting requests of all state agencies, with individual state agency priorities noted, pursuant to section 8.6, subsection 14.
  - c. Receive annual status reports for all ongoing capital projects of state agencies.
  - d. Examine and evaluate, on a continuing basis, the state’s system of contracting and subcontracting in regard to capital projects.
2. The legislative capital projects committee, subject to the approval of the legislative council, may do all of the following:
  - a. Gather information relative to capital projects, for the purpose of aiding the general assembly to properly appropriate moneys for capital projects.
  - b. Examine the reports and official acts of the state agencies, as defined in section 8.3A, with regard to capital project planning and budgeting and the receipt and disbursement of capital project funding.
  - c. Establish advisory bodies to the committee in areas where technical expertise is not otherwise readily available to the committee. Advisory body members may be reimbursed for

actual and necessary expenses from funds appropriated pursuant to section 2.12, but only if the reimbursement is approved by the legislative council.

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

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

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

89 Acts, ch 298, §3; 90 Acts, ch 1168, §1; 91 Acts, ch 268, §601; 95 Acts, ch 214, §1; 2001 Acts, 2nd Ex, ch 2, §1, 13; 2003 Acts, ch 145, §105; 2007 Acts, ch 115, §1

Section not amended; internal reference change applied

## CHAPTER 7C

### PRIVATE ACTIVITY BOND ALLOCATION ACT

#### **7C.4A Allocation of state ceiling.**

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

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

(1) Issuing qualified mortgage bonds.

(2) Reallocating the amount, or any portion thereof, to another qualified political subdivision for the purpose of issuing qualified mortgage bonds.

(3) Exchanging the allocation, or any portion thereof, for the authority to issue mortgage credit certificates by election under section 25(c) of the Internal Revenue Code.

(4) Issuing qualified residential rental project bonds.

b. However, at any time during the calendar year the executive director of the Iowa finance authority may determine that a lesser amount need be allocated to the Iowa finance authority and on that date this lesser amount shall be the amount allocated to the authority and the excess shall be allocated under subsection 7.

2. Twelve percent of the state ceiling shall be allocated to bonds issued to carry out programs established under chapters 260C, 260E, and 260F. However, at any time during the calendar year the director of the economic development authority may determine that a lesser amount need be allocated and on that date this lesser amount shall be the amount allocated for those programs and the excess shall be allocated under subsection 7.

3. Sixteen percent of the state ceiling shall be allocated to qualified student loan bonds. However, at any time during the calendar year the governor's designee, with the approval of the Iowa student loan liquidity corporation, may determine that a lesser amount need be allocated to qualified student loan bonds and on that date the lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 7.

4. Twenty-one percent of the state ceiling shall be allocated to qualified small issue bonds issued for first-time farmers. However, at any time during the calendar year the governor's designee, with the approval of the Iowa agricultural development authority, may determine that a lesser amount need be allocated to qualified small issue bonds for first-time farmers and on that date this lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 7.

5. Eighteen percent of the state ceiling shall be allocated to bonds issued by political subdivisions to finance a qualified industry or industries for the manufacturing, processing, or

assembly of agricultural or manufactured products even though the processed products may require further treatment before delivery to the ultimate consumer. A single project allocated a portion of the state ceiling pursuant to this subsection shall not receive an allocation in excess of ten million dollars in any calendar year.

6. During the period of January 1 through June 30, three percent of the state ceiling shall be reserved for private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions.

7. a. The amount of the state ceiling which is not otherwise allocated under subsections 1 through 5, and after June 30, the amount of the state ceiling reserved under subsection 6 and not allocated, shall be allocated to all bonds requiring an allocation under section 146 of the Internal Revenue Code without priority for any type of bond over another, except as otherwise provided in sections 7C.5 and 7C.11. A single project allocated a portion of the state ceiling pursuant to this subsection shall not receive an allocation in excess of ten million dollars in any calendar year.

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

87 Acts, ch 171, §4; 90 Acts, ch 1011, §1; 91 Acts, ch 25, §1; 98 Acts, ch 1165, §1; 2005 Acts, ch 30, §2; 2008 Acts, ch 1024, §1, 2; 2008 Acts, ch 1032, §201; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 7D

### EXECUTIVE COUNCIL

#### **7D.10 Court costs.**

If sufficient funds for court costs have not been appropriated to a state department, or if sufficient funds are not otherwise available for such purposes within the budget of a state department, upon authorization by the executive council there is appropriated from moneys in the general fund of the state not otherwise appropriated, an amount sufficient to pay expenses incurred, or costs taxed to the state, in any proceeding brought by or against any of the state departments or in which the state is a party or is interested. This section shall not be construed to authorize the payment of travel or other personal expenses of state officers or employees.

[S13, §170-i; C24, 27, 31, 35, 39, §289; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.10]  
C93, §7D.10

2011 Acts, ch 131, §10, 158

Section amended

#### **7D.10A Payment to livestock remediation fund.**

If moneys are not sufficient to support the livestock remediation fund as provided in chapter 459, subchapter V, the executive council may authorize as an expense paid from the appropriations addressed in section 7D.29 the payment of an amount to the livestock remediation fund as provided under section 459.501, subsection 5. However, not more than a total of one million dollars shall be paid pursuant to this section to the livestock remediation fund at any time.

98 Acts, ch 1209, §1; 2011 Acts, ch 81, §11; 2011 Acts, ch 131, §11, 158

Section amended

#### **7D.29 Performance of duty — expense.**

1. The executive council shall not employ others, or authorize any expense, for the purpose of performing any duty imposed upon the council when the duty may, without neglect of their usual duties, be performed by the members, or by their regular employees, but, subject to this limitation, the council may authorize the necessary expense to perform or cause to be performed any legal duty imposed on the council. The expenses authorized

by the executive council in accordance with this section and the expenses authorized by the executive council in accordance with other statutory provisions referencing the appropriations addressed in this section shall be paid as follows:

a. From the appropriation made from the Iowa economic emergency fund in section 8.55 for purposes of paying such expenses.

b. To the extent the appropriation from the Iowa economic emergency fund described in paragraph “a” is insufficient to pay such expenses, there is appropriated from moneys in the general fund of the state not otherwise appropriated the amount necessary to fund that deficiency.

2. At least two weeks prior to the executive council’s approval of a payment authorization under this section, the secretary of the executive council shall notify the legislative services agency that the authorization request will be considered by the executive council and shall provide background information justifying the request.

3. The executive council shall receive requests from the Iowa department of public health relative to the purchase, storing, and distribution of vaccines and medication for prevention, prophylaxis, or treatment. Upon review and after compliance with subsection 2, the executive council may approve the request and may authorize payment of the necessary expense. The expense authorized by the executive council under this subsection shall be paid from the appropriations referred to in subsection 1.

[S13, §170-l, -n, -p; C24, 27, 31, 35, 39, §306; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.29]

88 Acts, ch 1275, §30; 89 Acts, ch 315, §25

C93, §7D.29

2006 Acts, ch 1171, §7, 9; 2006 Acts, ch 1185, §54, 89; 2011 Acts, ch 131, §12, 158

Section amended

### **7D.30 Necessary record.**

Before authorizing any expense in accordance with section 7D.29, the executive council shall, in each case, by resolution, entered upon its records, set forth the necessity for authorizing such expense, the special fitness of the one employed to perform such work, the definite rate of compensation or salary allowed, and the total amount of money that may be expended. Compensation or salary for personal services in such cases must be determined by unanimous vote of all members of the council.

[S13, §170-m, -n; C24, 27, 31, 35, 39, §307; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.30]

C93, §7D.30

2011 Acts, ch 131, §13, 158

Section amended

### **7D.34 Energy conservation lease-purchase.**

1. As used in this section:

a. “*Energy conservation measure*” means installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source, which may contain integral control and measurement devices.

b. “*State agency*” means a board, department, commission or authority of or acting on behalf of the state having the power to enter into contracts with or without the approval of the executive council to acquire property in its own name or in the name of the state. “*State agency*” does not mean the general assembly, the courts, the governor or a political subdivision of the state.

2. a. A state agency may, with the approval of the executive council, lease as lessee real and personal properties and facilities for use as or in connection with any energy conservation measure for which it may so acquire real and personal properties and facilities, upon the terms, conditions and considerations the official or officials having the authority with or without the approval of the executive council to commit the state agency to acquire real and personal property and facilities deem in the best interests of the state agency. A lease may include provisions for ultimate ownership by the state or by the state agency

and may obligate the state agency to pay costs of maintenance, operation, insurance and taxes. The state agency shall pay the rentals and the additional costs from the annual appropriations for the state agency by the general assembly or from other funds legally available. The lessor of the properties or facilities may retain a security interest in them until title passes to the state or state agency. The security interest may be assigned or pledged by the lessor. In connection with the lease, the state agency may contract for a letter of credit, insurance or other security enhancement obligation with respect to its rental and other obligations and pay the cost from annual appropriations for such state agency by the general assembly or from other funds legally available. The security enhancement arrangement may contain customary terms and provisions, including reimbursement and acceleration if appropriate. This section is a complete and independent authorization and procedure for a state agency, with the approval of the executive council, to enter into a lease and related security enhancement arrangements and this section is not a qualification of any other powers which a state agency may possess, including those under chapter 262, and the authorization and powers granted under this section are not subject to the terms or requirements of any other provision of the Code.

b. Before a state agency seeks approval of the executive council for leasing real or personal properties or facilities for use as or in connection with any energy conservation measure, the state agency shall have a comprehensive engineering analysis done on a building in which it seeks to improve the energy efficiency by an engineering firm approved by the economic development authority through a competitive selection process and the engineering firm is subject to approval of the executive council. Provisions of this section shall only apply to energy conservation measures identified in the comprehensive engineering analysis.

c. Before the executive council gives its approval for a state agency to lease real and personal properties or facilities for use as or in connection with any energy conservation measure, the executive council shall in conjunction with the economic development authority and after review of the engineering analysis submitted by the state agency make a determination that the properties or facilities will result in energy cost savings to the state in an amount that results in the state recovering the cost of the properties or facilities within six years after the initial acquisition of the properties or facilities.

85 Acts, ch 55, §1

CS85, §19.34

C93, §7D.34

2009 Acts, ch 108, §1, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

### **7D.35 Dispute resolution.**

The executive council shall resolve any disputes transmitted to it by the economic development authority, the state building code commissioner, or both, arising under section 470.7.

89 Acts, ch 315, §26

CS89, §19.35

C93, §7D.35

2009 Acts, ch 108, §2, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

## **CHAPTER 7E**

### **EXECUTIVE BRANCH ORGANIZATION AND RESPONSIBILITIES**

#### **7E.3 Heads of departments and independent agencies — powers and duties.**

Each head of a department or independent agency shall, except as otherwise provided by law:

1. *Supervision.* Plan, direct, coordinate, and execute the functions vested in the department or independent agency.

2. *Budget.* Annually compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram, and activity in the department or agency.

3. *Advisory bodies.* In addition to any councils specifically created by law, create by rule and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their expenses.

4. *Annual report.* Unless otherwise provided by law, submit a report in November of each year to the governor and the legislature on the operation of the department or independent agency during the fiscal year concluded on the preceding June 30, and projecting the goals and objectives of the department or independent agency as developed in the program budget report for the fiscal year under way. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require.

5. *Adults not lawfully present.* Unless expressly authorized by federal or state law, ensure that the public benefits administered by the department or independent agency are not provided to persons who are not lawfully present in the United States.

86 Acts, ch 1245, §3; 2011 Acts, ch 122, §3, 5

See also §7A.3 – 7A.11A

NEW subsection 5

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

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

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

b. The department of administrative services, created in section 8A.102, which has primary responsibility for the management and coordination of the major resources of state government.

c. The department of revenue, created in section 421.2, which has primary responsibility for revenue collection and revenue law compliance.

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

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

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

g. The economic development authority, created in section 15.105, which has responsibility for ensuring that the economic development policies of the state are effectively and efficiently carried out.

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

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

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

k. The department on aging, created in section 231.21, which has primary responsibility

for leadership and program management for programs which serve the older individuals of the state.

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

*m.* The department of education, created in section 256.1, which has primary responsibility for supervising public education at the elementary and secondary levels and for supervising the community colleges.

*n.* The department of corrections, created in section 904.102, which has primary responsibility for corrections administration, corrections institutions, prison industries, and the development, funding, and monitoring of community-based corrections programs.

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

*p.* The department of public defense, created in section 29.1, which has primary responsibility for state military forces and emergency management.

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

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

*s.* The department of human rights, created in section 216A.1, which has primary responsibility for services relating to Latino persons, women, persons with disabilities, community action agencies, criminal and juvenile justice planning, African Americans, deaf and hard-of-hearing persons, persons of Asian and Pacific Islander heritage, and Native Americans.

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

*u.* The department for the blind, created in chapter 216B, which has primary responsibility for services relating to blind persons.

*v.* The department of veterans affairs. However, the commission of veterans affairs created in section 35A.2 shall have primary responsibility for state veterans affairs.

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

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

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

86 Acts, ch 1245, §5; 88 Acts, ch 1277, §20, 21; 89 Acts, ch 83, §1; 90 Acts, ch 1180, §1; 92 Acts, ch 1139, §19; 92 Acts, ch 1140, §1, 2; 92 Acts, ch 1163, §1; 93 Acts, ch 48, §2; 93 Acts, ch 75, §1; 93 Acts, ch 163, §38; 96 Acts, ch 1186, §23; 98 Acts, ch 1017, §1; 2000 Acts, ch 1058, §2; 2000 Acts, ch 1141, §11, 19; 2002 Acts, ch 1050, §1; 2003 Acts, ch 145, §116 – 119; 2003 Acts, ch 178, §96, 121; 2003 Acts, ch 179, §142; 2005 Acts, ch 115, §1, 40; 2008 Acts, ch 1031, §7; 2008 Acts, ch 1184, §37; 2009 Acts, ch 23, §1; 2009 Acts, ch 41, §4; 2009 Acts, ch 108, §3, 41; 2011 Acts, ch 118, §54, 85, 89

See Code editor's note on simple harmonization  
Subsection 1, paragraph g amended

## CHAPTER 8

### DEPARTMENT OF MANAGEMENT — BUDGET AND FINANCIAL CONTROL ACT

#### 8.6 Specific powers and duties.

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

1. *Forms.* To consult with all state officers and agencies which receive reports and forms from county officers, in order to devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and to prescribe forms on which each municipality, at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:

a. For the immediate prior fiscal year, revenue from all sources, other than revenue received from property taxation, allocated to each of the several funds and separately stated as to each such source, and for each fund the unencumbered cash balance thereof at the beginning and end of the year, the amount received by property taxation allocated to each fund, and the amount of actual expenditure for each fund.

b. For the current fiscal year, actual and estimated revenue, from all sources, other than revenue received from property taxation, and separately stated as to each such source, allocated to each of the several funds, and for each fund the actual unencumbered cash balance available at the beginning of the year, the amount to be received from property taxation allocated to each fund, and the amount of actual and estimated expenditures, whichever is applicable.

c. For the proposed budget year, an estimate of revenue from all sources, other than revenue to be received from property taxation, separately stated as to each such source, to be allocated to each of the several funds, and for each fund the actual or estimated unencumbered cash balance, whichever is applicable, to be available at the beginning of the year, the amount proposed to be received from property taxation allocated to each fund, and the amount proposed to be expended during the year plus the amount of cash reserve, based on actual experience of prior years, which shall be the necessary cash reserve of the budget adopted exclusive of capital outlay items. The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated or actual unencumbered balances at the beginning of the year and less the estimated income from all sources other than property taxation shall equal the amount to be received from property taxes, and such amount shall be shown on the proposed budget estimate.

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

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

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

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

5. Reserved.

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

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

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

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

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

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

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

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

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

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

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

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

i. Statements showing:

(1) The condition of the treasury at the end of the last fiscal year.

(2) The estimated condition of the treasury at the end of the current fiscal year.

(3) The estimated condition of the treasury at the end of the next fiscal year, if the director's recommendations are adopted.

(4) An estimate of the taxable value of all the property within the state.

(5) The estimated aggregate amount necessary to be raised by a state levy.

(6) The amount per thousand dollars of taxable value necessary to produce such amount.

(7) Other data or information as the director deems advisable.

10. *Budget and tax rate databases.* To develop and make available to the public a searchable budget database and internet site as required under chapter 8G, subchapter I, and to develop and make available to the public a searchable tax rate database and internet site as required under chapter 8G, subchapter II.

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

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

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

14. *Capital project budgeting requests.* To compile annually all capital project budgeting requests of all state agencies, as defined in section 8.3A, and to consolidate the requests, with individual state agency priorities noted, into a report for submission with the budget

documents by the governor pursuant to section 8.22. Any additional information regarding the capital project budgeting requests or priorities shall be compiled and submitted in the same report.

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

16. *State tort claims — risk management coordinator.* To designate a position within the department to serve as the executive branch's risk management coordinator.

a. The risk management coordinator shall have all of the following responsibilities:

(1) Coordinating and monitoring risk control policies and programs in the executive branch, including but not limited to coordination with the employees of departments who are responsible for the workers' compensation for state employees and management of state property.

(2) Consulting with the attorney general with respect to the risk control policies and programs and trends in claims and liability of the state under chapter 669.

(3) Coordinating the state's central data repository for claims and risk information.

b. The costs of salary, benefits, and support for the risk management coordinator shall be authorized by the state appeal board established in chapter 73A and shall be paid as claims for services furnished to the state under section 25.2.

17. *Designation of services — funding — customer council.*

a. To establish a process by which the department, in consultation with the department of administrative services, shall determine which services provided by the department of administrative services shall be funded by an appropriation and which services shall be funded by the governmental entity receiving the service.

b. To establish a process for determining whether the department of administrative services shall be the sole provider of a service for purposes of those services which the department determines under paragraph "a" are to be funded by the governmental entities receiving the service.

c. To establish, by rule, a customer council responsible for overseeing the services provided solely by the department of administrative services. The rules adopted shall provide for all of the following:

(1) The method of appointment of members to the council by the governmental entities required to receive the services.

(2) The duties of the customer council which shall be as follows:

(a) Annual review and approval of the department of administrative services' business plan regarding services provided solely by the department of administrative services.

(b) Annual review and approval of the procedure for resolving complaints concerning services provided by the department of administrative services.

(c) Annual review and approval of the procedure for setting rates for the services provided solely by the department of administrative services.

(3) A process for receiving input from affected governmental entities as well as for a biennial review by the customer council of the determinations made by the department of which services are funded by an appropriation to the department of administrative services and which services are funded by the governmental entities receiving the service, including any recommendations as to whether the department of administrative services shall be the sole provider of a service funded by the governmental entities receiving the service. The department, in consultation with the department of administrative services, may change the determination of a service if it is determined that the change is in the best interests of those governmental entities receiving the service.

d. If a service to be provided may also be provided to the judicial branch and legislative branch, then the rules shall provide that the chief justice of the supreme court may appoint a member to the customer council, and the legislative council may appoint a member from

the senate and a member from the house of representatives to the customer council, in their discretion.

[C51, §50; R60, §71, 1967; C73, §66; C97, §89; S13, §89, 161-a; C24, 27, 31, §102, 130, 329; C35, §84-e6; C39, §84.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.6]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1067, §3; 85 Acts, ch 212, §21; 86 Acts, ch 1244, §3; 86 Acts, ch 1245, §104, 105, 2014; 86 Acts, ch 1246, §121; 86 Acts, ch 1016, §1; 89 Acts, ch 284, §1; 89 Acts, ch 298, §5; 90 Acts, ch 1168, §3, 4; 90 Acts, ch 1266, §29; 91 Acts, ch 268, §602, 603; 99 Acts, ch 204, §21, 22; 2001 Acts, 2nd Ex, ch 2, §2, 3, 13; 2006 Acts, ch 1185, §90; 2007 Acts, ch 22, §2; 2008 Acts, ch 1184, §29; 2009 Acts, ch 41, §5; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 122, §39; 2011 Acts, ch 131, §49, 158

Code editor directive applied

NEW subsection 10 and former subsections 10 – 16 renumbered as 11 – 17

### **8.7 Reporting of gifts and bequests received.**

All gifts and bequests received by a department or accepted by the governor on behalf of the state shall be reported to the Iowa ethics and campaign disclosure board and the general assembly's standing committees on government oversight. The ethics and campaign disclosure board shall, by January 31 of each year, submit to the fiscal services division of the legislative services agency a written report listing all gifts and bequests received during the previous calendar year with a value over one thousand dollars and the purpose for each such gift or bequest. The submission shall also include a listing of all gifts and bequests received by a department from a person if the cumulative value of all gifts and bequests received by the department from the person during the previous calendar year exceeds one thousand dollars, and the ethics and campaign disclosure board shall include, if available, the purpose for each such gift or bequest. However, the reports on gifts or bequests filed by the state board of regents and the Iowa state fair board pursuant to section 8.44 shall be deemed sufficient to comply with the requirements of this section.

2005 Acts, ch 173, §27; 2008 Acts, ch 1191, §25; 2010 Acts, ch 1069, §1; 2011 Acts, ch 79, §1

Section amended

### **8.9 Grants enterprise management office.**

1. The office of grants enterprise management is established in the department of management. The function of the office is to develop and administer a system to track, identify, advocate for, and coordinate nonstate grants as defined in section 8.2, subsections 1 and 3. Staffing for the office of grants enterprise management shall be provided by a facilitator appointed by the director of the department of management. Additional staff may be hired, subject to the availability of funding.

2. *a.* All grant applications submitted and grant moneys received by a department on behalf of the state shall be reported to the office of grants enterprise management. The office shall by January 31 of each year submit to the fiscal services division of the legislative services agency a written report listing all grants received during the previous calendar year with a value over one thousand dollars and the funding entity and purpose for each grant. However, the reports on grants filed by the state board of regents pursuant to section 8.44 shall be deemed sufficient to comply with the requirements of this subsection.

*b.* The office of grants enterprise management shall submit by July 1 and January 1 of each year to the general assembly's standing committees on government oversight a written report summarizing departmental compliance with the requirements of this subsection.

2003 Acts, ch 99, §1; 2008 Acts, ch 1191, §26; 2010 Acts, ch 1069, §2; 2011 Acts, ch 34, §1

Subsection 1 amended

### **8.11 Grant applications — minority impact statements.**

1. Each application for a grant from a state agency shall include a minority impact statement that contains the following information:

*a.* Any disproportionate or unique impact of proposed policies or programs on minority persons in this state.

*b.* A rationale for the existence of programs or policies having an impact on minority persons in this state.

c. Evidence of consultation of representatives of minority persons in cases where a policy or program has an identifiable impact on minority persons in this state.

2. For the purposes of this section, the following definitions shall apply:

a. “Disability” means the same as provided in section 15.102, subsection 12, paragraph “b”, subparagraph (1).

b. “Minority persons” includes individuals who are women, persons with a disability, African Americans, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.

c. “State agency” means a department, board, bureau, commission, or other agency or authority of the state of Iowa.

3. The office of grants enterprise management shall create and distribute a minority impact statement form for state agencies and ensure its inclusion with applications for grants.

4. The directives of this section shall be carried out to the extent consistent with federal law.

5. The minority impact statement shall be used for informational purposes.

2008 Acts, ch 1095, §3, 4; 2009 Acts, ch 41, §6

Section not amended; internal reference change applied

#### **8.22A Revenue estimating conference.**

1. The state revenue estimating conference is created consisting of the governor or the governor’s designee, the director of the legislative services agency or the director’s designee, and a third member agreed to by the other two.

2. The conference shall meet as often as deemed necessary, but shall meet at least three times per year. The conference may use sources of information deemed appropriate. At each meeting, the conference shall agree to estimates for the current fiscal year and the following fiscal year for the general fund of the state, lottery revenues to be available for disbursement, and from gambling revenues and from interest earned on the cash reserve fund and the economic emergency fund to be deposited in the rebuild Iowa infrastructure fund. Only an estimate for the following fiscal year agreed to by the conference pursuant to subsection 3, 4, or 5, shall be used for purposes of calculating the state general fund expenditure limitation under section 8.54, and any other estimate agreed to shall be considered a preliminary estimate that shall not be used for purposes of calculating the state general fund expenditure limitation.

3. By December 15 of each fiscal year the conference shall agree to a revenue estimate for the fiscal year beginning the following July 1. That estimate shall be used by the governor in the preparation of the budget message under section 8.22 and by the general assembly in the budget process. If the conference agrees to a different estimate at a later meeting which projects a greater amount of revenue than the initial estimate amount agreed to by December 15, the governor and the general assembly shall continue to use the initial estimate amount in the budget process for that fiscal year. However, if the conference agrees to a different estimate at a later meeting which projects a lesser amount of revenue than the initial estimate amount, the governor and the general assembly shall use the lesser amount in the budget process for that fiscal year. As used in this subsection, “later meeting” means only those later meetings which are held prior to the conclusion of the regular session of the general assembly and, if the general assembly holds an extraordinary session prior to the commencement of the fiscal year to which the estimate applies, those later meetings which are held before or during the extraordinary session.

4. At the meeting in which the conference agrees to the revenue estimate for the following fiscal year in accordance with the provisions of subsection 3, the conference shall agree to an estimate for tax refunds payable from that estimated revenue. The estimates required by this subsection shall be used in determining the adjusted revenue estimate under section 8.54.

5. At the meeting in which the conference agrees to the revenue estimate for the succeeding fiscal year in accordance with the provisions of subsection 3, the conference shall also agree to the following estimates which shall be used by the governor in preparation of

the budget message under section 8.22 and the general assembly in the budget process for the succeeding fiscal year:

a. The amount of lottery revenues for the following fiscal year to be available for disbursement following the deductions made pursuant to section 99G.39, subsection 1.

b. The amount of revenue for the following fiscal year from gambling revenues and from interest earned on the cash reserve fund and the economic emergency fund to be deposited in the rebuild Iowa infrastructure fund under section 8.57, subsection 6, paragraph “e”.

c. The amount of accruals of those revenues collected by or due from entities other than the state on or before June 30 of the fiscal year but not remitted to the state until after June 30.

d. The amount of accrued lottery revenues collected on or before June 30 of the fiscal year but not transferred to the general fund of the state until after June 30.

86 Acts, ch 1245, §2045; 92 Acts, ch 1227, §2; 94 Acts, ch 1181, §4; 95 Acts, ch 214, §5; 96 Acts, ch 1218, §24; 2001 Acts, 2nd Ex, ch 2, §5, 13; 2003 Acts, ch 35, §23, 49; 2003 Acts, ch 178, §98, 121; 2003 Acts, ch 179, §142; 2004 Acts, ch 1175, §214, 287; 2011 Acts, ch 117, §1, 4

Subsection 2 amended

### **8.31 Allotments of appropriations — exceptions — modifications.**

1. a. Before an appropriation of any department or establishment becomes available, the department or establishment shall submit to the director of the department of management a requisition for allotment of the appropriation according to dates identified in the requisition during the fiscal year by which portions of the appropriation will be needed. The department or establishment shall submit the requisition by June 1, prior to the start of a fiscal year or by another date identified by the director. The requisition shall contain details of proposed expenditures as may be required by the director subject to review by the governor.

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

2. Allotments made in accordance with subsection 1 may be subsequently modified by the director of the department of management at the direction of the governor either upon the written request of the head of the department or establishment concerned, or in the event the governor finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, upon the governor’s own initiative to the extent the governor may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of the fiscal year; and the head of the department or establishment shall be given notice of a modification in the same way as in the case of original allotments.

3. The allotment requests of all departments and establishments collecting governmental fees and other revenue which supplement a state appropriation shall attach to the summary of requests a statement showing how much of the proposed allotments are to be financed from state appropriations, stores, and repayment receipts.

4. The procedure to be employed in controlling the expenditures and receipts of the state fair board and the institutions under the state board of regents, whose collections are not deposited in the state treasury, is that outlined in section 8A.502, subsection 9.

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

6. Allotments from appropriations for the foreign trade offices of the economic development authority, if the appropriations are described by line item in the authority’s

appropriation Act or another Act, may be made as is necessary to take advantage of the most favorable foreign currency exchange rates.

[C35, §84-e24; C39, §84.24; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.31; 81 Acts, ch 18, §1]

86 Acts, ch 1245, §1972; 87 Acts, ch 115, §4; 89 Acts, ch 309, §6; 94 Acts, ch 1063, §1; 2003 Acts, ch 145, §121; 2003 Acts, ch 179, §89, 159; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **8.39 Use of appropriations — transfer.**

1. Except as otherwise provided by law, an appropriation or any part of it shall not be used for any other purpose than that for which it was made. However, with the prior written consent and approval of the governor and the director of the department of management, the governing board or head of any state department, institution, or agency may, at any time during the fiscal year, make a whole or partial intradepartmental transfer of its unexpended appropriations for purposes within the scope of such department, institution, or agency. Such transfer shall be to an appropriation made from the same funding source and within the same fiscal year. The amount of a transfer made from an appropriation under this subsection shall be limited to not more than one-tenth of one percent of the total of all appropriations made from the funding source of the transferred appropriation for the fiscal year in which the transfer is made.

2. If the appropriation of a department, institution, or agency is insufficient to properly meet the legitimate expenses of the department, institution, or agency, the director, with the approval of the governor, may make an interdepartmental transfer from any other department, institution, or agency of the state having an appropriation in excess of its needs, of sufficient funds to meet that deficiency. Such transfer shall be to an appropriation made from the same funding source and within the same fiscal year. The amount of a transfer made from an appropriation under this subsection shall be limited to not more than one-tenth of one percent of the total of all appropriations made from the funding source of the transferred appropriation for the fiscal year in which the transfer is made. An interdepartmental transfer to an appropriation which is not an entitlement appropriation is not authorized when the general assembly is in regular session and, in addition, the sum of interdepartmental transfers in a fiscal year to an appropriation which is not an entitlement appropriation shall not exceed fifty percent of the amount of the appropriation as enacted by the general assembly. For the purposes of this subsection, an entitlement appropriation is a line item appropriation to the state public defender for indigent defense or to the department of human services for foster care, state supplementary assistance, or medical assistance, or for the family investment program.

3. The aggregate amount of intradepartmental and interdepartmental transfers made from all appropriations for a fiscal year pursuant to this section is limited to not more than five-tenths of one percent of the total amount of the appropriations made from the general fund of the state for the fiscal year. The aggregate amount of the intradepartmental and interdepartmental transfers made from an appropriation for a fiscal year is limited to fifty percent of the appropriation.

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

5. Any transfer made under the provisions of this section shall be reported to the legislative fiscal committee on a monthly basis. The report shall cover each calendar month and shall be due the tenth day of the following month. The report shall contain the following: The amount of each transfer; the date of each transfer; the departments and funds affected;

a brief explanation of the reason for the transfer; and such other information as may be required by the committee. A summary of all transfers made under the provisions of this section shall be included in the annual report of the legislative fiscal committee.

[C97, §187; SS15, §170-q; C24, 27, 31, §345; C35, §84-a3; C39, §84.32; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.39]

86 Acts, ch 1245, §2022; 87 Acts, ch 115, §5; 94 Acts, ch 1181, §6; 94 Acts, ch 1199, §44; 2011 Acts, ch 117, §2 – 4

Subsections 1 and 2 amended

NEW subsection 3 and former subsections 3 and 4 renumbered as 4 and 5

### **8.51 Political subdivisions — fiscal year — unexpended funds.**

1. The fiscal year of cities, counties, and other political subdivisions of the state shall begin July 1 and end the following June 30. For the purpose of this section, the term political subdivision includes school districts.

2. Each department that provides state funding to a political subdivision of the state shall annually review the statutory and regulatory requirements applicable to the political subdivision's receipt of the funding. The purpose of the review is to identify any barrier in statute or departmental rule or policy that would prevent recovery of any such state funding provided to a political subdivision that remains unencumbered or unobligated and the political subdivision no longer complies with requirements to receive the state funding. If an identified barrier exists in state law, the department shall propose legislation to the governor and general assembly to remove the barrier. If an identified barrier is in departmental rule or policy, the department shall amend the rule or policy to remove the barrier.

[C75, 77, 79, 81, §8.51]

2011 Acts, ch 122, §37, 38

Section amended

### **8.54 General fund expenditure limitation.**

1. For the purposes of section 8.22A, this section, and sections 8.55 through 8.57:

a. “*Adjusted revenue estimate*” means the appropriate revenue estimate for the general fund for the following fiscal year as determined by the revenue estimating conference under section 8.22A, subsection 3, adjusted by subtracting estimated tax refunds payable from that estimated revenue and as determined by the conference, adding any new revenues which may be considered to be eligible for deposit in the general fund.

b. “*New revenues*” means moneys which are received by the state due to increased tax rates and fees or newly created taxes and fees over and above those moneys which are received due to state taxes and fees which are in effect as of January 1 following the December state revenue estimating conference. “*New revenues*” also includes moneys received by the general fund of the state due to new transfers over and above those moneys received by the general fund of the state due to transfers which are in effect as of January 1 following the December state revenue estimating conference. The department of management shall obtain concurrence from the revenue estimating conference on the eligibility of transfers to the general fund of the state which are to be considered as new revenue in determining the state general fund expenditure limitation.

2. There is created a state general fund expenditure limitation for each fiscal year calculated as provided in this section. An expenditure limitation shall be used for the portion of the budget process commencing on the date the revenue estimating conference agrees to a revenue estimate for the following fiscal year in accordance with section 8.22A, subsection 3, and ending with the governor's final approval or disapproval of the appropriations bills applicable to that fiscal year that were passed prior to July 1 of that fiscal year in a regular or extraordinary legislative session.

3. Except as otherwise provided in this section, the state general fund expenditure limitation for a fiscal year shall be ninety-nine percent of the adjusted revenue estimate.

4. The state general fund expenditure limitation amount provided for in this section shall be used by the governor in the preparation of the budget under section 8.22 and approval of the budget and by the general assembly in the budget process. If a source for new revenues is proposed, the budget revenue projection used for that new revenue source for

the period beginning on the effective date of the new revenue source and ending in the fiscal year in which the source is included in the revenue base shall be an amount determined by subtracting estimated tax refunds payable from the projected revenue from that new revenue source, multiplied by ninety-five percent. If a new revenue source is established and implemented, the original state general fund expenditure limitation amount provided for in subsection 3 shall be readjusted to include ninety-five percent of the estimated revenue from the new revenue source.

5. For fiscal years in which it is anticipated that the distribution of moneys from the Iowa economic emergency fund in accordance with section 8.55, subsection 2, will result in moneys being transferred to the general fund, the original state general fund expenditure limitation amount provided for in subsection 3 shall be readjusted to include the amount of moneys anticipated to be so transferred.

6. The scope of the expenditure limitation under subsection 3 shall not encompass federal funds, donations, constitutionally dedicated moneys, and moneys in expenditures from state retirement system moneys.

7. The governor shall transmit to the general assembly, in accordance with section 8.21, a budget which does not exceed the state general fund expenditure limitation. The general assembly shall pass a budget which does not exceed the state general fund expenditure limitation. The governor shall not transmit a budget with recommended appropriations in excess of the state general fund expenditure limitation and the general assembly shall not pass a budget with appropriations in excess of the state general fund expenditure limitation. The governor shall not approve or disapprove appropriation bills or items of appropriation bills passed by the general assembly in a manner that would cause the final budget approved by the governor to exceed the state general fund expenditure limitation. In complying with the requirements of this subsection, the governor and the general assembly shall not rely on any anticipated reversion of appropriations in order to meet the state general fund expenditure limitation.

92 Acts, ch 1227, §4; 92 Acts, 2nd Ex, ch 1001, §228; 94 Acts, ch 1181, §1, 5; 2001 Acts, 2nd Ex, ch 2, §10, 11, 13; 2004 Acts, ch 1175, §215, 287; 2011 Acts, ch 123, §28, 32

2011 amendment to subsection 5 applies to moneys attributed to fiscal years beginning on or after July 1, 2011; 2011 Acts, ch 123, §32  
Subsection 5 amended

ECONOMIC EMERGENCY FUND,  
CASH RESERVE FUND,  
REBUILD IOWA INFRASTRUCTURE FUND,  
ENVIRONMENT FIRST FUND,  
VERTICAL INFRASTRUCTURE FUND,  
TECHNOLOGY REINVESTMENT FUND, AND  
TAXPAYERS TRUST FUND

**8.55 Iowa economic emergency fund.**

1. The Iowa economic emergency fund is created. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. The moneys credited to the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section.

2. *a.* The maximum balance of the fund is the amount equal to two and one-half percent of the adjusted revenue estimate for the fiscal year. If the amount of moneys in the Iowa economic emergency fund is equal to the maximum balance, moneys in excess of this amount shall be distributed as follows:

(1) The first sixty million dollars of the difference between the actual net revenue for the general fund of the state for the fiscal year and the adjusted revenue estimate for the fiscal year shall be transferred to the taxpayers trust fund.

(2) The remainder of the excess, if any, shall be transferred to the general fund of the state.

b. Notwithstanding paragraph “a”, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of each fiscal year shall not be distributed as provided in paragraph “a” but shall be transferred to the senior living trust fund. The total amount appropriated, reverted, or transferred, in the aggregate, under this paragraph, section 8.57, subsection 2, and any other law providing for an appropriation or reversion or transfer of an appropriation to the credit of the senior living trust fund, for all fiscal years beginning on or after July 1, 2004, shall not exceed the amount specified in section 8.57, subsection 2, paragraph “c”.

3. a. Except as provided in paragraphs “b”, “c”, and “d”, the moneys in the Iowa economic emergency fund shall only be used pursuant to an appropriation made by the general assembly. An appropriation shall only be made for the fiscal year in which the appropriation is made. The moneys shall only be appropriated by the general assembly for emergency expenditures.

b. Moneys in the fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the fund by the end of that fiscal year.

c. There is appropriated from the Iowa economic emergency fund to the general fund of the state for the fiscal year in which moneys in the fund were used for cash flow purposes, for the purposes of reducing or preventing any overdraft on or deficit in the general fund of the state, the amount from the Iowa economic emergency fund that was used for cash flow purposes pursuant to paragraph “b” and that was not returned to the Iowa economic emergency fund by June 30 of the fiscal year. The appropriation in this paragraph shall not exceed fifty million dollars and is contingent upon all of the following having occurred:

(1) The revenue estimating conference estimate of general fund receipts made during the last quarter of the fiscal year was or the actual fiscal year receipts and accruals were at least one-half of one percent less than the comparable estimate made during the third quarter of the fiscal year.

(2) The governor has implemented the uniform reductions in appropriations required in section 8.31 as a result of subparagraph (1) and such reduction was insufficient to prevent an overdraft on or deficit in the general fund of the state or the governor did not implement uniform reductions in appropriations because of the lateness of the estimated or actual receipts and accruals under subparagraph (1).

(3) The balance of the general fund of the state at the end of the fiscal year prior to the appropriation made in this paragraph was negative.

(4) The governor has issued an official proclamation and has notified the co-chairpersons of the fiscal committee of the legislative council and the legislative services agency that the contingencies in subparagraphs (1) through (3) have occurred and the reasons why the uniform reductions specified in subparagraph (2) were insufficient or were not implemented to prevent an overdraft on or deficit in the general fund of the state.

d. There is appropriated from the Iowa economic emergency fund to the executive council an amount sufficient to pay the expenses authorized by the executive council, as addressed in section 7D.29.

e. If an appropriation is made pursuant to paragraph “c” for a fiscal year, there is appropriated from the general fund of the state to the Iowa economic emergency fund for the following fiscal year, the amount of the appropriation made pursuant to paragraph “c”.

f. Except as provided in section 8.58, the Iowa economic emergency fund shall be considered a special account for the purposes of section 8.53 in determining the cash position of the general fund of the state for the payment of state obligations.

4. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the Iowa economic emergency fund shall be credited to the rebuild Iowa infrastructure fund.

84 Acts, ch 1305, §21; 92 Acts, ch 1227, §5; 94 Acts, ch 1181, §8; 95 Acts, ch 214, §13; 2001 Acts, 2nd Ex, ch 6, §27, 28, 37; 2002 Acts, ch 1169, §1; 2002 Acts, ch 1175, §73; 2002 Acts, 2nd Ex, ch 1001, §25, 26, 33, 52; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 179, §29, 30, 40; 2004 Acts, ch 1175, §216; 2005 Acts, ch 179, §24, 25; 2006 Acts, ch 1173, §1, 3; 2011 Acts, ch 123, §29, 32; 2011 Acts, ch 131, §14, 15, 158

For future repeal of subsection 2, paragraph b, see §8.57, subsection 2, paragraph d

2011 amendment to subsection 2 applies to moneys attributed to fiscal years beginning on or after July 1, 2011; 2011 Acts, ch 123, §32  
 Subsection 2 amended  
 Subsection 3, paragraph a amended  
 Subsection 3, NEW paragraph d and former paragraphs d and e redesignated as e and f

**8.57 Annual appropriations — reduction of GAAP deficit — rebuild Iowa infrastructure fund.**

1. *a.* The “cash reserve goal percentage” for fiscal years beginning on or after July 1, 2004, is seven and one-half percent of the adjusted revenue estimate. For each fiscal year in which the appropriation of the surplus existing in the general fund of the state at the conclusion of the prior fiscal year pursuant to paragraph “b” was not sufficient for the cash reserve fund to reach the cash reserve goal percentage for the current fiscal year, there is appropriated from the general fund of the state an amount to be determined as follows:

(1) If the balance of the cash reserve fund in the current fiscal year is not more than six and one-half percent of the adjusted revenue estimate for the current fiscal year, the amount of the appropriation under this lettered paragraph is one percent of the adjusted revenue estimate for the current fiscal year.

(2) If the balance of the cash reserve fund in the current fiscal year is more than six and one-half percent but less than seven and one-half percent of the adjusted revenue estimate for that fiscal year, the amount of the appropriation under this lettered paragraph is the amount necessary for the cash reserve fund to reach seven and one-half percent of the adjusted revenue estimate for the current fiscal year.

(3) The moneys appropriated under this lettered paragraph shall be credited in equal and proportionate amounts in each quarter of the current fiscal year.

*b.* The surplus existing in the general fund of the state at the conclusion of the fiscal year is appropriated for distribution in the succeeding fiscal year as provided in subsections 3 and 4. Moneys credited to the cash reserve fund from the appropriation made in this paragraph shall not exceed the amount necessary for the cash reserve fund to reach the cash reserve goal percentage for the succeeding fiscal year. As used in this paragraph, “surplus” means the excess of revenues and other financing sources over expenditures and other financing uses for the general fund of the state in a fiscal year.

*c.* The amount appropriated in this section is not subject to the provisions of section 8.31, relating to requisitions and allotment, or to section 8.32, relating to conditional availability of appropriations.

2. *a.* There is appropriated from the surplus existing in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2005, and ending June 30, 2006, and at the conclusion of each succeeding fiscal year for distribution to the senior living trust fund, an amount equal to one percent of the adjusted revenue estimate for the current fiscal year. However, if the amount of the surplus existing in the general fund of the state at the conclusion of a fiscal year is less than two percent of the adjusted revenue estimate for that fiscal year, the amount of the appropriation made in this paragraph shall be equal to fifty percent of the surplus amount. The appropriation made in this paragraph shall be distributed to the senior living trust fund in the succeeding fiscal year. For the purposes of this subsection, “surplus” means the same as defined in subsection 1, paragraph “b”.

*b.* The appropriation made in paragraph “a” shall be made before the appropriations are made pursuant to subsections 1, 3, and 4, of the surplus existing in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2005, and ending June 30, 2006, and each succeeding fiscal year.

*c.* The appropriation made in paragraph “a” shall continue until the aggregate amount of the appropriations made, reverted, or transferred to the senior living trust fund for all fiscal years beginning on or after July 1, 2004, pursuant to paragraph “a” of this subsection, section 8.55, subsection 2, paragraph “b”, and any other law providing for an appropriation or reversion or transfer of an appropriation to the senior living trust fund is equal to three hundred million dollars.

*d.* This subsection and section 8.55, subsection 2, paragraph “b”, are repealed when the aggregate amount specified in paragraph “c” has been distributed, appropriated, reverted, or transferred to the senior living trust fund. The director of the department

of management shall notify the Iowa Code editor when the aggregate amount has been distributed, appropriated, reverted, or transferred.

3. Moneys appropriated under subsection 1 shall be first credited to the cash reserve fund. To the extent that moneys appropriated under subsection 1 would make the moneys in the cash reserve fund exceed the cash reserve goal percentage of the adjusted revenue estimate for the fiscal year, the moneys are appropriated to the department of management to be spent for the purpose of eliminating Iowa's GAAP deficit, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year. These moneys shall be deposited into a GAAP deficit reduction account established within the department of management. The department of management shall annually file with both houses of the general assembly at the time of the submission of the governor's budget, a schedule of the items for which moneys appropriated under this subsection for the purpose of eliminating Iowa's GAAP deficit, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year, shall be spent. The schedule shall indicate the fiscal year in which the spending for an item is to take place and shall incorporate the items detailed in 1994 Iowa Acts, chapter 1181, section 17. The schedule shall list each item of expenditure and the estimated dollar amount of moneys to be spent on that item for the fiscal year. The department of management may submit during a regular legislative session an amended schedule for legislative consideration. If moneys appropriated under this subsection are not enough to pay for all listed expenditures, the department of management shall distribute the payments among the listed expenditure items. Moneys appropriated to the department of management under this subsection shall not be spent on items other than those included in the filed schedule. On September 1 following the close of a fiscal year, moneys in the GAAP deficit reduction account which remain unexpended for items on the filed schedule for the previous fiscal year shall be credited to the Iowa economic emergency fund.

4. To the extent that moneys appropriated under subsection 1 exceed the amounts necessary for the cash reserve fund to reach its maximum balance and the amounts necessary to eliminate Iowa's GAAP deficit, including elimination of the making of any appropriation in an incorrect fiscal year, the moneys shall be appropriated to the Iowa economic emergency fund.

5. As used in this section, "GAAP" means generally accepted accounting principles as established by the governmental accounting standards board.

6. *a.* A rebuild Iowa infrastructure fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

*b.* Moneys in the infrastructure fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the infrastructure fund shall be credited to the infrastructure fund. Moneys in the infrastructure fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the infrastructure fund by the end of that fiscal year.

*c.* Moneys in the fund in a fiscal year shall be used as directed by the general assembly for public vertical infrastructure projects. For the purposes of this subsection, "vertical infrastructure" includes only land acquisition and construction; major renovation and major repair of buildings; all appurtenant structures; utilities; site development; recreational trails; and debt service payments on academic revenue bonds issued in accordance with chapter 262A for capital projects at board of regents institutions. "Vertical infrastructure" does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

*d.* The general assembly may provide that all or part of the moneys deposited in the GAAP

deficit reduction account created in this section shall be transferred to the infrastructure fund in lieu of appropriation of the moneys to the Iowa economic emergency fund.

e. (1) (a) (i) Notwithstanding provisions to the contrary in sections 99D.17 and 99F.11, for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter, not more than a total of sixty-six million dollars shall be deposited in the general fund of the state in any fiscal year pursuant to sections 99D.17 and 99F.11.

(ii) However, in lieu of the deposit in subparagraph subdivision (i), for the fiscal year beginning July 1, 2010, and for each fiscal year thereafter until the principal and interest on all bonds issued by the treasurer of state pursuant to section 12.87 are paid, as determined by the treasurer of state, the first fifty-five million dollars of the moneys directed to be deposited in the general fund of the state under subparagraph subdivision (i) shall be deposited in the revenue bonds debt service fund created in section 12.89, and the next three million seven hundred fifty thousand dollars of the moneys directed to be deposited in the general fund of the state under subparagraph subdivision (i) shall be deposited in the revenue bonds federal subsidy holdback fund created in section 12.89A, and the next one million two hundred fifty thousand dollars of the moneys directed to be deposited in the general fund of the state under subparagraph subdivision (i) shall be deposited in the general fund of the state.

(b) The next fifteen million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the vision Iowa fund created in section 12.72 for the fiscal year beginning July 1, 2000, and for each fiscal year through the fiscal year beginning July 1, 2019.

(c) The next five million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the school infrastructure fund created in section 12.82 for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter until the principal and interest on all bonds issued by the treasurer of state pursuant to section 12.81 are paid, as determined by the treasurer of state.

(d) (i) The total moneys in excess of the moneys deposited in the revenue bonds debt service fund, the revenue bonds federal subsidy holdback fund, the vision Iowa fund, the school infrastructure fund, and the general fund of the state in a fiscal year shall be deposited in the rebuild Iowa infrastructure fund and shall be used as provided in this section, notwithstanding section 8.60.

(ii) However, in lieu of the deposit in subparagraph subdivision (i), for the fiscal year beginning July 1, 2010, and for each fiscal year thereafter until the principal and interest on all bonds issued by the treasurer of state pursuant to section 12.87 are paid, as determined by the treasurer of state, sixty-four million seven hundred fifty thousand dollars of the excess moneys directed to be deposited in the rebuild Iowa infrastructure fund under subparagraph subdivision (i) shall be deposited in the general fund of the state.

(2) If the total amount of moneys directed to be deposited in the general fund of the state under sections 99D.17 and 99F.11 in a fiscal year is less than the total amount of moneys directed to be deposited in the revenue bonds debt service fund and the revenue bonds federal subsidy holdback fund in the fiscal year pursuant to this paragraph "e", the difference shall be paid from moneys deposited in the beer and liquor control fund created in section 123.53 in the manner provided in section 123.53, subsection 3.

(3) After the deposit of moneys directed to be deposited in the general fund of the state, the revenue bonds debt service fund, and the revenue bonds federal subsidy holdback fund, as provided in subparagraph (1), subparagraph division (a), if the total amount of moneys directed to be deposited in the general fund of the state under sections 99D.17 and 99F.11 in a fiscal year is less than the total amount of moneys directed to be deposited in the vision Iowa fund and the school infrastructure fund in the fiscal year pursuant to this paragraph "e", the difference shall be paid from lottery revenues in the manner provided in section 99G.39, subsection 3.

f. There is appropriated from the rebuild Iowa infrastructure fund to the secure an advanced vision for education fund created in section 423F.2, for each fiscal year of the fiscal period beginning July 1, 2008, and ending June 30, 2010, the amount of the moneys in excess of the first forty-seven million dollars credited to the rebuild Iowa infrastructure fund during the fiscal year, not to exceed ten million dollars.

g. Notwithstanding any other provision to the contrary, and prior to the appropriation of moneys from the rebuild Iowa infrastructure fund pursuant to paragraph “c”, and section 8.57A, subsection 4, moneys shall first be appropriated from the rebuild Iowa infrastructure fund to the vertical infrastructure fund as provided in section 8.57B, subsection 4.

h. Annually, on or before January 15 of each year, a state agency that received an appropriation from the rebuild Iowa infrastructure fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

i. Annually, on or before December 31 of each year, a recipient of moneys from the rebuild Iowa infrastructure fund for any purpose shall report to the state agency to which the moneys are appropriated the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

92 Acts, ch 1227, §7; 92 Acts, 2nd Ex, ch 1001, §229, 230; 94 Acts, ch 1181, §10, 11; 95 Acts, ch 209, §11, 12; 95 Acts, ch 214, §15, 16; 96 Acts, ch 1218, §25, 26, 71; 2000 Acts, ch 1225, §30, 38, 39; 2001 Acts, ch 185, §33, 49; 2002 Acts, 2nd Ex, ch 1001, §28, 29, 33, 52; 2003 Acts, ch 178, §99, 121; 2003 Acts, ch 179, §31, 40, 90, 142, 159; 2003 Acts, 1st Ex, ch 2, §91, 209; 2004 Acts, ch 1101, §100, 102; 2004 Acts, ch 1170, §3; 2004 Acts, ch 1175, §321; 2006 Acts, ch 1173, §2, 3; 2006 Acts, ch 1179, §33; 2007 Acts, ch 22, §114, 116; 2007 Acts, ch 219, §27; 2008 Acts, ch 1134, §37; 2008 Acts, ch 1179, §37; 2009 Acts, ch 173, §26, 36; 2009 Acts, ch 179, §29; 2009 Acts, ch 182, §100; 2009 Acts, ch 184, §29; 2010 Acts, ch 1184, §75, 76; 2011 Acts, ch 25, §1; 2011 Acts, ch 133, §18, 19, 50

For temporary exceptions to appropriations contained in this section, see appropriations and other noncodified enactments in annual Acts of the general assembly

Subsection 6, paragraph c amended

Subsection 6, paragraph e, subparagraph (1), subparagraph division (d), subparagraph subdivision (i) amended

Subsection 6, paragraph f amended

### **8.57A Environment first fund.**

1. An environment first fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the environment first fund shall be credited to the rebuild Iowa infrastructure fund.

3. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for the protection, conservation, enhancement, or improvement of natural resources or the environment.

4. a. There is appropriated from the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 2013, and for each fiscal year thereafter, the sum of forty-two million dollars to the environment first fund, notwithstanding section 8.57, subsection 6, paragraph “c”.

b. There is appropriated from the rebuild Iowa infrastructure fund each fiscal year for the period beginning July 1, 2010, and ending June 30, 2012, the sum of thirty-three million dollars to the environment first fund, notwithstanding section 8.57, subsection 6, paragraph “c”.

c. There is appropriated from the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 2012, and ending June 30, 2013, the sum of thirty-five million dollars to the environment first fund, notwithstanding section 8.57, subsection 6, paragraph “c”.

5. Annually, on or before January 15 of each year, a state agency that received an

appropriation from the environment first fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

2000 Acts, ch 1225, §22; 2006 Acts, ch 1179, §34; 2007 Acts, ch 215, §8; 2007 Acts, ch 219, §28; 2008 Acts, ch 1179, §38; 2010 Acts, ch 1184, §77; 2011 Acts, ch 133, §20, 50

Subsection 4 amended

#### **8.57C Technology reinvestment fund.**

1. A technology reinvestment fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

2. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for the acquisition of computer hardware and software, software development, telecommunications equipment, and maintenance and lease agreements associated with technology components and for the purchase of equipment intended to provide an uninterruptible power supply.

3. *a.* There is appropriated from the general fund of the state for the fiscal year beginning July 1, 2012, and for each subsequent fiscal year thereafter, the sum of seventeen million five hundred thousand dollars to the technology reinvestment fund.

*b.* There is appropriated from the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 2008, and ending June 30, 2009, the sum of seventeen million five hundred thousand dollars, and for the fiscal year beginning July 1, 2009, and ending June 30, 2010, the sum of fourteen million five hundred twenty-five thousand dollars to the technology reinvestment fund, notwithstanding section 8.57, subsection 6, paragraph “c”.

*c.* There is appropriated from the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 2010, and ending June 30, 2011, the sum of ten million dollars to the technology reinvestment fund, notwithstanding section 8.57, subsection 6, paragraph “c”.

*d.* There is appropriated from the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 2011, and ending June 30, 2012, the sum of fifteen million, five hundred forty-one thousand dollars to the technology reinvestment fund, notwithstanding section 8.57, subsection 6, paragraph “c”.

4. Annually, on or before January 15 of each year, a state agency that received an appropriation from this fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

2006 Acts, ch 1179, §23; 2007 Acts, ch 219, §30; 2008 Acts, ch 1179, §40; 2009 Acts, ch 184, §30; 2010 Acts, ch 1184, §78; 2011 Acts, ch 133, §21, 22, 50

Subsection 3, paragraphs a and c amended

Subsection 3, NEW paragraph d

#### **8.57E Taxpayers trust fund.**

1. A taxpayers trust fund is created. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. The moneys credited to the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section.

2. Moneys in the taxpayers trust fund shall only be used pursuant to appropriations made by the general assembly for tax relief.

3. *a.* Moneys in the taxpayers trust fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the fund by the end of that fiscal year.

*b.* Except as provided in section 8.58, the taxpayers trust fund shall be considered a special account for the purposes of section 8.53 in determining the cash position of the general fund of the state for the payment of state obligations.

4. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the taxpayers trust fund shall be credited to the fund.

2011 Acts, ch 123, §30; 2011 Acts, ch 131, §50, 158

NEW section

#### **8.58 Exemption from automatic application.**

1. To the extent that moneys appropriated under section 8.57 do not result in moneys being credited to the general fund under section 8.55, subsection 2, moneys appropriated under section 8.57 and moneys contained in the cash reserve fund, rebuild Iowa infrastructure fund, environment first fund, Iowa economic emergency fund, and taxpayers trust fund shall not be considered in the application of any formula, index, or other statutory triggering mechanism which would affect appropriations, payments, or taxation rates, contrary provisions of the Code notwithstanding.

2. To the extent that moneys appropriated under section 8.57 do not result in moneys being credited to the general fund under section 8.55, subsection 2, moneys appropriated under section 8.57 and moneys contained in the cash reserve fund, rebuild Iowa infrastructure fund, environment first fund, Iowa economic emergency fund, and taxpayers trust fund shall not be considered by an arbitrator or in negotiations under chapter 20.

92 Acts, ch 1227, §8; 95 Acts, ch 214, §17; 2000 Acts, ch 1225, §23; 2011 Acts, ch 123, §31

Section amended

## CHAPTER 8A

### DEPARTMENT OF ADMINISTRATIVE SERVICES

#### SUBCHAPTER I

#### ADMINISTRATION

#### PART 1

#### GENERAL PROVISIONS

#### **8A.111 Reports required.**

The department shall provide all of the following reports:

1. An annual report of the department as required under section 7E.3, subsection 4.
2. Internal service fund service business plans and financial reports as required under section 8A.123, subsection 5, paragraph "a", and an annual internal service fund expenditure report as required under section 8A.123, subsection 5, paragraph "b".
3. An annual report of expenditures from the IowaAccess revolving fund as provided in section 8A.224.
4. An annual report on the status of capital projects as required under section 8A.321, subsection 11.
5. An annual salary report as required under section 8A.341, subsection 2.

6. An annual average fuel economy standards compliance report as required under section 8A.362, subsection 4, paragraph “c”.

7. An annual report of the capitol planning commission as required under section 8A.373.

8. A comprehensive annual financial report as required under section 8A.502, subsection 8.

9. An annual report regarding the Iowa targeted small business procurement Act activities of the department as required under section 15.108, subsection 7, paragraph “c”, and quarterly reports regarding the total dollar amount of certified purchases for certified targeted small businesses during the previous quarter as required in section 73.16, subsection 2. The department shall keep any vendor identification information received from the department of inspections and appeals as provided in section 10A.104, subsection 8, and necessary for the quarterly reports, confidential to the same extent as the department of inspection and appeals is required to keep such information. Confidential information received by the department from the department of inspections and appeals shall not be disclosed except pursuant to court order or with the approval of the department of inspections and appeals.

10. An annual report on the condition of affirmative action, diversity, and multicultural programs as provided under section 19B.5, subsection 2.

11. An unpaid warrants report as required under section 25.2, subsection 3, paragraph “b”.

12. A report on educational leave as provided under section 70A.25.

13. A monthly report regarding the revitalize Iowa’s sound economy fund as required under section 315.7.

2008 Acts, ch 1184, §30; 2010 Acts, ch 1031, §2, 3; 2011 Acts, ch 127, §32, 89

See also §7A.3

Subsection 4 stricken and former subsections 5 – 14 renumbered as 4 – 13

## PART 2

### SERVICES — PROVISION AND FUNDING

**8A.121 Financing department services — customer councils.** Repealed by 2008 Acts, ch 1184, § 36. See § 8.6(17).

Section not amended; “see” reference revised

## SUBCHAPTER II

### INFORMATION TECHNOLOGY

## PART 1

### GENERAL PROVISIONS

#### **8A.207 Procurement of information technology.**

1. Standards established by the department, unless waived by the department, shall apply to all information technology procurements for participating agencies.

2. The department shall institute procedures to ensure effective and efficient compliance with standards established by the department.

3. The department shall develop policies and procedures that apply to all information technology goods and services acquisitions, and shall ensure the compliance of all participating agencies. The department shall also be the sole provider of infrastructure services for participating agencies.

4. The department, by rule, may implement a prequalification procedure for contractors

with which the department has entered or intends to enter into agreements regarding the procurement of information technology.

5. Notwithstanding the provisions governing purchasing as provided in subchapter III, the department may procure information technology as provided in this section. The department may cooperate with other governmental entities in the procurement of information technology in an effort to make such procurements in a cost-effective, efficient manner as provided in this section. The department, as deemed appropriate and cost-effective, may procure information technology using any of the following methods:

a. *Cooperative procurement agreement.* The department may enter into a cooperative procurement agreement with another governmental entity relating to the procurement of information technology, whether such information technology is for the use of the department or other governmental entities. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which such purpose will be accomplished. Any power exercised under such agreement shall not exceed the power granted to any party to the agreement.

b. *Negotiated contract.* The department may enter into an agreement for the purchase of information technology if any of the following applies:

(1) The contract price, terms, and conditions are pursuant to the current federal supply contract, and the purchase order adequately identifies the federal supply contract under which the procurement is to be made.

(2) The contract price, terms, and conditions are no less favorable than the contractor's current federal supply contract price, terms, and conditions; the contractor has indicated in writing a willingness to extend such price, terms, and conditions to the department; and the purchase order adequately identifies the contract relied upon.

(3) The contract is with a vendor which has a current exclusive or nonexclusive price agreement with the state for the information technology to be procured, and such information technology meets the same standards and specifications as the items to be procured and both of the following apply:

(a) The quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement.

(b) The purchase order adequately identifies the price agreement relied upon.

c. *Contracts let by another governmental entity.* The department, on its own behalf or on the behalf of another participating agency or governmental entity, may procure information technology under an existing competitively procured contract let by another governmental entity, or may approve such procurement in the same manner by a participating agency or governmental entity. The department, on its own behalf or on the behalf of another participating agency or governmental entity, may also procure information technology by leveraging an existing competitively procured contract, other than a contract associated with the state board of regents or an institution under the control of the state board of regents.

d. *Reverse auction.*

(1) The department may enter into an agreement for the purchase of information technology utilizing a reverse auction process. Such process shall result in the purchase of information technology from the vendor submitting the lowest responsible bid amount for the information technology to be acquired. The department, in establishing a reverse auction process, shall do all of the following:

(a) Determine the specifications and requirements of the information technology to be acquired.

(b) Identify and provide notice to potential vendors concerning the proposed acquisition.

(c) Establish prequalification requirements to be met by a vendor to be eligible to participate in the reverse auction.

(d) Conduct the reverse auction in a manner as deemed appropriate by the department and consistent with rules adopted by the department.

(2) Prior to conducting a reverse auction, the department shall establish a threshold amount which shall be the maximum amount which the department is willing to pay for the information technology to be acquired.

(3) The department shall enter into an agreement with a vendor who is the lowest

responsible bidder which meets the specifications or description of the information technology to be procured, or the department may reject all bids and begin the process again. In determining the lowest responsible bidder, the department may consider various factors including, but not limited to, the past performance of the vendor relative to quality of product or service, the past experience of the department in relation to the product or service, the relative quality of products or services, the proposed terms of delivery, and the best interest of the state.

*e. Competitive bidding.* The department may enter into an agreement for the procurement or acquisition of information technology in the same manner as provided under subchapter III for the purchasing of service.

*f. Other agreements.* In addition to the competitive bidding procedure provided for under paragraph “e”, the department may enter into an agreement for the purchase, disposal, or other disposition of information technology in the same manner and subject to the same limitations as otherwise provided in this chapter. The department, by rule, shall provide for such procedures.

6. The department shall adopt rules pursuant to chapter 17A to implement the procurement methods and procedures provided for in subsections 2 through 5.

2003 Acts, ch 145, §23; 2010 Acts, ch 1031, §17; 2010 Acts, ch 1189, §36; 2011 Acts, ch 34, §2

Subsection 5, paragraph c amended

## PART 2 IOWACCESS

### **8A.221 IowAccess — duties and responsibilities.**

1. *IowAccess.* The department shall establish IowAccess as a service to the citizens of this state that is the gateway for one-stop electronic access to government information and transactions, whether federal, state, or local. Except as provided in this section, IowAccess shall be a state-funded service providing access to government information and transactions. The department, in establishing the fees for value-added services, shall consider the reasonable cost of creating and organizing such government information through IowAccess.

2. *Duties.* The department shall do all of the following:

*a.* Establish rates to be charged for access to and for value-added services performed through IowAccess.

*b.* Approve and establish the priority of projects associated with IowAccess. The determination may also include requirements concerning funding for a project proposed by a political subdivision of the state or an association, the membership of which is comprised solely of political subdivisions of the state. Prior to approving a project proposed by a political subdivision, the department shall verify that all of the following conditions are met:

(1) The proposed project provides a benefit to the state.

(2) The proposed project, once completed, can be shared with and used by other political subdivisions of the state, as appropriate.

(3) The state retains ownership of any final product or is granted a permanent license to the use of the product.

*c.* Establish expected outcomes and effects of the use of IowAccess and determine the manner in which such outcomes are to be measured and evaluated.

*d.* Establish the IowAccess total budget request and ensure that such request reflects the priorities and goals of IowAccess as established by the department.

*e.* Advocate for access to government information and services through IowAccess and for data privacy protection, information ethics, accuracy, and security in IowAccess programs and services.

*f.* Receive status and operations reports associated with IowAccess.

3. *Data purchasing.* This section shall not be construed to impair the right of a person to

contract to purchase information or data from the Iowa court information system or any other governmental entity. This section shall not be construed to affect a data purchase agreement or contract in existence on April 25, 2000.

2003 Acts, ch 145, §24; 2004 Acts, ch 1101, §3; 2004 Acts, ch 1108, §1; 2005 Acts, ch 90, §5; 2005 Acts, ch 179, §142; 2008 Acts, ch 1156, §10, 58; 2008 Acts, ch 1184, §32; 2010 Acts, ch 1031, §18

Section not amended; footnote deleted

#### **8A.224 IowaAccess revolving fund.**

1. An IowaAccess revolving fund is created in the state treasury. The revolving fund shall be administered by the department and shall consist of moneys collected by the department as fees, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund are appropriated to and shall be used by the department to maintain, develop, operate, and expand IowaAccess consistent with this subchapter, and for the support of activities of the technology advisory council pursuant to section 8A.204.

2. The department shall submit an annual report not later than January 31 to the members of the general assembly and the legislative services agency of the activities funded by and expenditures made from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §27; 2005 Acts, ch 90, §6; 2005 Acts, ch 179, §142; 2010 Acts, ch 1031, §19

For the fiscal years beginning July 1, 2011, and July 1, 2012, a portion of the fees collected for furnishing a certified abstract of a vehicle operating record to be transferred to the IowaAccess revolving fund; 2011 Acts, ch 127, §5, 63, 89

Section not amended; footnote revised

### SUBCHAPTER III

#### PHYSICAL RESOURCES

#### PART 1

#### GENERAL PROVISIONS

#### **8A.302 Departmental duties — physical resources.**

The duties of the department as it relates to the physical resources of state government shall include but not necessarily be limited to the following:

1. Providing a system of uniform standards and specifications for purchasing. When the system is developed, all items of general use shall be purchased by state agencies through the department, except items provided for under section 904.808 or items used by the state board of regents and institutions under the control of the state board of regents. However, the department may authorize the department of transportation, the department for the blind, and any other agencies otherwise exempted by law from centralized purchasing, to directly purchase items used by those agencies without going through the department, if the department of administrative services determines such purchasing is in the best interests of the state. However, items of general use may be purchased through the department by any governmental entity.

2. Providing for the proper maintenance of the state laboratories facility in Ankeny and of the state capitol, grounds, and equipment, and all other state buildings, grounds, and equipment at the seat of government, except those referred to in section 216B.3, subsection 6.

3. Providing for mail services for all state officials, agencies, and departments located at the seat of government. However, postage shall not be furnished to the general assembly, its members, officers, employees, or committees.

4. Providing architectural services, contracting for construction and construction oversight for state agencies except for the state board of regents, state department of transportation, national guard, natural resource commission, and the Iowa public employees' retirement system. Capital funding appropriated to state agencies, except to the state board of regents, state department of transportation, national guard, natural resource commission, and the Iowa public employees' retirement system, for property management shall be transferred for administration to the director of the department of administrative services.

5. Developing and implementing procedures to conduct transactions, including purchasing, authorized by this subchapter in an electronic format to the extent determined appropriate by the department. The director shall adopt rules establishing criteria for competitive bidding procedures involving transactions in an electronic format, including criteria for accepting or rejecting bids which are electronically transmitted to the department, and for establishing with reasonable assurance the authenticity of the bid and the bidder's identity.

6. Providing insurance for motor vehicles owned by the state.

2003 Acts, ch 145, §29; 2004 Acts, ch 1101, §4; 2010 Acts, ch 1031, §71; 2010 Acts, ch 1190, §22

Requirements for state government purchasing efforts to be administered by the department of administrative services; 2010 Acts, ch 1031, §76; 2011 Acts, ch 131, §109

Section not amended; footnote revised

## PART 2

### PURCHASING

#### **8A.311 Competitive bidding — preferences — reciprocal application — direct purchasing.**

The director shall adopt rules establishing competitive bidding procedures.

1. *a.* All equipment, supplies, or services procured by the department shall be purchased by a competitive bidding procedure as established by rule. However, the director may exempt by rule purchases of noncompetitive items and purchases in lots or quantities too small to be effectively purchased by competitive bidding. Preference shall be given to purchasing Iowa products and purchases from Iowa-based businesses if the Iowa-based business bids submitted are comparable in price to bids submitted by out-of-state businesses and otherwise meet the required specifications. If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids of Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.

*b.* The department and each state agency shall provide notice in an electronic format available to the public of every competitive bidding opportunity offered by the department or the state agency as provided in section 73.2, subsection 2. The department may establish by rule requirements relating to such notice. A competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this paragraph is void and shall be rebid. A request for proposals for architectural or engineering services may be posted electronically by a department or state agency.

2. Notwithstanding section 72.3, if the competitive bidding procedure used by the department involves the use of a reverse auction or similar competitive bidding procedure requiring the disclosure of bid information submitted by vendors, the department shall disclose the bid information as necessary and appropriate.

3. The director may also exempt the purchase of an item or service from a competitive bidding procedure when the director determines that the best interests of the state will be served by the exemption which shall be based on one of the following:

*a.* An immediate or emergency need existing for the item or service.

*b.* A need to protect the health, safety, or welfare of persons occupying or visiting a public improvement or property located adjacent to the public improvement.

4. a. The director may contract for the purchase of items or services by the department. Contracts for the purchase of items or services shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.

b. Architectural and engineering services shall be procured in a reasonable manner, as the director by rule may determine, on the basis of competence and qualification for the type of services required and for a fair and reasonable price.

5. The director may enter into a cooperative procurement agreement with another governmental entity relating to the procurement of goods or services, whether the goods or services are for the use of the department or other governmental entities. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which that purpose will be accomplished. Any power exercised under the agreement shall not exceed the power granted to any party to the agreement.

6. The director may refuse all bids on any item or service and request new bids.

7. The director shall establish by rule the amount of security, if any, to accompany a bid or as a condition precedent to the awarding of any contract and the circumstances under which a security will be returned to the bidder or forfeited to the state.

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

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

10. a. The director shall adopt rules providing that any state agency may, upon request and approval by the department, purchase directly from a vendor if the direct purchasing is more economical than purchasing through the department, if the agency shows that direct purchasing by the state agency would be in the best interests of the state due to an immediate or emergency need, or if the purchase will not exceed ten thousand dollars and the purchase would contribute to the agency complying with the targeted small business procurement goals under sections 73.15 through 73.21.

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

11. a. When the estimated total cost of construction, erection, demolition, alteration, or repair of a public improvement exceeds the competitive bid threshold in section 26.3, or as established in section 314.1B, the department shall comply with chapter 26.

b. In awarding a contract under this subsection, the department shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if the department considers the bids received not to be acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied by a certified or cashier's check or bid bond in an amount designated in the advertisement for bids as security that the bidder will enter into a contract for the work requested. The department shall establish the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The certified or cashier's checks or bid bonds of unsuccessful bidders shall be returned as soon as the successful bidder is determined. The certified or cashier's check or bid bond of the successful bidder shall be returned upon execution of the contract. This subsection does not apply to the construction, erection, demolition, alteration, or repair of a public improvement when the contracting procedure for the work requested is otherwise provided for in law.

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

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

14. The director shall review and, where necessary, revise specifications used by state agencies to procure products in order to ensure all of the following:

a. The procurement of products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires. The specifications shall be revised if they restrict the use of alternative materials, exclude recovered materials, or require performance standards which exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will hamper the intended use of the product.

b. The procurement by state agencies of biobased hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with the requirements of section 8A.316.

c. The procurement of designated biobased products in accordance with the requirements of section 8A.317.

15. a. A bidder, to be considered for an award of a state construction contract, shall disclose to the state agency awarding the contract the names of all subcontractors and suppliers who will work on the project being bid within forty-eight hours after the published date and time by which bids must be submitted.

b. A bidder shall not replace a subcontractor or supplier disclosed under paragraph "a" without the approval of the state agency awarding the contract.

c. A bidder, prior to an award or who is awarded a state construction contract, shall disclose all of the following, as applicable:

(1) If a subcontractor or supplier disclosed under paragraph "a" by a bidder is replaced, the reason for replacement and the name of the new subcontractor or supplier.

(2) If the cost of work to be done by a subcontractor or supplier is changed or if the replacement of a subcontractor or supplier results in a change in the cost, the amount of the change in cost.

16. A state agency shall make every effort to purchase those products produced for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation or other developmental disabilities or mental illness if the products meet the required specifications.

17. A state agency shall make every effort to purchase products produced for sale by employers of persons in supported employment.

18. The department shall not award a contract to a bidder for a construction, reconstruction, demolition, or repair project or improvement with an estimated cost that exceeds twenty-five thousand dollars in which the bid requires the use of inmate labor supplied by the department of corrections, but not employed by private industry pursuant to section 904.809, to perform the project or improvement.

19. Life cycle cost and energy efficiency shall be included in the criteria used by the department, institutions under the control of the state board of regents, the state department of transportation, the department for the blind, and other state agencies in developing standards and specifications for purchasing energy-consuming products. For purposes of this subsection, the life cycle costs of American motor vehicles shall be reduced by five percent in order to determine if the motor vehicle is comparable to foreign-made motor vehicles. "American motor vehicles" includes those vehicles manufactured in this state and those vehicles in which at least seventy percent of the value of the motor vehicle was manufactured in the United States or Canada and at least fifty percent of the motor vehicle sales of the manufacturer are in the United States or Canada. In determining the life cycle costs of a motor vehicle, the costs shall be determined on the basis of the bid price, the resale value, and the operating costs based upon a useable life of five years or seventy-five thousand miles, whichever occurs first.

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

21. a. The director may authorize the procurement of goods and services in which a contractual limitation of vendor liability is provided for and set forth in the documents initiating the procurement. The director, in consultation with the department of management,

shall adopt rules setting forth the circumstances in which such procurement will be permitted and what types of contractual limitations of liability are permitted. Rules adopted by the director shall establish criteria to be considered in making a determination of whether to permit a contractual limitation of vendor liability with regard to any procurement of goods and services. The criteria, at a minimum, shall include all of the following:

(1) Whether authorizing a contractual limitation of vendor liability is necessary to prevent harm to the state from a failure to obtain the goods or services sought, or from obtaining the goods or services at a higher price if the state refuses to allow a contractual limitation of vendor liability.

(2) Whether the contractual limitation of vendor liability is commercially reasonable when taking into account any risk to the state created by the goods or services to be procured and the purpose for which they will be used.

b. Notwithstanding paragraph “a”, a contractual limitation of vendor liability shall not include any limitation on the liability of any vendor for intentional torts, criminal acts, or fraudulent conduct.

c. The rules shall provide for the negotiation of a contractual limitation of vendor liability consistent with the requirements of this section and any other requirements of the department as provided in any related documents associated with a procurement of goods and services.

22. a. The state, through the department, shall give a preference to purchasing equipment, supplies, or services from or awarding public improvement contracts pursuant to subsection 11 to an Iowa-based business as provided under paragraph “b”, as appropriate, if the bid submitted is comparable in price to those submitted by other bidders and meets the required specifications. However, before giving the preference, the department shall confirm with the Iowa employer support of the guard and reserve committee that the requirements of paragraph “b” have been met by the Iowa-based business.

b. To receive a preference as provided by this subsection, the Iowa-based business employer shall have adopted policies beyond those otherwise required by law to support employees who are officers or enlisted persons in the national guard and organized reserves of the armed forces of the United States consistent with standards adopted by the Iowa employer support of the guard and reserve committee. To be eligible for such preference, an employer shall submit to the committee a copy of the applicable policies adopted by the employer and shall sign and submit to the committee a statement of support of persons in the employ of the employer who serve in the national guard and the reserves, recognizing the vital role of the national guard and the reserves, and pledging all of the following:

(1) To neither deny employment nor limit or reduce job opportunities because of an employee’s service in the national guard or organized reserves of the armed forces of the United States.

(2) To grant leaves of absence during a period of military duty or training.

(3) To ensure that all employees are aware of the employer’s policies and the requirements of section 29A.43.

2003 Acts, ch 145, §30; 2004 Acts, ch 1101, §5; 2005 Acts, ch 52, §3; 2005 Acts, ch 100, §1; 2006 Acts, ch 1017, §16, 42; 2006 Acts, ch 1072, §3; 2007 Acts, ch 115, §6, 18; 2007 Acts, ch 207, §1, 18; 2007 Acts, ch 215, §79; 2008 Acts, ch 1032, §201; 2008 Acts, ch 1104, §1; 2010 Acts, ch 1031, §72; 2011 Acts, ch 25, §2; 2011 Acts, ch 127, §33, 89

Preferences; see also chapter 73, §73A.21

Requirements for state government purchasing efforts to be administered by the department of administrative services; 2010 Acts, ch 1031, §76; 2011 Acts, ch 131, §109

Subsection 14, paragraph b amended

Subsection 15 amended

### **8A.311A Centralized purchasing.**

1. The department may designate goods and services of general use that agencies shall, and governmental subdivisions may, purchase pursuant to a master contract established by the department for that good or service. The department shall establish a master contract subject to the requirements of this section if the department determines that a high-quality good or service can be acquired by agencies and governmental subdivisions at lower cost through the establishment of a master contract.

2. The department shall establish a master contract pursuant to this section on a competitive basis, and the purchase of a good or service pursuant to the contract shall be deemed to satisfy any otherwise applicable competitive bidding requirements.

3. Upon the establishment of a master contract for a good or service pursuant to this section, an agency shall purchase the good or service pursuant to the contract, and shall not expend money to purchase the good or service directly from a vendor and not through the contract, unless any of the following applies:

a. The department determines, upon a request by the agency, that the agency can satisfy the requirements for purchase of the good or service directly from a vendor as provided in section 8A.311, subsection 10, paragraph “a”.

b. The agency is purchasing the good or service pursuant to another contract in effect on the effective date of the master contract. However, the agency shall terminate the other contract if the contract permits the termination of the contract without penalty and the agency shall not renew the other contract beyond the current term of the other contract.

2010 Acts, ch 1031, §73

Requirements for state government purchasing efforts to be administered by the department of administrative services; 2010 Acts, ch 1031, §76; 2011 Acts, ch 131, §109

Section not amended; footnote revised

### **8A.312 Cooperative purchasing.**

The director may purchase items through any agency specifically exempted by law from centralized purchasing as well as from other interstate and intergovernmental entities. The department shall collaborate and cooperate with the state board of regents and institutions under the control of the state board of regents, as provided in section 262.9B, and any other state agency exempt from centralized purchasing to explore joint purchases of general use items that present opportunities to obtain quality goods and services at the lowest reasonable cost.

2003 Acts, ch 145, §31; 2010 Acts, ch 1031, §74

Requirements for state government purchasing efforts to be administered by the department of administrative services; 2010 Acts, ch 1031, §76; 2011 Acts, ch 131, §109

Section not amended; footnote revised

### **8A.315 State purchases — recycled products — soybean-based inks.**

1. When purchasing paper products other than printing and writing paper, the department shall, when the price is reasonably competitive and the quality as intended, purchase the recycled product. The department shall also purchase, when the price is reasonably competitive and the quality as intended, and in keeping with the schedule established in this subsection, soybean-based inks and plastic products with recycled content including but not limited to plastic garbage can liners.

a. One hundred percent of the purchases of inks which are used for newsprint printing services performed internally or contracted for by the department shall be soybean-based.

b. One hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the department, shall be soybean-based to the extent formulations for such inks are available.

c. A minimum of fifty percent of the purchases of garbage can liners made by the department shall be plastic garbage can liners with recycled content.

d. For purposes of this subsection, “*recycled content*” means that the content of the product contains a minimum of thirty percent postconsumer material.

2. a. Except as otherwise provided in this section, the department shall purchase and use recycled printing and writing paper so that ninety percent of the volume of printing and writing paper purchased is recycled paper. The recycled printing and writing paper shall meet the requirements for procuring recycled printing and writing paper set forth in 40 C.F.R. pt. 247, and in related recovered materials advisory notices issued by the United States environmental protection agency.

b. The department shall establish a prioritization procedure for the purchase of recycled paper which provides for a five percent differential in the cost of the purchase of paper which has been recycled through the use of a nonchlorinated process.

c. If a provision under this subsection results in the limitation of sources for the purchase

of printing and writing paper to three or fewer sources, the department may waive the requirement in order to purchase necessary amounts of printing and writing paper.

d. Notwithstanding the requirements of this subsection regarding the purchase of recycled printing and writing paper, the department shall purchase acid-free permanent paper in the amount necessary for the production or reproduction of documents, papers, or similar materials produced or reproduced for permanent preservation pursuant to law.

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

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

5. Information on recycled content shall be requested on all bids for paper products other than printing and writing paper issued by the state and on other bids for products which could have recycled content such as oil, plastic products, including but not limited to compost materials, aggregate, solvents, soybean-based inks, and rubber products. Except for purchases of printing and writing paper made pursuant to subsection 2, paragraphs “c” and “d”, the department shall require persons submitting bids for printing and writing paper to certify that the printing and writing paper proposed complies with the requirements referred to in subsection 2, paragraph “a”.

6. The department, in conjunction with the department of natural resources, shall adopt rules to administer this section.

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

8. The department, whenever technically feasible, shall purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, “*packing material*” means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

2003 Acts, ch 145, §34; 2004 Acts, ch 1101, §6; 2011 Acts, ch 127, §34, 89

Subsection 1, paragraph d stricken and former paragraph e redesignated as d

#### **8A.316 Lubricants and oils — preferences.**

The department shall do all of the following:

1. Develop its procedures and specifications for the purchase of lubricating oil and industrial oil to eliminate exclusion of recycled oils and any requirement that oils be manufactured from virgin materials.

2. Require that purchases of lubricating oil and industrial oil be made from the seller whose oil product contains the greatest percentage of recycled oil, unless one of the following circumstances regarding a specific oil product containing recycled oil exists:

a. The product is not available within a reasonable period of time or in quantities necessary or in container sizes appropriate to meet a state agency’s needs.

b. The product does not meet the performance requirements or standards recommended by the equipment or vehicle manufacturer, including any warranty requirements.

c. The product is available only at a cost greater than one hundred five percent of the cost of comparable virgin oil products.

3. Establish and maintain a preference program for procuring oils containing the maximum content of recycled oil. The preference program shall include but is not limited to all of the following:

a. The inclusion of the preferences for recycled oil products in publications used to solicit bids from suppliers.

b. The provision of a description of the recycled oil procurement program at bidders’ conferences.

c. Discussion of the preference program in lubricating oil and industrial oil procurement solicitations or invitations to bid.

d. Efforts to inform industry trade associations about the preference program.

4. a. Provide that when purchasing hydraulic fluids, greases, and other industrial lubricants, the department or a state agency authorized by the department to directly purchase hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing biobased hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans.

b. Provide for the implementation of requirements necessary in order to carry out this subsection by the department or state agency making the purchase, which shall include all of the following:

(1) Including the preference requirements in publications used to solicit bids for hydraulic fluids, greases, and other industrial lubricants.

(2) Describing the preference requirements at bidders' conferences in which bids for the sale of hydraulic fluids, greases, and other industrial lubricants are sought by the department or authorized state agency.

(3) Discussing the preference requirements in procurement solicitations or invitations to bid for hydraulic fluids, greases, and other industrial lubricants.

(4) Informing industry trade associations about the preference requirements.

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

(1) "*Biobased hydraulic fluids, greases, and other industrial lubricants*" means the same as defined by the United States department of agriculture, if the department has adopted such a definition. If the United States department of agriculture has not adopted a definition, "*biobased hydraulic fluids, greases, and other industrial lubricants*" means hydraulic fluids, greases, and other lubricants containing a minimum of fifty-one percent soybean oil.

(2) "*Other industrial lubricants*" means lubricants used or applied to machinery.

2003 Acts, ch 145, §35; 2005 Acts, ch 19, §10; 2011 Acts, ch 25, §3, 4

Subsection 4, paragraph a amended

Subsection 4, paragraph c, subparagraph (1) amended

### **8A.317 State purchases — designated biobased products.**

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

a. "*Biobased material*" means the same as defined in section 469.31.\*

b. "*Designated biobased product*" means a biobased product as defined in section 469.31,\* and includes a product determined by the United States department of agriculture to be a commercial or industrial product, other than food or feed, that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials including plant, animal, and marine materials, or forestry materials as provided in 7 U.S.C. § 8102.

2. The department shall do all of the following:

a. Develop procedures and specifications for the purchase of designated biobased products. The department may develop specifications after consulting guidelines or regulations promulgated by the United States department of agriculture pursuant to section 7 U.S.C. § 8102.

b. Require that a purchase of a designated biobased product be made from the seller whose designated biobased product contains the greatest percentage of biobased materials, unless any of the following applies:

(1) The designated biobased product is not available within a reasonable period of time or in quantities necessary or in container sizes appropriate to meet a state agency's needs.

(2) The designated biobased product does not meet performance requirements or standards recommended by a manufacturer, including any warranty requirements.

(3) The designated biobased product does not meet the functional requirements and evaluation criteria identified in bid documents. Functional requirements to be considered may include but are not limited to the designated biobased product's conformance with ASTM (American society for testing and materials) international standards.

(4) The purchase of the designated biobased product conflicts with section 8A.311, subsection 1, paragraph “a”.

(5) The designated biobased product is available only at a cost greater than one hundred five percent of the cost of comparable products which are not biobased.

c. Establish and maintain a preference program for procuring the maximum content of biobased materials in biobased products. The preference program shall include but is not limited to all of the following:

(1) The inclusion of preferences for designated biobased products in publications used to solicit bids from suppliers.

(2) The provision of a description of the preference program at bidders’ conferences.

(3) Discussion of the preference program in requests for proposals or invitations to bid.

(4) Efforts to inform industry trade associations about the preference program.

3. This section does not apply to a biobased product which is subject to requirements for procurement in another provision of this chapter including but not limited to any of the following:

a. Soybean-based ink as provided in section 8A.315.

b. Degradable loose foam packing material manufactured from grain starches or other renewable resources as provided in section 8A.315.

c. A biobased hydraulic fluid, grease, or other industrial lubricant as provided in section 8A.316.

4. When evaluating a bid for the purchase of designated biobased products, the department may take into consideration warranty provisions and life cycle cost estimates.

2008 Acts, ch 1104, §2

\* Chapter 469 repealed by 2011 Acts, ch 118, §49; corrective legislation is pending

Section not amended; footnote added

### **8A.318 Building cleaning and maintenance — environmentally preferable cleaning products.**

1. *Findings and intent.* The general assembly finds that human beings are vulnerable to and may be severely affected by exposure to chemicals, hazardous waste, and other environmental hazards. The federal environmental protection agency estimates that human exposure to indoor air pollutants can be two to five times, and up to one hundred times, higher than outdoor levels. Children, teachers, janitors, and other staff members spend a significant amount of time inside school buildings. Likewise, state employees and citizens of this state spend a significant amount of time inside state buildings. These individuals are continuously exposed to chemicals from cleaners, waxes, deodorizers, and other maintenance products.

2. *Definitions.* As used in this section, unless the context otherwise requires:

a. “*Environmentally preferable cleaning and maintenance products*” includes but is not limited to cleaning and maintenance products identified by the department and posted on the department’s internet site.

b. “*State building*” means a public facility or building owned by or leased by the state, or an agency or department of the state.

3. *Use of environmentally preferable cleaning and maintenance products.*

a. All school districts in this state, community colleges, institutions under the control of the state board of regents, and state agencies utilizing state buildings, are encouraged to conform to an environmentally preferable cleaning policy designed to facilitate the purchase and use of environmentally preferable cleaning and maintenance products for purposes of public school, community college, regents institution, and state building cleaning and maintenance.

b. Each school district, community college, institution under the control of the state board of regents, or state agency utilizing public buildings shall conduct an evaluation and assessment regarding implementation of an environmentally preferable cleaning policy pursuant to this section. On or after July 1, 2012, all state agencies, and all school districts, community colleges, and institutions under the control of the state board of regents which have not opted out of compliance pursuant to paragraph “c”, shall purchase only cleaning

and maintenance products identified by the department or that meet nationally recognized standards. School districts, community colleges, institutions under the control of the state board of regents, and state agencies procuring supplies for schools and state buildings may deplete their existing cleaning and maintenance supply stocks and implement the new requirements in the procurement cycle for the following year. This section shall not be interpreted in a manner that prohibits the use of disinfectants, disinfecting cleaners, sanitizers, or any other antimicrobial product regulated by the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., when necessary to protect public health and provided that the use of these products is in accordance with responsible cleaning procedure requirements.

c. A school district, community college, or institution under the control of the state board of regents may, based upon the evaluation and assessment conducted pursuant to paragraph “b”, opt out of compliance with the requirements of this section upon the affirmative vote of a majority of the members of the board of directors of the school district or a determination by the president of the community college or by the president or administrative officer of the regents institution. A school district, community college, or regents institution opting out of compliance pursuant to this paragraph shall notify the department of education, the state board of education, or the state board of regents, as appropriate, of this decision.

4. *Information requirements — department internet site.* The department shall provide information on the department’s internet site regarding environmentally preferable cleaning and maintenance products used by the department. The department may also provide information regarding other cleaning and maintenance products that the department is aware of that meet nationally recognized standards. Information shall also be provided, at the discretion of the department, regarding the nationally recognized standards and the entity establishing the standards.

2010 Acts, ch 1162, §1; 2011 Acts, ch 20, §1

Subsection 3, paragraph c amended

### PART 3

#### PHYSICAL RESOURCES AND FACILITY MANAGEMENT

##### **8A.321 Physical resources and facility management — director duties — appropriation.**

In managing the physical resources of government, the director shall perform all of the following duties:

1. Provide for supervision over the custodians and other employees of the department in and about the state laboratories facility in Ankeny and in and about the capitol and other state buildings at the seat of government, except the buildings and grounds referred to in section 216B.3, subsection 6.

2. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property, including but not limited to intangible and intellectual property, under the person’s control.

3. Under the direction of the governor, provide, furnish, and pay for public utilities service, heat, maintenance, minor repairs, and equipment in operating and maintaining the official residence of the governor of Iowa.

4. Contract, with the approval of the executive council, for the repair, remodeling, or, if the condition warrants, demolition of all buildings and grounds of the state at the seat of government, at the state laboratories facility in Ankeny, and the institutions of the department of human services and the department of corrections for which no specific appropriation has been made, if the cost of repair, remodeling, or demolition will not exceed one hundred thousand dollars when completed. The cost of repair projects for which no specific appropriation has been made shall be paid as an expense authorized by the executive council as provided in section 7D.29.

5. Dispose of all personal property of the state under the director's control as provided by section 8A.324 when it becomes unnecessary or unfit for further use by the state. If the director concludes that the personal property is contaminated, contains hazardous waste, or is hazardous waste, the director may charge the state agency responsible for the property for removal and disposal of the personal property. The director shall adopt rules establishing the procedures for inspecting, selecting, and removing personal property from state agencies or from state storage.

6. a. Lease all buildings and office space necessary to carry out the provisions of this subchapter or necessary for the proper functioning of any state agency wherever located throughout the state. For state agencies at the seat of government, the director may lease buildings and office space in Polk county or in a county contiguous to Polk county. If no specific appropriation has been made, the proposed lease shall be submitted to the executive council for authorization and if authorized lease expense shall be paid from the appropriations addressed in section 7D.29. An office space lease shall not be terminated at a time when either contract damages or early termination penalties may be applicable for doing so. Additionally, the director shall also develop cooperative relationships with the state board of regents in order to promote colocation of state agencies.

b. When the general assembly is not in session, the director may request an expense authorization from the executive council for moving state agencies from one location to another. The request may include moving costs, telecommunications costs, repair costs, or any other costs relating to the move. The executive council may authorize the expenses and may authorize the expenses to be paid from the appropriations addressed in section 7D.29 if it determines the agency or department does not have funds available for these expenses.

c. (1) The department shall annually issue a request for proposals for leasing privately owned office space for state employees in the downtown area of the city of Des Moines. Prior to replacing or renovating publicly owned buildings or relocating any state agencies to any space in publicly owned buildings, the department shall use such proposals to compare the costs of privately owned space to publicly owned space. The department shall locate state employees in office space in the most cost-efficient manner possible. In determining cost efficiency, the department shall consider all costs of the publicly owned space, the costs of the original acquisition of the publicly owned space, the costs of tenant improvements to the publicly owned space, and the anticipated economic and useful life of the publicly owned building space.

(2) Subparagraph (1) shall not apply when emergency circumstances exist. Actions taken during an emergency which would otherwise violate subparagraph (1) shall be limited in scope and duration to meet the emergency. An emergency includes but is not limited to a condition that does any of the following:

- (a) Threatens public health, welfare, or safety.
- (b) In which there is a need to protect the health, welfare, or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.
- (c) In which the department or agency must act to preserve critical services or programs.
- (d) In which the need is a result of events or circumstances not reasonably foreseeable.

7. Unless otherwise provided by law, coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property to be purchased by a state agency for whose benefit and use the property is being obtained.

a. If the purchase of real or personal property is to be financed pursuant to section 12.28, the department shall cooperate with the treasurer of state in providing the information necessary to complete the financing of the property.

b. A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease-purchased by the treasurer of state pursuant to section 12.28 is exempt from section 8A.311, subsections 1 and 11, unless the lease-purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the treasurer of state under a lease-purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.

8. With the authorization of a constitutional majority of each house of the general assembly and approval by the governor, dispose of real property belonging to the state and

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

9. a. With the approval of the executive council pursuant to section 7D.29 or pursuant to other authority granted by law, acquire real property to be held by the department in the name of the state as follows:

(1) By purchase, lease, option, gift, grant, bequest, devise, or otherwise.

(2) By exchange of real property belonging to the state for property belonging to another person.

b. If real property acquired by the department in the name of the state is subject to a lease in effect at the time of acquisition, the director may honor and maintain the existing lease subject to the following requirements:

(1) The lease shall not be renewed beyond the term of the existing lease including any renewal periods under the lease that are solely at the discretion of the lessee.

(2) The lease shall not be renewed by the department as the lessor if the lessor has discretion to not renew under the existing lease.

(3) The lease shall not be maintained for a period in excess of ten years from the date of acquisition of the real property, including any renewal periods, without the approval of the executive council.

(4) The lease shall not be maintained if the lessee at the time of the acquisition ceases to occupy the leased property.

10. Subject to the selection procedures of section 12.30, employ financial consultants, banks, insurers, underwriters, accountants, attorneys, and other advisors or consultants necessary to implement the provisions of subsection 7.

11. Prepare annual status reports for all capital projects in progress of the department, and submit the status reports to the legislative services agency and the department of management on or before January 15 of each year.

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

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

14. Establish a monument maintenance account in the state treasury under the control of the department. Funds for the maintenance of a state monument, whether received by gift, devise, bequest, or otherwise, shall be deposited in the account. Funds in the account shall be deposited in an interest-bearing account. Notwithstanding section 12C.7, interest earned on the account shall be deposited in the account and shall be used to maintain the designated monument. Any maintenance funds for a state monument held by the state and interest earned on the funds shall be used to maintain the designated monument. Notwithstanding section 8.33, funds in the monument maintenance account at the end of a fiscal year shall not revert to the general fund of the state.

2003 Acts, ch 145, §36; 2004 Acts, ch 1101, §7; 2006 Acts, ch 1179, §36; 2006 Acts, ch 1182, §56; 2007 Acts, ch 115, §7; 2007 Acts, ch 219, §31; 2008 Acts, ch 1032, §201; 2009 Acts, ch 28, §1; 2011 Acts, ch 122, §9, 10; 2011 Acts, ch 127, §35, 89; 2011 Acts, ch 131, §16, 17, 158; 2011 Acts, ch 133, §23, 50

See Code editor's note on simple harmonization

Subsection 4 amended  
 Subsection 6, paragraphs a and b amended and former paragraph c stricken  
 Subsection 6, NEW paragraph c

### **8A.327 Rent revolving fund created — purpose.**

1. A rent revolving fund is created in the state treasury under the control of the department to be used by the department to pay the lease or rental costs of all buildings and office space necessary for the proper functioning of any state agency wherever located throughout the state as provided in section 8A.321, subsection 6, except that this fund shall not be used to pay the rental or lease costs of a state agency which has not received funds budgeted for rental or lease purposes.

2. The director shall pay the lease or rental fees to the renter or lessor and submit a monthly statement to each state agency for which building and office space is rented or leased. If the director pays the lease or rental fees on behalf of a state agency, the state agency's payment to the department shall be credited to the rent revolving fund established by this section. With the approval of the director, a state agency may pay the lease or rental cost directly to the person who is due the payment under the lease or rental agreement.

2003 Acts, ch 145, §42; 2011 Acts, ch 127, §36, 89  
 Subsection 1 amended

## PART 4 PRINTING

### **8A.341 State printing — duties.**

The director shall do all of the following as it relates to printing:

1. Provide general supervision of all matters pertaining to public printing, including the enforcement of contracts for printing, except as otherwise provided by law. The supervision shall include providing guidelines for the letting of contracts for printing, the manner, form, style, and quantity of public printing, and the specifications and advertisements for public printing. In addition, the director shall have charge of office equipment and supplies and of the stock, if any, required in connection with printing contracts.

2. If money is appropriated for this purpose, by November 1 of each year supply a report which contains the name, gender, county, or city of residence when possible, official title, salary received during the previous fiscal year, base salary as computed on July 1 of the current fiscal year, and traveling and subsistence expense of the personnel of each of the departments, boards, and commissions of the state government except personnel who receive an annual salary of less than one thousand dollars. The number of the personnel and the total amount received by them shall be shown for each department in the report. All employees who have drawn salaries, fees, or expense allowances from more than one department or subdivision shall be listed separately under the proper departmental heading. On the request of the director, the head of each department, board, or commission shall furnish the data covering that agency. The report shall be distributed upon request without charge in an electronic medium to each caucus of the general assembly, the legislative services agency, the chief clerk of the house of representatives, and the secretary of the senate. Copies of the report shall be made available to other persons in an electronic medium upon payment of a fee, which shall not exceed the cost of providing the copy of the report. Sections 22.2 through 22.5 apply to the report. All funds from the sale of the report shall be deposited in the printing revolving fund established in section 8A.345.

3. Deposit receipts from the sale of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation in the printing revolving fund established in section 8A.345.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §45; 2005 Acts, ch 52, §7; 2011 Acts, ch 106, §1, 17

Style, publication, and distribution of Iowa Code and Code Supplement, Iowa Acts, Iowa administrative code, Iowa administrative bulletin, and Iowa court rules; §2.42, 2A.5, 2A.6  
 Subsection 2 amended

PART 6  
FLEET MANAGEMENT

**8A.361 Vehicle assignment — authority in department.**

The department shall provide for the assignment of all motor vehicles utilized by all state officers and employees, and by all state offices, departments, bureaus, and commissions, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other agencies exempted by law.

2003 Acts, ch 145, §51; 2011 Acts, ch 127, §37, 89

Section amended

**8A.362 Fleet management — powers and duties — fuel economy requirements.**

1. The director may provide for the assignment to a state officer or employee or to a state agency, of one or more motor vehicles which may be required by the state officer or employee or state agency, after the state officer or employee or state agency has shown the necessity for such transportation. The director may assign a motor vehicle either for part-time or full-time use. The director may revoke the assignment at any time.

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

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

*b.* A gasoline-powered motor vehicle operated under this subsection shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1, unless under emergency circumstances. A diesel-powered motor vehicle operated under this subsection shall not operate on diesel fuel other than biodiesel fuel as defined in section 214A.1, if commercially available. A state-issued credit card shall not be valid to purchase gasoline other than ethanol blended gasoline, if commercially available, or to purchase diesel fuel other than biodiesel fuel, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline or biodiesel fuel, as applicable. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

4. *a.* The director shall provide for the purchase of motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted by law, which are not rented or leased pursuant to section 8A.367. The director shall purchase new vehicles in accordance with competitive bidding procedures for items or services as provided in this subchapter. The director may purchase used or preowned

vehicles at governmental or dealer auctions if the purchase is determined to be in the best interests of the state.

b. The director, and any other state agency, which for purposes of this subsection includes but is not limited to community colleges and institutions under the control of the state board of regents, or local governmental subdivisions purchasing new motor vehicles, shall purchase motor vehicles and light trucks, which are not rented or leased pursuant to section 8A.367, so that the average fuel efficiency for the fleet of new passenger vehicles and light trucks purchased in that year equals or exceeds the average fuel economy standard for the vehicles' model year as established by the United States secretary of transportation under 15 U.S.C. § 2002. This paragraph does not apply to vehicles purchased for law enforcement purposes or used for off-road maintenance work, or work vehicles used to pull loaded trailers.

c. Not later than June 15 of each year, the director shall report compliance with the corporate average fuel economy standards published by the United States secretary of transportation for assigned motor vehicles, other than motor vehicles purchased by the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted from the requirements of this subsection. The report of compliance shall classify the vehicles assigned for the current vehicle model year using the following categories: passenger automobiles, enforcement automobiles, vans, and light trucks. The director shall deliver a copy of the report to the economic development authority. As used in this paragraph, "corporate average fuel economy" means the corporate average fuel economy as defined in 49 C.F.R. § 533.5.

d. The director shall assign motor vehicles available for use to maximize the average passenger miles per gallon of motor fuel consumed. In assigning motor vehicles, the director shall consider standards established by the director, which may include but are not limited to the number of passengers traveling to a destination, the fuel economy of and passenger capacity of vehicles available for assignment, and any other relevant information, to assure assignment of the most energy-efficient vehicle or combination of vehicles for a trip from those vehicles available for assignment. The standards shall not apply to special work vehicles and law enforcement vehicles. The standards shall apply to the following agencies:

- (1) State department of transportation.
- (2) Institutions under the control of the state board of regents.
- (3) Department for the blind.
- (4) Any other state agency exempted from obtaining vehicles for use through the department.

e. As used in paragraph "d", "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. § 4064(c).

5. All used motor vehicles turned in to the director shall be disposed of by public auction, and the sales shall be advertised in a newspaper of general circulation one week in advance of sale, and the receipts from the sale shall be deposited in the depreciation fund to the credit of the state agency turning in the vehicle; except that, in the case of a used motor vehicle of special design, the director may, instead of selling it at public auction, authorize the motor vehicle to be traded for another vehicle of similar design. If a vehicle sustains damage and the cost to repair exceeds the wholesale value of the vehicle, the director may dispose of the motor vehicle by obtaining two or more written salvage bids and the vehicle shall be sold to the highest responsible bidder.

6. The director may authorize the establishment of motor pools consisting of a number of state-assigned motor vehicles under the director's supervision. The director may store the motor vehicles in a public or private garage. If the director establishes a motor pool, any state officer or employee desiring the use of a state-assigned motor vehicle on state business shall notify the director of the need for a vehicle within a reasonable time prior to actual use of the motor vehicle. The director may assign a motor vehicle from the motor pool to the state officer or employee, or from the vendor awarded a contract pursuant to section 8A.367. If two or more state officers or employees desire the use of a state-assigned motor vehicle for a trip to the same destination for the same length of time, the director may assign one vehicle to make the trip.

7. The director shall require that a sign be placed on each state-owned motor vehicle in a conspicuous place which indicates its ownership by the state. This requirement shall not apply to motor vehicles requested to be exempt by the director or by the commissioner of public safety. All state-owned motor vehicles shall display registration plates bearing the word "official" except motor vehicles requested to be furnished with ordinary plates by the director or by the commissioner of public safety pursuant to section 321.19. The director shall keep an accurate record of the registration plates used on all state-owned motor vehicles. This subsection shall not apply to an assigned vehicle rented or leased pursuant to section 8A.367.

8. All fuel used in state-assigned automobiles shall be purchased at cost from the various installations or garages of the state department of transportation, state board of regents, department of human services, or state motor pools throughout the state, unless the state-owned sources for the purchase of fuel are not reasonably accessible. If the director determines that state-owned sources for the purchase of fuel are not reasonably accessible, the director shall authorize the purchase of fuel from other sources. The director may prescribe a manner, other than the use of the revolving fund, in which the purchase of fuel from state-owned sources is charged to the state agency responsible for the use of the motor vehicle. The director shall prescribe the manner in which oil and other normal motor vehicle maintenance for state-owned motor vehicles may be purchased from private sources, if they cannot be reasonably obtained from a state motor pool. The director may advertise for bids and award contracts in accordance with competitive bidding procedures for items and services as provided in this subchapter for furnishing fuel, oil, grease, and vehicle replacement parts for all state-owned motor vehicles. The director and other state agencies, when advertising for bids for gasoline, shall also seek bids for ethanol blended gasoline.

2003 Acts, ch 145, §52; 2006 Acts, ch 1142, §57, 58, 83; 2007 Acts, ch 115, §8; 2008 Acts, ch 1169, §36, 42; 2009 Acts, ch 108, §4, 41; 2011 Acts, ch 118, §50, 89; 2011 Acts, ch 127, §38 – 40, 58, 89

Marking vehicles generally, §721.8

"Official" plates, §321.19, 321.170

Code editor directives applied

Subsection 4, paragraphs a – c amended

Subsection 5 stricken and former subsection 6 renumbered as 5

Former subsections 7 – 9 amended and renumbered as 6 – 8

### **8A.363 Private use prohibited — rate for state business.**

1. A state officer or employee shall not use a state-assigned motor vehicle for personal private use. A state officer or employee shall not be compensated for driving a privately owned motor vehicle unless it is done on state business with the approval of the director. In that case the state officer or employee shall receive an amount to be determined by the director. The amount shall not exceed the maximum allowable under the federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. However, the director may authorize private motor vehicle rates in excess of the rate allowed under the federal internal revenue service rules for state business use of substantially modified or specially equipped privately owned vehicles required by persons with disabilities. A statutory provision establishing reimbursement for necessary mileage, travel, or actual expenses to a state officer falls under the private motor vehicle mileage rate limitation provided in this section unless specifically provided otherwise. Any peace officer employed by the state as defined in section 801.4 who is required to use a private motor vehicle in the performance of official duties shall receive the private vehicle mileage rate at the rate provided in this section. However, the director may delegate authority to officials of the state, and department heads, for the use of private vehicles on state business up to a yearly mileage figure established by the director. If a motor vehicle has been assigned to a state officer or employee, the officer or employee shall not collect mileage for the use of a privately owned motor vehicle unless the motor vehicle assigned is not usable.

2. This section does not apply to any of the following:

- a. Officials and employees of the state whose mileage is paid other than by a state agency.
- b. Elected officers of the state.

c. Judicial officers or court employees.

d. Members and employees of the general assembly who shall be governed by policies relating to motor vehicle travel, including but not limited to reimbursement for expenses, if such policies are otherwise established by the general assembly.

2003 Acts, ch 145, §53; 2011 Acts, ch 127, §41, 58, 89

See also §2.10, 70A.9, 602.1509

See Code editor's note on simple harmonization

Subsection 1 amended

#### **8A.364 Fleet management revolving fund — replenishment.**

1. A fleet management revolving fund is created in the state treasury under the control of the department. There is appropriated from moneys in the state treasury not otherwise appropriated the sum of twenty-five thousand dollars to the revolving fund. All purchases of gasoline, oil, tires, repairs, and all other general expenses incurred in the operation of state-assigned motor vehicles, and all salaries and expenses of employees providing fleet management services shall be paid from this fund.

2. At the end of each month the director shall render a statement to each state department or agency for the actual cost of operation of all motor vehicles assigned to such department or agency, together with a fair proportion of the administrative costs for providing fleet management services during such month, as determined by the director, all subject to review by the executive council upon complaint of any state department or agency adversely affected. Such expenses shall be paid by the state departments or agencies in the same manner as other expenses of such department are paid, and when such expenses are paid, such sums shall be credited to the fleet management revolving fund. If any surplus accrues to the revolving fund in excess of twenty-five thousand dollars for which there is no anticipated need or use, the governor may order such surplus transferred to the general fund of the state.

2003 Acts, ch 145, §54; 2011 Acts, ch 127, §58, 89

Code editor directive applied

#### **8A.366 Violations — withdrawing use of vehicle.**

If any state officer or employee violates any of the provisions of sections 8A.361 through 8A.365, the director may withdraw the assignment of any state-assigned motor vehicle to any such state officer or employee.

2003 Acts, ch 145, §56; 2011 Acts, ch 127, §58, 89

Code editor directive applied

#### **8A.367 State-owned passenger vehicles — disposition and sale — fleet privatization.**

1. For purposes of this section, “*passenger vehicles*” means United States environmental protection agency designated compact sedans, compact wagons, midsize sedans, midsize wagons, full-size sedans, and passenger minivans, and additional vehicle classes determined by the department to be able to be reasonably supported by a private entity for rental or leasing. “*Passenger vehicles*” does not mean utility vehicles, vans other than passenger minivans, fire trucks, ambulances, motor homes, buses, medium-duty and heavy-duty trucks, heavy construction equipment and other highway maintenance vehicles, vehicles assigned for law enforcement purposes, and any other classes of vehicles of limited application approved by the director of the department of administrative services.

2. On or before September 30, 2011, the department shall implement a request for proposal process to enter into a contract for the purpose of state passenger vehicle rental or leasing from a private entity. Prior to awarding a contract, a private entity shall demonstrate the following:

a. Existence of sufficient inventory of passenger vehicles within this state to accommodate the needs of the state in assigning passenger vehicles.

b. Existence of adequate personnel in any county within the state where rental and leasing activity can be supported to satisfy the terms of the contract in renting or leasing state-assigned vehicles.

c. Existence of adequate personnel to facilitate the sale and disposition of the existing state-owned passenger vehicles returned to the department pursuant to subsection 3 or otherwise under the control of the department. Notwithstanding the provisions of section

8A.364 to the contrary, proceeds from the sale of motor vehicles as provided by this subsection shall be credited to the fund from which the motor vehicles were purchased.

3. By March 1, 2012, the department shall award a vehicle rental or leasing contract to a private entity, and shall assign passenger vehicles for rental or lease pursuant to that contract, to the extent the department determines doing so would be economically feasible and financially advantageous. By March 1, 2012, all state-assigned passenger vehicles designated for use by multiple drivers, and located in any county of this state which can support the operation of a private entity for rental and leasing purposes, which the department determines would be suitable for rental or leasing shall be returned to the department for use and disposition as provided in this section.

4. Notwithstanding any other provision of state law to the contrary, a private entity awarded a contract pursuant to this section shall not be required to indemnify or hold harmless the state for any liability the state might have to any third party due to the negligence of the state or any of its employees.

5. The department shall conduct an ongoing evaluation regarding the economic advantages of renting or leasing state-assigned vehicles versus state ownership of such vehicles, and shall accordingly adjust the number of vehicles subject to the rental and leasing contract pursuant to this section at intervals specified in the contract.

2011 Acts, ch 127, §42, 89

NEW section

#### SUBCHAPTER IV

#### STATE HUMAN RESOURCE MANAGEMENT — OPERATIONS

#### PART 4

#### MISCELLANEOUS PROVISIONS

##### **8A.454 Health insurance administration fund.**

1. A separate, special Iowa state health insurance administration fund is created in the state treasury under the control of the department. The fund shall consist of all moneys deposited in the fund from proceeds of a monthly per contract administrative charge assessed and collected by the department. Moneys deposited in the fund shall be expended by the department for health insurance program administration costs. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. A monthly per contract administrative charge shall be assessed by the department on all health insurance plans administered by the department in which the contract holder has a state employer to pay the charge. The amount of the administrative charge shall be established by the general assembly. The department shall collect the administrative charge from each department utilizing the centralized payroll system and shall deposit the proceeds in the fund. In addition, the state board of regents, the state fair board, the state department of transportation, and each judicial district department of correctional services shall remit the administrative charge on a monthly basis to the department and shall submit a report to the department containing the number and type of health insurance contracts held by each of its employees whose health insurance is administered by the department.

3. The expenditure of moneys from the fund in any fiscal year shall not exceed the amount of the monthly charge established by the general assembly multiplied by the number of health insurance contracts in effect at the beginning of the same fiscal year in which the expenditures shall be made. Any unencumbered or unobligated moneys in the fund at the end of the fiscal

year shall not revert but shall be transferred to the health insurance premium reserve fund established pursuant to section 509A.5.

2003 Acts, ch 145, §79; 2007 Acts, ch 115, §9, 18; 2009 Acts, ch 181, §34, 36; 2010 Acts, ch 1189, §38, 40; 2011 Acts, ch 132, §35, 106

Subsection 2 amended

## SUBCHAPTER V FINANCIAL ADMINISTRATION

### **8A.502 Financial administration duties.**

The department shall provide for the efficient management and administration of the financial resources of state government and shall have and assume the following powers and duties:

1. *Centralized accounting and payroll system.* To assume the responsibilities related to a centralized accounting system for state government and to establish a centralized payroll system for all state agencies. However, the state board of regents and institutions under the control of the state board of regents shall not be required to utilize the centralized payroll system.

2. *Setoff procedures.* To establish and maintain a setoff procedure as provided in section 8A.504.

3. *Cost allocation system.* To establish a cost allocation system as provided in section 8A.505.

4. *Collection and payment of funds — monthly payments.* To control the payment of all moneys into the state treasury, and all payments from the state treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payment, and to advise the treasurer of state monthly in writing of the amount of public funds not currently needed for operating expenses. Whenever the state treasury includes state funds that require distribution to counties, cities, or other political subdivisions of this state, and the counties, cities, and other political subdivisions certify to the director that warrants will be stamped for lack of funds within the thirty-day period following certification, the director may partially distribute the funds on a monthly basis. Whenever the law requires that any funds be paid by a specific date, the director shall prepare a final accounting and shall make a final distribution of any remaining funds prior to that date.

5. *Preaudit system.* To establish and fix a reasonable imprest cash fund for each state department and institution for disbursement purposes where needed. These revolving funds shall be reimbursed only upon vouchers approved by the director. It is the purpose of this subsection to establish a preaudit system of settling all claims against the state, but the preaudit system is not applicable to any of the following:

a. Institutions under the control of the state board of regents.

b. The state fair board as established in chapter 173.

c. The Iowa dairy industry commission as established in chapter 179, the Iowa beef cattle producers association as established in chapter 181, the Iowa pork producers council as established in chapter 183A, the Iowa egg council as established in chapter 184, the Iowa turkey marketing council as established in chapter 184A, the Iowa soybean association as provided in chapter 185, and the Iowa corn promotion board as established in chapter 185C.

6. *Audit of claims.* To set rules and procedures for the preaudit of claims by individual agencies or organizations. The director reserves the right to refuse to accept incomplete or incorrect claims and to review, preaudit, or audit claims as determined by the director.

7. *Contracts.* To certify, record, and encumber all formal contracts to prevent overcommitment of appropriations and allotments.

8. *Accounts.* To keep the central budget and proprietary control accounts of the general fund of the state and special funds, as defined in section 8.2, of the state government. Upon elimination of the state deficit under generally accepted accounting principles, including the payment of items budgeted in a subsequent fiscal year which under generally accepted

accounting principles should be budgeted in the current fiscal year, the recognition of revenues received and expenditures paid and transfers received and paid within the time period required pursuant to section 8.33 shall be in accordance with generally accepted accounting principles. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations, and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income, and expense. For each fiscal year, the financial position and results of operations of the state shall be reported in a comprehensive annual financial report prepared in accordance with generally accepted accounting principles, as established by the governmental accounting standards board.

9. *Fair board and board of regents.* To control the financial operations of the state fair board and the institutions under the state board of regents:

a. By charging all warrants issued to the respective educational institutions and the state fair board to an advance account to be further accounted for and not as an expense which requires no further accounting.

b. By charging all collections made by the educational institutions and state fair board to the respective advance accounts of the institutions and state fair board, and by crediting all such repayment collections to the respective appropriations and special funds.

c. By charging all disbursements made to the respective allotment accounts of each educational institution or state fair board and by crediting all such disbursements to the respective advance and inventory accounts.

d. By requiring a monthly abstract of all receipts and of all disbursements, both money and stores, and a complete account current each month from each educational institution and the state fair board.

10. *Entities representing agricultural producers.* To control the financial operations of the Iowa dairy industry commission as provided in chapter 179, the Iowa beef cattle producers association as provided in chapter 181, the Iowa pork producers council as provided in chapter 183A, the Iowa egg council as provided in chapter 184, the Iowa turkey marketing council as provided in chapter 184A, the Iowa soybean association as provided in chapter 185, and the Iowa corn promotion board as provided in chapter 185C.

11. *Custody of records.* To have the custody of all books, papers, records, documents, vouchers, conveyances, leases, mortgages, bonds, and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office.

12. *Interest of the permanent school fund.* To transfer the interest of the permanent school fund to the credit of the interest for Iowa schools fund.

13. *Forms.* To prescribe all accounting and business forms and the system of accounts and reports of financial transactions by all departments and agencies of the state government other than those of the legislative branch.

14. *Federal Cash Management and Improvement Act administrator.*

a. To serve as administrator for state actions relating to the federal Cash Management and Improvement Act of 1990, Pub. L. No. 101-453, as codified in 31 U.S.C. § 6503. The director shall perform the following duties relating to the federal law:

(1) Act as the designated representative of the state in the negotiation and administration of contracts between the state and federal government relating to the federal law.

(2) Modify the centralized statewide accounting system and develop, or require to be developed by the appropriate departments of state government, the reports and procedures necessary to complete the managerial and financial reports required to comply with the federal law.

b. There is annually appropriated from the general fund of the state to the department an amount sufficient to pay interest costs that may be due the federal government as a result of implementation of the federal law. This paragraph does not authorize the payment of interest from the general fund of the state for any departmental revolving, trust, or special fund where monthly interest earnings accrue to the credit of the departmental revolving, trust, or special fund. For any departmental revolving, trust, or special fund where monthly interest is accrued to the credit of the fund, the director may authorize a supplemental expenditure to

pay interest costs from the individual fund which are due the federal government as a result of implementation of the federal law.

2003 Acts, ch 145, §84; 2004 Acts, ch 1086, §8; 2005 Acts, ch 179, §104, 105; 2008 Acts, ch 1032, §114, 201; 2010 Acts, ch 1193, §30, 31; 2011 Acts, ch 122, §40

Subsection 9 stricken and former subsections 10 – 15 renumbered as 9 – 14

#### **8A.504 Setoff procedures.**

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

a. “*Collection entity*” means the department of administrative services and any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for collection of debts owed to the state or its agencies.

b. “*Person*” does not include a state agency.

c. “*Qualifying debt*” includes, but is not limited to, the following:

(1) Any debt, which is assigned to the department of human services, or which is owed to the department of human services for unpaid premiums under section 249A.3, subsection 2, paragraph “a”, subparagraph (1), or section 249J.8, subsection 1, or which the child support recovery unit is otherwise attempting to collect, or which the foster care recovery unit of the department of human services is attempting to collect on behalf of a child receiving foster care provided by the department of human services.

(2) An amount that is due because of a default on a guaranteed student or parental loan under chapter 261.

(3) Any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of the district court.

d. “*State agency*” means a board, commission, department, including the department of administrative services, or other administrative office or unit of the state of Iowa or any other state entity reported in the Iowa comprehensive annual financial report, or a political subdivision of the state, or an office or unit of a political subdivision. “*State agency*” does include the clerk of the district court as it relates to the collection of a qualifying debt. “*State agency*” does not include the general assembly or the governor.

2. *Setoff procedure.* The collection entity shall establish and maintain a procedure to set off against any claim owed to a person by a state agency any liability of that person owed to a state agency, a support debt being enforced by the child support recovery unit pursuant to chapter 252B, or such other qualifying debt. The procedure shall only apply when at the discretion of the director it is feasible. The procedure shall meet the following conditions:

a. Before setoff, a person’s liability to a state agency and the person’s claim on a state agency shall be in the form of a liquidated sum due, owing, and payable.

b. Before setoff, the state agency shall obtain and forward to the collection entity the full name and social security number of the person liable to it or to whom a claim is owing who is a natural person. If the person is not a natural person, before setoff, the state agency shall forward to the collection entity the information concerning the person as the collection entity shall, by rule, require. The collection entity shall cooperate with other state agencies in the exchange of information relevant to the identification of persons liable to or claimants of state agencies. However, the collection entity shall provide only relevant information required by a state agency. The information shall be held in confidence and used for the purpose of setoff only. Section 422.72, subsection 1, does not apply to this paragraph.

c. Before setoff, a state agency shall, at least annually, submit to the collection entity the information required by paragraph “b” along with the amount of each person’s liability to and the amount of each claim on the state agency. The collection entity may, by rule, require more frequent submissions.

d. Before setoff, the amount of a person’s claim on a state agency and the amount of a person’s liability to a state agency shall constitute a minimum amount set by rule of the collection entity.

e. Upon submission of an allegation of liability by a state agency, the collection entity shall notify the state agency whether the person allegedly liable is entitled to payment from a state agency, and, if so entitled, shall notify the state agency of the amount of the person’s

entitlement and of the person's last address known to the collection entity. Section 422.72, subsection 1, does not apply to this paragraph.

f. (1) Upon notice of entitlement to a payment, the state agency shall send written notification to that person of the state agency's assertion of its rights to all or a portion of the payment and of the state agency's entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or commonly owned right to payment be divided among owners, and the person's opportunity to give written notice of intent to contest the amount of the allegation. The state agency shall send a copy of the notice to the collection entity. A state agency subject to chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with chapter 17A.

(2) However, upon submission of an allegation of the liability of a person which is owing and payable to the clerk of the district court and upon the determination by the collection entity that the person allegedly liable is entitled to payment from a state agency, the collection entity shall send written notification to the person which states the assertion by the clerk of the district court of rights to all or a portion of the payment, the clerk's entitlement to recover the liability through the setoff procedure, the basis of the assertions, the person's opportunity to request within fifteen days of the mailing of the notice that the collection entity divide a jointly or commonly owned right to payment between owners, the opportunity to contest the liability to the clerk by written application to the clerk within fifteen days of the mailing of the notice, and the person's opportunity to contest the collection entity's setoff procedure.

g. Upon the timely request of a person liable to a state agency or of the spouse of that person and upon receipt of the full name and social security number of the person's spouse, a state agency shall notify the collection entity of the request to divide a jointly or commonly owned right to payment. Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

h. The collection entity shall, after the state agency has sent notice to the person liable or, if the liability is owing and payable to the clerk of the district court, the collection entity has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The collection entity shall refund any balance of the amount to the person. The collection entity shall periodically transfer amounts set off to the state agencies entitled to them. If a person liable to a state agency gives written notice of intent to contest an allegation, a state agency shall hold a refund or rebate until final disposition of the allegation. Upon completion of the setoff, a state agency shall notify in writing the person who was liable or, if the liability is owing and payable to the clerk of the district court, shall comply with the procedures as provided in paragraph "j".

i. The department of revenue's existing right to credit against tax due or to become due under section 422.73 is not to be impaired by a right granted to or a duty imposed upon the collection entity or other state agency by this section. This section is not intended to impose upon the collection entity or the department of revenue any additional requirement of notice, hearing, or appeal concerning the right to credit against tax due under section 422.73.

j. If the alleged liability is owing and payable to the clerk of the district court and setoff as provided in this section is sought, all of the following shall apply:

(1) The judicial branch shall prescribe procedures to permit a person to contest the amount of the person's liability to the clerk of the district court.

(2) The collection entity shall, except for the procedures described in subparagraph (1), prescribe any other applicable procedures concerning setoff as provided in this subsection.

(3) Upon completion of the setoff, the collection entity shall file, at least monthly, with the clerk of the district court a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. The clerk shall record the notice and enter a satisfaction for the amounts collected and a separate written notice is not required.

k. If the alleged liability is owing and payable to a community college and setoff pursuant to this section is sought, both of the following shall apply:

(1) In addition to satisfying other applicable setoff procedures established under this subsection, the community college shall prescribe procedures to permit a person to contest the amount of the person's liability to the community college. Such procedures shall be

consistent with and ensure the protection of the person's right of due process under Iowa law.

(2) The collection entity shall, except for the procedures prescribed pursuant to subparagraph (1), prescribe any other applicable procedures concerning setoff as provided in this subsection.

3. In the case of multiple claims to payments filed under this section, priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit, next priority shall be given to claims filed by the clerk of the district court, next priority shall be given to claims filed by the college student aid commission, next priority shall be given to claims filed by the investigations division of the department of inspections and appeals, and last priority shall be given to claims filed by other state agencies. In the case of multiple claims in which the priority is not otherwise provided by this subsection, priority shall be determined in accordance with rules to be established by the director.

4. The director shall have the authority to enter into reciprocal agreements with the departments of revenue of other states that have enacted legislation that is substantially equivalent to the setoff procedure provided in this section for the recovery of an amount due because of a default on a guaranteed student or parental loan under chapter 261. A reciprocal agreement shall also be approved by the college student aid commission. The agreement shall authorize the department to provide by rule for the setoff of state income tax refunds or rebates of defaulters from states with which Iowa has a reciprocal agreement and to provide for sending lists of names of Iowa defaulters to the states with which Iowa has a reciprocal agreement for setoff of that state's income tax refunds.

5. Under substantive rules established by the director, the department shall seek reimbursement from other state agencies to recover its costs for setting off liabilities.

2003 Acts, ch 145, §86, 286; 2006 Acts, ch 1072, §4; 2008 Acts, ch 1032, §201; 2010 Acts, ch 1146, §1; 2010 Acts, ch 1182, §2, 36; 2011 Acts, ch 120, §1

Subsection 1, paragraph c, subparagraph (1) amended

#### **8A.512 Limits on claims.**

The director is limited in authorizing the payment of claims, as follows:

##### *1. Funding limit.*

a. A claim shall not be allowed by the department if the appropriation or fund of certification available for paying the claim has been exhausted or proves insufficient.

b. The authority of the director is subject to the following exceptions:

(1) Claims by state employees for benefits pursuant to chapters 85, 85A, 85B, and 86 are subject to limitations provided in those chapters.

(2) Claims for medical assistance payments authorized under chapter 249A are subject to the time limits imposed by rule adopted by the department of human services.

(3) Claims approved by an agency according to the provisions of section 25.2.

2. *Payment from fees.* Claims for per diem and expenses payable from fees shall not be approved for payment in excess of those fees if the law provides that such expenditures are limited to the special funds collected and deposited in the state treasury.

2003 Acts, ch 145, §94; 2006 Acts, ch 1185, §91; 2011 Acts, ch 127, §43, 89

Subsection 2 stricken and former subsection 3 renumbered as 2

#### **8A.512A Executive branch employee travel — information and database.**

1. The department shall develop and maintain the following:

a. An electronic travel authorization form to be used for any executive branch employee's out-of-state travel, conference, or related expenditures associated with the employee's official duties. The electronic travel authorization form shall include all of the following:

(1) The identification of the employee, the employee's title, and the employee's department or agency.

(2) The travel departure point and destination point.

(3) The reason for the travel.

(4) The estimated reimbursable expenses.

(5) The date or dates upon which the travel is to occur.

b. A searchable database available on the department's internet site containing information related to all executive branch employee travel that includes all of the following:

- (1) The identification of the employee who engaged in the travel, the employee's department or agency, and the employee's title.
- (2) The travel departure point and destination point.
- (3) The reason for the travel.
- (4) The actual amount of expenses reimbursed.
- (5) The date or dates upon which the travel occurred.

c. Notwithstanding paragraph "b" of this subsection, the searchable database shall not include information regarding travel by officers and employees of the department of public safety occurring in relation to or during the course of criminal investigations, including but not limited to undercover operations.

2. A claim for reimbursement for any out-of-state travel, conference, or related expenditures shall only be allowed after the occurrence of both of the following:

a. The electronic travel authorization form is approved by the head of the employee's department.

b. The request for reimbursement is submitted by the employee on the appropriate form with required approvals.

3. For purposes of this section, "*executive branch employee*" means an employee of the executive branch as defined in section 7E.2, other than a member or employee of the state board of regents and institutions under the control of the state board of regents.

2011 Acts, ch 127, §44, 89

NEW section

## CHAPTER 8D

### IOWA COMMUNICATIONS NETWORK

#### 8D.2 Definitions.

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

1. "*Commission*" means the Iowa telecommunications and technology commission established in section 8D.3.

2. "*Director*" means the executive director appointed pursuant to section 8D.4.

3. "*Network*" means the Iowa or state communications network.

4. "*Private agency*" means an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, or a hospital licensed pursuant to chapter 135B or a physician clinic to the extent provided in section 8D.13, subsection 15.

5. a. "*Public agency*" means a state agency, an institution under the control of the board of regents, the judicial branch as provided in section 8D.13, subsection 16, a school corporation, a city library, a county library as provided in chapter 336, or a judicial district department of correctional services established in section 905.2, to the extent provided in section 8D.13, subsection 14, an agency of the federal government, or a United States post office which receives a federal grant for pilot and demonstration projects.

b. For the purposes of this chapter, "*public agency*" also includes any homeland security or defense facility or disaster response agency established by the administrator of the homeland security and emergency management division of the department of public defense or the governor or any facility connected with a security or defense system or disaster response as required by the administrator of the homeland security and emergency management division of the department of public defense or the governor.

6. "*State communications*" refers to the transmission of voice, data, video, the written word or other visual signals by electronic means but does not include radio and television facilities and other educational telecommunications systems and services including narrowcast and broadcast systems under the public broadcasting division of the department

of education, department of transportation distributed data processing and mobile radio network, or law enforcement communications systems.

[C71, 73, §8A.2; C75, 77, 79, 81, §18.133]

83 Acts, ch 126, §4, 5; 86 Acts, ch 1245, §308, 2049; 87 Acts, ch 211, §1; 89 Acts, ch 319, §31; 93 Acts, ch 48, §8; 94 Acts, ch 1184, §3, 4, 29

C95, §8D.2

98 Acts, ch 1047, §4; 2001 Acts, ch 158, §1; 2002 Acts, ch 1065, §1; 2003 Acts, ch 44, §2; 2003 Acts, ch 179, §157; 2005 Acts, ch 179, §51; 2011 Acts, ch 132, §36, 106

Subsection 5, paragraph a amended

### **8D.3 Iowa telecommunications and technology commission — members — duties.**

1. *Commission established.* A telecommunications and technology commission is established with the sole authority to supervise the management, development, and operation of the network and ensure that all components of the network are technically compatible. The management, development, and operation of the network shall not be subject to the jurisdiction or control of any other state agency. However, the commission is subject to the general operations practices and procedures which are generally applicable to other state agencies.

a. The commission shall ensure that the network operates in an efficient and responsible manner consistent with the provisions of this chapter for the purpose of providing the best economic service attainable to the network users consistent with the state's financial capacity.

b. The commission shall ensure that educational users and the use, design, and implementation for educational applications be given the highest priority concerning use of the network.

c. The commission shall provide for the centralized, coordinated use and control of the network.

#### *2. Members — meetings.*

a. The commission is composed of five members appointed by the governor and subject to confirmation by the senate. Members of the commission shall not serve in any manner or be employed by an authorized user of the network or by an entity seeking to do or doing business with the network.

(1) The governor shall appoint a member as the chairperson of the commission from the five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the commission shall serve six-year staggered terms as designated by the governor and appointments to the commission are subject to the requirements of sections 69.16, 69.16A, and 69.19. Vacancies shall be filled by the governor for the duration of the unexpired term.

(3) The salary of the members of the commission shall be twelve thousand dollars per year, except that the salary of the chairperson shall be seventeen thousand dollars per year. Members of the commission shall also be reimbursed for all actual and necessary expenses incurred in the performance of duties as members. The benefits and salary paid to the members of the commission shall be adjusted annually equal to the average of the annual pay adjustments, expense reimbursements, and related benefits provided under collective bargaining agreements negotiated pursuant to chapter 20.

b. In addition to the members appointed by the governor, the auditor of state or the auditor's designee shall serve as a nonvoting, ex officio member of the commission.

c. Meetings of the commission shall be held at the call of the chairperson of the commission.

#### *3. Duties.* The commission shall do all of the following:

a. Enter into agreements pursuant to chapter 28E as necessary and appropriate for the purposes of the commission. However, the commission shall not enter into an agreement with an unauthorized user or any other person pursuant to chapter 28E for the purpose of providing such user or person access to the network.

b. Adopt rules pursuant to chapter 17A as deemed appropriate and necessary, and directly related to the implementation and administration of the duties of the commission. The commission, in consultation with the department of administrative services, shall also

adopt and provide for standard communications procedures and policies relating to the use of the network which recognize, at a minimum, the need for reliable communications services.

c. Establish an appeal process for review by the commission of a scheduling conflict decision, including a scheduling conflict involving an educational user, or the establishment of a fee associated with the network upon the request of a person affected by such decision or fee. A determination made by the commission pursuant to this paragraph shall be final.

d. Review and approve for adoption, rules as proposed and submitted by an authorized user group necessary for the authorized user group's access and use of the network. The commission may refuse to approve and adopt a proposed rule, and upon such refusal, shall return the proposed rule to the respective authorized user group proposing the rule with a statement indicating the commission's reason for refusing to approve and adopt the rule.

e. (1) Develop and issue for response all requests for proposals for any construction, installation, repair, maintenance, or equipment and parts necessary for the network. In preparing the request for proposals, the commission shall do all of the following:

(a) Review existing requests for proposals related to the network.

(b) Consider and evaluate all competing technologies which could be used in any construction, installation, repair, or maintenance project.

(c) Allow flexibility for proposals to be submitted in response to a request for proposals issued by the commission such that any qualified provider may submit a bid on a site-by-site basis, or on a merged area or defined geographic area basis, or both, and by permitting proposals to be submitted for use of competing or alternative technologies in each defined area.

(d) Ensure that rural communities have access to comparable services to the services provided in urban areas resulting from any plans to construct, install, repair, or maintain any part of the network.

(2) In determining which proposal to recommend to the general assembly to accept, consider what is in the long-term best interests of the citizens of the state and the network, and utilize, if possible, the provision of services with existing service providers consistent with those best interests. In determining what is in the long-term best interests of the citizens of the state and the network, the commission, at a minimum, shall consider the cost to taxpayers of the state.

(3) Deliver a written report and all proposals submitted in response to the request for proposals for Part III to the general assembly no later than January 1, 1995. The commission shall not enter into any agreement related to such proposals without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor.

f. Include in the commission's annual report related to the network the actual income and expenses for the network for the preceding fiscal year and estimates for income and expenses for the network for the two-year fiscal period that includes the fiscal year during which the report is submitted. The report shall include the amount of any general fund appropriations to be requested, any recommendations of the commission related to changes in the system, and other items as deemed appropriate by the commission. The report shall also include a list of contracts in excess of one million dollars entered into by the commission during the preceding fiscal year, including any contract entered into pursuant to section 8D.11 or 8D.13 or any other authority of the commission.

g. Review existing maintenance contracts and past contracts to determine vendor capability to perform the obligations under such contracts. The commission shall report to the general assembly prior to January 1 of each year as to the performance of all vendors under each contract and shall make recommendations concerning continued funding for the contracts.

h. Pursue available opportunities to cooperate and coordinate with the federal government for the use and potential expansion of the network and for the financing of any such expansion.

i. Evaluate existing and projected rates for use of the system and ensure that rates are sufficient to pay for the operation of the system excluding the cost of construction and lease costs for Parts I, II, and III. The commission shall establish all hourly rates to be charged to

all authorized users for the use of the network and shall consider all costs of the network in establishing the rates. A fee established by the commission to be charged to a hospital licensed pursuant to chapter 135B, a physician clinic, or the federal government shall be at an appropriate rate so that, at a minimum, there is no state subsidy related to the costs of the connection or use of the network related to such user.

j. Make recommendations to the general assembly, as deemed appropriate by the commission, concerning the operation of the network.

k. Provide necessary telecommunications cabling to provide state communications.

94 Acts, ch 1184, §5; 95 Acts, ch 210, §1; 96 Acts, ch 1200, §1; 99 Acts, ch 207, §8; 2000 Acts, ch 1141, §12, 19; 2003 Acts, ch 145, §286; 2005 Acts, ch 178, §39; 2006 Acts, ch 1126, §1; 2007 Acts, ch 116, §1; 2008 Acts, ch 1031, §78; 2011 Acts, ch 25, §5

Confirmation, see §2.32  
Subsection 2 amended

### **8D.9 Certification of use — network use by certain authorized users.**

1. A private or public agency, other than a state agency, local school district or nonpublic school, city library, county library, judicial branch, judicial district department of correctional services, agency of the federal government, a hospital or physician clinic, or a post office authorized to be offered access pursuant to this chapter as of May 18, 1994, shall certify to the commission no later than July 1, 1994, that the agency is a part of or intends to become a part of the network. Upon receiving such certification from an agency not a part of the network on May 18, 1994, the commission shall provide for the connection of such agency as soon as practical. An agency which does not certify to the commission that the agency is a part of or intends to become a part of the network as required by this subsection shall be prohibited from using the network.

2. a. A private or public agency, other than a private college or university or a nonpublic school, which certifies to the commission pursuant to subsection 1 that the agency is a part of or intends to become a part of the network shall use the network for all video, data, and voice requirements of the agency unless the private or public agency petitions the commission for a waiver and one of the following applies:

(1) The costs to the authorized user for services provided on the network are not competitive with the same services provided by another provider.

(2) The authorized user is under contract with another provider for such services, provided the contract was entered into prior to April 1, 1994. The agency shall use the network for video, data, and voice requirements which are not provided pursuant to such contract.

(3) The authorized user has entered into an agreement with the commission to become part of the network prior to June 1, 1994, which does not provide for use of the network for all video, data, and voice requirements of the agency. The commission may enter into an agreement described in this subparagraph upon a determination that the use of the network for all video, data, and voice requirements of the agency would not be in the best interests of the agency.

b. A private or public agency, other than a private college or university or a nonpublic school, shall petition the commission for a waiver of the requirement to use the network as provided in paragraph “a”, if the agency determines that paragraph “a”, subparagraph (1) or (2) applies. The commission shall establish by rule a review process for determining, upon application of an authorized user, whether paragraph “a”, subparagraph (1) or (2) applies. An authorized user found by the commission to be under contract for such services as provided in paragraph “a”, subparagraph (2), shall not enter into another contract upon the expiration of such contract, but shall utilize the network for such services as provided in this section unless paragraph “a”, subparagraph (1), applies. A waiver approved by the commission may be for a period as requested by the private or public agency of up to three years.

c. A private college or university or a nonpublic school which certifies to the commission pursuant to subsection 1 that the private college, university, or nonpublic school is a part of or intends to become a part of the network may use the network for its video, data, or voice requirements as determined by the private college or university or nonpublic school.

3. A facility that is considered a public agency pursuant to section 8D.2, subsection 5, paragraph “b”, shall be authorized to access the Iowa communications network strictly for homeland security communication purposes and disaster communication purposes. Any utilization of the network that is not related to communications concerning homeland security or a disaster, as defined in section 29C.2, is expressly prohibited. Access under this subsection shall be available only if a state of disaster emergency is proclaimed by the governor pursuant to section 29C.6 or a homeland security or disaster event occurs requiring connection of disparate communications systems between public agencies to provide for a multiagency or multijurisdictional response. Access shall continue only for the period of time the homeland security or disaster event exists. For purposes of this subsection, disaster communication purposes includes training and exercising for a disaster if public notice of the training and exercising session is posted on the website of the homeland security and emergency management division of the department of public defense. A scheduled and noticed training and exercising session shall not exceed five days. Interpretation and application of the provisions of this subsection shall be strictly construed.

4. A community college receiving federal funding to conduct first responder training and testing regarding homeland security first responder communication and technology-related research and development projects shall be authorized to utilize the network for testing purposes.

94 Acts, ch 1184, §11; 98 Acts, ch 1047, §5; 2001 Acts, ch 158, §2; 2003 Acts, ch 44, §3; 2004 Acts, ch 1175, §194; 2005 Acts, ch 179, §52; 2011 Acts, ch 93, §1; 2011 Acts, ch 132, §37, 106 Subsections 1 and 2 amended

#### **8D.11 Powers — facilities — leases.**

1. a. The commission may purchase, lease, and improve property, equipment, and services for telecommunications for public and private agencies and may dispose of property and equipment when not necessary for its purposes. The commission may enter into a contract for the purchase, lease, or improvement of property, equipment, or services for telecommunications pursuant to this subsection in an amount not greater than the contract limitation amount without prior authorization by a constitutional majority of each house of the general assembly, approval by the legislative council if the general assembly is not in session, or the approval of the executive council as provided pursuant to paragraph “b”. A contract entered into under this subsection for an amount exceeding the contract limitation amount shall require prior authorization or approval by the general assembly, the legislative council, or the executive council as provided in this subsection. The commission shall not issue any bonding or other long-term financing arrangements as defined in section 12.30, subsection 1, paragraph “b”. Real or personal property to be purchased by the commission through the use of a financing agreement shall be done in accordance with the provisions of section 12.28, provided, however, that the commission may purchase property, equipment, or services for telecommunications pursuant to a financing agreement in an amount not greater than the contract limitation amount without prior authorization by a constitutional majority of each house of the general assembly, approval by the legislative council if the general assembly is not in session, or the approval of the executive council as provided pursuant to paragraph “b”. A contract entered into under this subsection for an amount exceeding the contract limitation amount shall require prior authorization or approval by the general assembly, the legislative council, or the executive council as provided in this subsection.

b. Approval by the executive council as provided under paragraph “a” shall only be permitted if the contract for which the commission is seeking approval is necessary as the result of circumstances constituting a natural disaster or a threat to homeland security.

c. For purposes of this subsection, “*contract limitation amount*” means two million dollars. However, beginning July 1, 2008, and on each succeeding July 1, the director shall adjust the contract limitation amount to be applicable for the twelve-month period commencing on September 1 of the year in which the adjustment is made. The new contract limitation amount shall be published annually as a notice in the Iowa administrative bulletin prior to September 1. The adjusted contract limitation amount shall be calculated by applying the percentage change in the consumer price index for all urban consumers for the most recent available

twelve-month period published in the federal register by the United States department of labor, bureau of labor statistics, to the existing contract limitation amount as an increase or decrease, rounded to the nearest dollar. The calculation and publication of the contract limitation amount by the director are exempt from the provisions of chapter 17A.

2. The commission also shall not provide or resell communications services to entities other than public and private agencies. The public or private agency shall not provide communication services of the network to another entity unless otherwise authorized pursuant to this chapter. The commission may arrange for joint use of available services and facilities, and may enter into leases and agreements with private and public agencies with respect to the Iowa communications network, and public agencies are authorized to enter into leases and agreements with respect to the network for their use and operation. Rentals and other amounts due under the agreements or leases entered into pursuant to this section by a state agency are payable from funds annually appropriated by the general assembly or from other funds legally available. Other public agencies may pay the rental costs and other amounts due under an agreement or lease from their annual budgeted funds or other funds legally available or to become available.

3. This section comprises a complete and independent authorization and procedure for a public agency, with the approval of the commission, to enter into a lease or agreement and this section is not a qualification of any other powers which a public agency may possess and the authorizations and powers granted under this section are not subject to the terms, requirements, or limitations of any other provisions of law, except that the commission must comply with the provisions of section 12.28 when entering into financing agreements for the purchase of real or personal property. All moneys received by the commission from agreements and leases entered into pursuant to this section with private and public agencies shall be deposited in the Iowa communications network fund.

4. A political subdivision receiving communications services from the state as of April 1, 1986, may continue to do so but communications services shall not be provided or resold to additional political subdivisions other than a school corporation, a city library, and a county library as provided in chapter 336. The rates charged to the political subdivision shall be the same as the rates charged to state agencies.

86 Acts, ch 1245, §309

C87, §18.134

87 Acts, ch 233, §131; 89 Acts, ch 319, §32; 93 Acts, ch 48, §9; 94 Acts, ch 1184, §13, 29

C95, §8D.11

96 Acts, ch 1177, §1; 2001 Acts, ch 158, §3; 2007 Acts, ch 116, §2; 2011 Acts, ch 132, §38, 106

Commission authorized to enter into contracts in excess of contract limitation amount for purposes of grant project associated with federal broadband technology opportunities program grant; 2011 Acts, ch 123, §19, 20  
Subsection 4 amended

## CHAPTER 8E

### STATE GOVERNMENT ACCOUNTABILITY (ACCOUNTABLE GOVERNMENT ACT)

#### SUBCHAPTER II

#### STRATEGIC PLANNING AND PERFORMANCE MEASUREMENT

##### **8E.202 Reports and records — access and purpose.**

1. The department and each agency shall provide for the widest possible dissemination of information between agencies and the public relating to the enterprise strategic plan and agency strategic plans, including but not limited to internet access. This section does

not require the department or an agency to release information which is classified as a confidential record under law.

a. In administering this subsection, the department shall provide for the dissemination of all of the following:

(1) The enterprise strategic plan, performance measures, performance targets based on performance data, performance data, and data sources used to evaluate agency performance, and explanations of the plan's provisions.

(2) Methods for the public and state employees to provide input including written and oral comments for the enterprise strategic plan, including a schedule of any public hearings relating to the plan or revisions.

b. In administering this subsection, each agency shall provide for the dissemination of all of the following:

(1) The agency strategic plan, performance measures, performance targets based on performance data, performance data, and data sources used by the agency to evaluate its performance, and explanations of the plan's provisions.

(2) Methods for the public and agency employees to provide input including written and oral comments for the agency strategic plan, including a schedule of any public hearings relating to the plan or revisions.

2. The department may review any records of an agency that relate to an agency strategic plan, an agency performance plan, or a performance audit conducted pursuant to section 8E.209.

3. A record which is confidential under law shall not be released to the public under this section.

2001 Acts, ch 169, §14; 2011 Acts, ch 106, §2, 3, 17

Subsection 1, unnumbered paragraph 1 amended

Subsection 3 amended

## CHAPTER 8G

### TAXATION TRANSPARENCY AND DISCLOSURE

#### SUBCHAPTER I

#### TAXPAYER TRANSPARENCY ACT

##### **8G.1 Intent — findings.**

The general assembly finds that taxpayers should be able to easily access the details on how the state is spending their tax dollars and the performance results achieved for those expenditures. Therefore, it is the intent of the general assembly to direct the department of management to create and maintain a searchable budget database and internet site detailing where tax dollars are expended, the purposes for which tax dollars are expended, and the results achieved for all taxpayer investments in state government.

2011 Acts, ch 122, §41

NEW section

##### **8G.2 Short title.**

This subchapter shall be known as and may be cited as the “*Taxpayer Transparency Act*”.

2011 Acts, ch 122, §42

NEW section

##### **8G.3 Definitions.**

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

1. “Agency” means a state department, office, board, commission, bureau, division, institution, or public institution of higher education. “Agency” includes individual state

agencies and programs, as well as those programs and activities that are administered by or involve more than one agency. “Agency” includes all elective offices in the executive branch of government and the general assembly. “Agency” includes the judicial branch of state government.

2. “Director” means the director of the department of management.

3. a. “Entity” or “recipients” means any of the following:

- (1) A corporation.
- (2) An association.
- (3) An employee union.
- (4) A limited liability company.
- (5) A limited liability partnership.
- (6) Any other legal business entity, including nonprofit entities.
- (7) A grant recipient.
- (8) Contractors.
- (9) A county, city, school district, or other local government entity.

b. “Entity” or “recipients” does not include an individual recipient of state assistance, an employee, or a student. The department of management shall define by rule adopted pursuant to chapter 17A the meaning of the term “*individual recipient of state assistance*”.

4. “Funding action or expenditure” includes details on the type of spending that is provided including but not limited to grants, contracts, and appropriations. “Funding action or expenditure” includes tax exemptions or credits. Where possible, an electronic link to the actual grants or contracts shall be provided. An electronic link shall be in a format that is a searchable document.

5. “Funding source” means the state account or fund from which the expenditure is appropriated. “Funding source” does not include federal moneys or grants received by an agency.

6. “Searchable internet site” means an internet site that allows the public at no cost to search and compile the information identified in section 8G.4 and that provides such information in a format capable of being downloaded from the site to personal computers.

7. “State audit or report” shall include any audit or report issued by the auditor of state, department of management, legislative services agency, legislative committee, or executive body relating to the entity or recipient of state funds, the budget program or activity, or agency.

8. “Tax exemption or credit” means an exclusion from the operation or collection of a tax imposed in this state. Tax exemption or credit includes tax credits, exemptions, deductions, and rebates. “Tax exemption or credit” also includes sales tax refunds if such refunds are applied for and granted as a form of financial assistance, including but not limited to the refunds allowed in sections 15.331A and 423.4.

9. “Taxing jurisdiction” means a political subdivision of the state with the authority to levy taxes. Taxing jurisdiction includes but is not limited to a city, a county, a school district, and a township.

2011 Acts, ch 122, §43

NEW section

#### **8G.4 Searchable budget database internet site created.**

1. By January 1, 2013, the director shall develop and make publicly available a database internet site for searching, accessing, and processing data, including the data required in this section, for the most recent state budget. The internet site shall be developed in such a way that the information can be provided to other software applications, including internet software applications, in a manner and format that allows such software applications to access and interpret the data using the internal programming of the software applications. In gathering or receiving information from agencies, the director shall make a good-faith effort to minimize the costs and disruptions to other agencies and their computer systems of providing such information.

2. The searchable internet site developed pursuant to this section shall allow the public at no cost to search and compile the information provided pursuant to this subsection. Each

state agency, except the institutions under the state board of regents, shall provide the following:

- a. Name of the entity or recipient of state funds.
- b. Amount of state funds expended.
- c. Funding or expending agency.
- d. Funding source.
- e. Budget program or activity of the expenditure.
- f. Descriptive purpose for the funding action or expenditure.
- g. Expected performance outcome for the funding action or expenditure, to the extent that such information is available and can be provided.
- h. Past performance outcomes achieved for the funding action or expenditure, to the extent that such information is available and can be provided.
- i. State audit or report relating to the entity or recipient of state funds or the budget program or activity or agency.
- j. Any other relevant information specified by the director.

3. For purposes of complying with this section, the institutions under the state board of regents, for each budgeted department, program, or activity, shall provide the following:

- a. The funding source and the amount of state funds received by the institutions.
- b. The amount of state funds expended by the institutions.
- c. The names of the entities or recipients receiving state funds from the institutions.
- d. The amounts paid to the entities or recipients named in paragraph "c".
- e. A description of the department, program, or activity involved, including, to the extent practicable, the descriptive purpose and expected performance outcome of each budget program or activity.
- f. Past performance outcomes of the budget program or activity.
- g. State audit or report relating to the budget program or activity.
- h. Other information as the institutions may deem appropriate for a budget program or activity.

4. a. In providing information pursuant to this section on tax exemptions or credits, the department of revenue shall do the following:

- (1) Provide aggregate information for those tax exemptions or credits that are claimed by individual taxpayers.
- (2) Provide the information described in subsection 2 for those tax exemptions or credits that are awarded by an agency.
- (3) Adhere to all applicable confidentiality provisions to the extent possible while complying with the requirements of this section.

b. An agency awarding tax exemptions or credits shall provide to the department of revenue any information the department may request regarding such exemptions or credits.

5. In addition to the information to be provided pursuant to subsection 2, there shall be provided on the searchable internet site all of the following:

a. A listing and description of awarded tax credits claimed for the individual income tax, corporate income tax, franchise tax, and insurance premiums tax. An awarded tax credit is a tax credit allowed and claimed through a state-authorized program. For each category of tax the internet site shall list each of the awarded tax credits applicable to it, the total amount of that tax credit claimed, and the number of taxpayers claiming the tax credit.

b. The estimated cost to the state of each of the twenty sales tax exemptions that account for the largest dollar amount share of sales tax exemptions under section 423.3. The estimated cost to the state shall include the amount of exempt sales by business type for each county. This paragraph does not apply to the tax exemptions pursuant to section 423.3, subsections 2, 31, 39, 58, 73, and 85.

c. The information to be provided pursuant to subsection 2 shall also be provided for entities or recipients of the awarded tax credits or exemptions described in this subsection.

6. This section does not apply to local governments.

2011 Acts, ch 122, §44

NEW section

**8G.5 Internet site updates.**

1. Effective July 1, 2013, the internet site shall be updated regularly as new data and information become available, but shall be updated no less frequently than annually within sixty days following the close of the state fiscal year. In addition, the director may update the internet site as new data becomes available. All agencies shall provide to the director data that is required to be included on the internet site not later than sixty days following the close of the state fiscal year. The director shall provide guidance to agency heads or the governing body of an agency to ensure compliance with this section.

2. By January 1, 2014, the director shall add data for the previous budgets to the internet site. Data for previous fiscal years may be added as it becomes available and as time permits. The director shall ensure that all data added to the internet site remain accessible to the public for a minimum of ten years.

2011 Acts, ch 122, §45

NEW section

**8G.6 Noncompliance.**

The director shall not be considered in compliance with this subchapter if the data required for the internet site is not available in a searchable manner and capable of being compiled or if the public is redirected to other government internet sites unless each of those sites displays information from all agencies and each category of information required can be searched electronically by field in a single search.

2011 Acts, ch 122, §46

NEW section

**8G.7 through 8G.9** Reserved.

## SUBCHAPTER II

### TAXATION DISCLOSURE ACT

**8G.10 Intent — findings.**

The general assembly finds that increasing the ease of public access to state and local tax rates, particularly where the rates are currently available from disparate government sources and are difficult for the public to collect and efficiently aggregate, significantly contributes to governmental accountability, public participation, and the understanding of the cost of government services. Therefore, it is the intent of the general assembly to direct the department of management, in consultation with the department of revenue, to create and maintain a searchable database and internet site of each tax rate for all taxing jurisdictions in the state to make citizen access to state and local tax rates as open, transparent, and publicly accessible as is feasible.

2011 Acts, ch 122, §47

NEW section

**8G.11 Short title.**

This subchapter shall be known and cited as the “*Taxation Disclosure Act*”.

2011 Acts, ch 122, §48

NEW section

**8G.12 Tax rate database.**

1. *Searchable tax rate database.* By January 1, 2012, the department of management, in consultation with the department of revenue, shall make publicly available on an internet site a searchable database of all tax rates in the state for each taxing jurisdiction. The information shall include all applicable tax types imposed in the taxing jurisdiction and shall be organized, presented, and accessible, to the extent possible, by county, city, and physical address for each residency or business. Individual tax levies shall be further specified within each tax rate.

2. *Geographical tax rate map.* In addition to searching for tax rates in the manner described in subsection 1, searches shall be accommodated by a geographical tax rate map of the state that is capable of being displayed with a level of specificity corresponding to each taxing jurisdiction.

2011 Acts, ch 122, §49

NEW section

### **8G.13 Updating database.**

To facilitate the department of management's efforts in creating and maintaining a searchable database of the taxes identified in section 8G.12, subsection 1, for all taxing jurisdictions in the state, each taxing jurisdiction may annually be required to report its tax rates to the department of management or the department of revenue and shall report any changes to its tax rates within thirty days of the change.

2011 Acts, ch 122, §50; 2011 Acts, ch 131, §51, 158

NEW section

## CHAPTER 10A

### DEPARTMENT OF INSPECTIONS AND APPEALS

#### ARTICLE I

#### ORGANIZATION

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

The director or designees of the director shall:

1. Coordinate the internal operations of the department and develop and implement policies and procedures designed to ensure the efficient administration of the department.

2. Appoint the administrators of the divisions within the department and all other personnel deemed necessary for the administration of this chapter, except the state public defender, assistant state public defenders, administrator of the racing and gaming commission, members of the employment appeal board, and administrator of the child advocacy board created in section 237.16. All persons appointed and employed in the department are covered by the provisions of chapter 8A, subchapter IV, but persons not appointed by the director are exempt from the merit system provisions of chapter 8A, subchapter IV.

3. Prepare an annual budget for the department.

4. Develop and recommend legislative proposals deemed necessary for the continued efficiency of department functions, and review legislative proposals generated outside of the department which are related to matters within the department's purview.

5. Adopt rules deemed necessary for the implementation and administration of this chapter in accordance with chapter 17A.

6. Issue subpoenas and distress warrants, administer oaths, and take depositions in connection with audits, appeals, investigations, inspections, and hearings conducted by the department. If a person refuses to obey a subpoena or distress warrant issued by the department or otherwise fails to cooperate in proceedings of the department, the director may enlist the assistance of a court of competent jurisdiction in requiring the person's compliance. Failure to obey orders of the court renders the person in contempt of the court and subject to penalties provided for that offense.

7. Enter into contracts for the receipt and provision of services as deemed necessary. The director and the governor may obtain and accept federal grants and receipts to or for the state to be used for the administration of this chapter.

8. Establish by rule standards and procedures for certifying that targeted small businesses are eligible to participate in the procurement program established in sections 73.15 through

73.21. The procedure for determination of eligibility shall not include self-certification by a business. The director shall maintain a current directory of targeted small businesses that have been certified pursuant to this subsection. The director shall also provide information to the department of administrative services necessary for the identification of targeted small businesses as provided under section 8A.111, subsection 9.

9. Administer and enforce this chapter, and chapters 99B, 135B, 135C, 135H, 135J, 135O, 137C, 137D, and 137F.

10. Enter into and implement agreements or compacts between the state of Iowa and Indian tribes located in the state which are entered into under the authority of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). The agreements or compacts shall contain provisions intended to implement the policies and objectives of the Indian Gaming Regulatory Act.

11. Administer inspection and licensing of social and charitable gambling pursuant to chapter 99B.

12. Administer inspections and licensing of hotels, home food establishments, and egg handlers.

13. Administer inspections and licensing of food establishments, including but not limited to restaurants, vending machines, food processing plants, grocery stores, convenience stores, temporary food establishments, and mobile food units.

14. Administer inspections for sanitation in any locality of the state upon the written petition of five or more residents of the locality.

15. Administer inspections of cosmetology salons under section 157.7 and barbershops under section 158.6.

86 Acts, ch 1245, §504; 88 Acts, ch 1273, §3; 89 Acts, ch 231, §2 – 4; 92 Acts, ch 1141, §1; 93 Acts, ch 53, §1; 94 Acts, ch 1076, §1; 95 Acts, ch 67, §2; 96 Acts, ch 1052, §1; 96 Acts, ch 1079, §1; 98 Acts, ch 1162, §1, 30; 98 Acts, ch 1202, §1, 46; 2000 Acts, ch 1155, §1; 2002 Acts, ch 1162, §2, 3, 15, 75; 2003 Acts, ch 145, §128; 2004 Acts, ch 1026, §1; 2008 Acts, ch 1184, §34; 2009 Acts, ch 136, §1

For future amendment to subsection 12, effective July 1, 2012, see 2011 Acts, ch 16, §1, 5

## CHAPTER 10B

### AGRICULTURAL LANDHOLDING REPORTING

#### **10B.4 Reporting requirements.**

1. A biennial report shall be filed by a reporting entity with the secretary of state on or before March 31 of each odd-numbered year as required by rules adopted by the secretary of state pursuant to chapter 17A. However, a reporting entity required to file a biennial report pursuant to chapter 489, 490, 496C, 497, 498, 499, 501, 501A, or 504 shall file the report required by this section in the same year as required by that chapter. The reporting entity may file the report required by this section together with the biennial report required to be filed by one of the other chapters referred to in this subsection. The reports shall be filed on forms prepared and supplied by the secretary of state. The secretary of state may provide for combining its reporting forms with other biennial reporting forms required to be used by the reporting entities.

2. A report required pursuant to this section shall contain information for the reporting period regarding the reporting entity as required by the secretary of state which shall at least include all of the following:

- a. The name and address of the reporting entity.
- b. The name and address of the person supervising the daily operations on the agricultural land in which the reporting entity holds an interest.
- c. The following information regarding each person who holds an interest in the reporting entity:

- (1) The name and address of the person.
- (2) The person's citizenship, if other than the United States.
- (3) The percentage interest held by the person in the reporting entity, unless the person is a natural person who holds less than a ten percent interest in a reporting entity.
  - d. The percentage interest that a reporting entity holds in another reporting entity, and the number of acres of agricultural land that is attributable to the reporting entity which holds an interest in another reporting entity as provided in chapter 10.
  - e. A certification that the reporting entity meets all of the requirements to lawfully hold agricultural land in this state.
  - f. The number of acres of agricultural land held by the reporting entity, including the following:
    - (1) The total number of acres in the state.
    - (2) The number of acres in each county identified by county name.
    - (3) The number of acres owned.
    - (4) The number of acres leased.
    - (5) The number of acres held other than by ownership or lease.
    - (6) The number of acres used for the production of row crops.
  - g. If the reporting entity is a life science enterprise, as provided in chapter 10C,\* as that chapter exists on or before June 30, 2005, the total amount of commercial sale of life science products and products other than life science products which are produced from the agricultural land held by the life science enterprise.

3. A reporting entity other than a foreign business, foreign government, or nonresident alien shall be excused from filing a report with the secretary of state during any reporting period in which the reporting entity holds an interest in less than twenty acres of agricultural land in this state and the gross revenue produced from all farming on the land equals less than ten thousand dollars.

98 Acts, ch 1110, §204, 301; 2000 Acts, ch 1197, §1, 10; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1147, §1 – 3; 2005 Acts, ch 3, §2; 2005 Acts, ch 16, §1, 7; 2005 Acts, ch 135, §102; 2005 Acts, ch 179, §135; 2008 Acts, ch 1162, §129, 154, 155

\* Chapter 10C repealed by 2011 Acts, ch 118, §35, 89  
Section not amended; footnote added

### **10B.5 Use of reports.**

1. The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of this chapter has occurred.

2. Information provided in reports required in this chapter is a confidential record as provided in section 22.7. The attorney general may have access to the reports, and may use information in the reports in any action to enforce state law, including but not limited to chapters 9H and 9I. The reports shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent that agricultural land is held in this state by corporations and other business and foreign entities and the effect of such land ownership upon the economy of this state. The secretary of state shall assist any committee of the general assembly studying these issues.

98 Acts, ch 1110, §205, 301; 2004 Acts, ch 1147, §4; 2011 Acts, ch 118, §22, 89  
Subsection 2 amended

## CHAPTER 10C

### LIFE SCIENCE PRODUCTS

Chapter repealed by 2011 Acts, ch 118, §35, 89

## CHAPTER 11

### AUDITOR OF STATE

#### 11.1 Definitions.

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

a. “*Department*” means any authority charged by law with official responsibility for the expenditure of public money of the state and any agency receiving money from the general revenues of the state.

b. “*Examination*” means procedures that are less in scope than an audit but which are directed toward reviewing financial activities and compliance with legal requirements.

c. “*Governmental subdivision*” means cities and administrative agencies established by cities, hospitals or health care facilities established by a city, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E, community colleges, area education agencies, and school districts.

d. “*Regents institutions*” means the institutions governed by the board of regents under section 262.7.

2. As used in this chapter, unless the context otherwise requires, “*book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

[C24, 27, 31, §339; C35, §101-a1; C39, §101.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.1]

2000 Acts, ch 1148, §1; 2011 Acts, ch 75, §1

Section amended

#### 11.2 Annual settlements.

1. The auditor of state shall annually, and more often if deemed necessary, audit the state and all state officers and departments receiving or expending state funds, except that the accounts, records, and documents of the treasurer of state shall be audited daily.

2. Departments shall immediately notify the auditor of state regarding any suspected embezzlement, theft, or other significant financial irregularities.

3. In conjunction with the audit of the state board of regents required under this section, the auditor of state, in accordance with generally accepted auditing standards, shall perform audit testing on the state board of regents’ investments. The auditor shall report to the state board of regents concerning compliance with state law and state board of regents’ investment policies. The state board of regents is responsible for remedying any reported noncompliance with its own policy or practices.

a. The state board of regents shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by a regents institution.

b. All contracts or agreements with an investment entity or investment professional employed by a regents institution shall require the investment entity or investment professional employed by a regents institution to notify in writing the state board of regents within thirty days of receipt of all communication from an independent auditor or the auditor of state or any regulatory authority of the existence of a material weakness in internal control, or regulatory orders or sanctions against the investment entity or investment professional, with regard to the type of services being performed under the contracts or agreements. This provision shall not be limited or avoided by another contractual provision.

c. The audit under this section shall not be certified until the most recent annual reports of any investment entity or investment professional employed by a regents institution are reviewed by the auditor of state.

d. The review of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, pursuant to 17 C.F.R. § 270.30d-1 or the review, by the person performing the audit, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

e. As used in this subsection, “*investment entity*” and “*investment professional*” exclude a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 12C.

[C97, §161; S13, §161-a; C24, 27, 31, §340; C35, §101-a2; C39, §101.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.2]

92 Acts, ch 1156, §1; 2003 Acts, ch 145, §131; 2007 Acts, ch 126, §4; 2008 Acts, ch 1032, §201; 2011 Acts, ch 75, §2 – 4

Subsection 1 amended  
NEW subsection 2 and former subsection 2 renumbered as 3  
Subsection 3, paragraphs a, b, and c amended

#### 11.4 Report of audits.

1. The auditor of state shall make or cause to be made and filed and kept in the auditor’s office written reports of all audits and examinations, which reports shall include, if applicable, the following:

- a. The financial condition of the state or department.
- b. Whether, in the auditor’s opinion,
  - (1) Funds have been expended for the purpose for which appropriated.
  - (2) The department so audited or examined is efficiently conducted, and if the maximum results for the money expended are obtained.
  - (3) The work of the departments so audited or examined needlessly conflicts with or duplicates the work done by any other department.
- c. All illegal or unbusinesslike practices.
- d. Any recommendations for greater simplicity, accuracy, efficiency, or economy in the operation of the business of the several departments and institutions.
- e. Any other information which, in the auditor’s judgment, may be of value.

2. The state auditor is hereby authorized to obtain, maintain, and operate, under the auditor’s exclusive control such machinery as may be necessary to print confidential reports and documents originating in the auditor’s office.

[S13, §161-a; C24, 27, 31, §342; C35, §101-a4; C39, §101.4; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.4]

92 Acts, ch 1242, §14; 2008 Acts, ch 1032, §117; 2011 Acts, ch 75, §5, 6  
Subsection 1 amended  
Subsection 2 stricken and former subsection 3 renumbered as 2

#### 11.5A Audit costs.

When requested by the auditor of state, the department of management shall transfer from any unappropriated funds in the state treasury an amount not exceeding the expenses and prorated salary costs already paid to perform audits of state departments and agencies, the offices of the judicial branch, and federal financial assistance as defined in the federal Single Audit Act, 31 U.S.C. § 7501, et seq., received by all other departments, as listed in section 11.5B, for which payments by agencies have not been made. Upon payment by the departments, the auditor of state shall credit the payments to the state treasury.

87 Acts, ch 234, §422; 98 Acts, ch 1047, §9; 2011 Acts, ch 75, §7  
Section amended

### **11.5B Repayment of audit expenses by state departments and agencies.**

The auditor of state shall be reimbursed by a department or agency for performing audits or examinations of the following state departments or agencies, or funds received by a department or agency:

1. Department of commerce.
  2. Department of human services.
  3. State department of transportation.
  4. Iowa department of public health.
  5. State board of regents.
  6. Department of agriculture and land stewardship.
  7. Iowa veterans home.
  8. Department of education.
  9. Department of workforce development.
  10. Department of natural resources.
  11. Offices of the clerks of the district court of the judicial branch.
  12. The Iowa public employees' retirement system.
  13. Federal financial assistance, as defined in the federal Single Audit Act, 31 U.S.C. § 7501, et seq., received by all other departments.
  14. Department of administrative services.
- 90 Acts, ch 1247, §3; 90 Acts, ch 1261, §24; 94 Acts, ch 1187, §16; 96 Acts, ch 1186, §23; 98 Acts, ch 1047, §10; 2000 Acts, ch 1141, §13, 19; 2003 Acts, ch 145, §286; 2008 Acts, ch 1144, §1, 13; 2011 Acts, ch 75, §8, 9; 2011 Acts, ch 118, §37, 89

Unnumbered paragraph 1 amended  
 Subsection 13 amended  
 Subsection 15 stricken

## AUDIT OF GOVERNMENTAL SUBDIVISIONS AND RELATED ORGANIZATIONS

### **11.6 Audits of governmental subdivisions and related organizations — consultative services.**

1. a. (1) Except for entities organized under chapter 28E having gross receipts of one hundred thousand dollars or less in a fiscal year, the financial condition and transactions of all government subdivisions shall be audited at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The audit of school districts shall include an audit of all school funds including categorical funding provided by the state, the certified annual financial report, the certified enrollment as provided in section 257.6, supplementary weighting as provided in section 257.11, and the revenues and expenditures of any nonprofit school organization established pursuant to section 279.62. Differences in certified enrollment shall be reported to the department of management. The audit of school districts shall include at a minimum a determination that the laws of the state are being followed, that categorical funding is not used to supplant other funding except as otherwise provided, that supplementary weighting is pursuant to an eligible sharing condition, and that postsecondary courses provided in accordance with section 257.11 and chapter 261E supplement, rather than supplant, school district courses. The audit of a city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476 shall include performing tests of the city's compliance with section 388.10. The audit of a city that owns or operates a municipal utility providing telecommunications services pursuant to section 388.10 shall include performing tests of the city's compliance with section 388.10.

(2) Subject to the exceptions and requirements of subsections 2 and 3, and subsection 4, paragraph "a", subparagraph (3), audits shall be made as determined by the governmental subdivision either by the auditor of state or by certified public accountants, certified in the

state of Iowa, and they shall be paid from the proper public funds of the governmental subdivision.

b. The financial condition and transactions of community mental health centers organized under chapter 230A, substance abuse programs organized under chapter 125, and community action agencies organized under chapter 216A, shall be audited at least once each year.

c. (1) In conjunction with the audit of the governmental subdivision required under this section, the auditor shall also perform tests for compliance with the investment policy of the governmental subdivision. The results of the compliance testing shall be reported in accordance with generally accepted auditing standards. The auditor may also make recommendations for changes to investment policy or practices. The governmental subdivision is responsible for the remedy of reported noncompliance with its policy or practices.

(2) (a) As part of its audit, the governmental subdivision is responsible for obtaining and providing to the auditor the audited financial statements and related report on internal control of outside persons, performing any of the following during the period under audit for the governmental subdivision:

- (i) Investing public funds.
- (ii) Advising on the investment of public funds.
- (iii) Directing the deposit or investment of public funds.
- (iv) Acting in a fiduciary capacity for the governmental subdivision.

(b) The audit under this section shall not be certified until all material information required by this subparagraph is reviewed by the auditor.

(3) The review by the auditor of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, pursuant to 17 C.F.R. § 270.30d-1 or the review, by the auditor, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

(4) All contracts or agreements with outside persons performing any of the functions listed in subparagraph (2) shall require the outside person to notify in writing the governmental subdivision within thirty days of receipt of all communication from the auditor or any regulatory authority of the existence of a material weakness in internal control, or regulatory orders or sanctions against the outside person, with regard to the type of services being performed under the contracts or agreements. This provision shall not be limited or avoided by another contractual provision.

(5) As used in this subsection, “*outside person*” excludes a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 12C.

(6) A joint investment trust organized pursuant to chapter 28E shall file the audit reports required by this chapter with the administrator of the securities and regulated industries bureau of the insurance division of the department of commerce within ten days of receipt from the auditor. The auditor of a joint investment trust shall provide written notice to the administrator of the time of delivery of the reports to the joint investment trust.

(7) If during the course of an audit of a joint investment trust organized pursuant to chapter 28E, the auditor determines the existence of a material weakness in the internal control or a material violation of the internal control, the auditor shall report the determination to the joint investment trust which shall notify the administrator in writing within twenty-four hours, and provide a copy of the notification to the auditor. The auditor shall provide, within twenty-four hours of the receipt of the copy of the notice, written acknowledgment of the receipt to the administrator. If the joint investment trust does not make the notification within twenty-four hours, or the auditor does not receive a copy of the notification within twenty-four hours, the auditor shall immediately notify the administrator in writing of the material weakness in the internal control or the material violation of the internal control.

2. A governmental subdivision contracting with certified public accountants shall do so in

a reasonable manner on the basis of competence and qualification for the services required and for a fair and reasonable price utilizing procedures which include a written request for proposals.

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

4. *a.* In addition to the powers and duties under other provisions of the Code, the auditor of state may at any time cause to be made a complete or partial reaudit of the financial condition and transactions of any governmental subdivision, or an office of any governmental subdivision, if any of the following conditions exists:

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

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

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

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

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

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

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

8. The auditor of state shall provide advice and counsel to public entities and certified public accountants concerning audit and examination matters. The auditor of state shall adopt rules in accordance with chapter 17A to establish a fee schedule based upon the prevailing rate for the service rendered. The auditor of state shall obtain payment from a public entity or certified public accountant for advisory and consultation services rendered pursuant to this subsection. The auditor of state may waive any charge provided in this subsection and may determine to provide certain services without cost.

9. Accounts of the Iowa state association of counties, the Iowa league of cities, and the Iowa association of school boards shall be audited annually by either the auditor of state or a certified public accountant certified in the state of Iowa. The audit shall state all moneys

expended for expenses incurred by and salaries paid to legislative representatives and lobbyists of the association audited.

10. The auditor of state shall adopt rules in accordance with chapter 17A to establish and collect a filing fee for the filing of each report of audit or examination conducted pursuant to subsections 1 through 3. The funds collected shall be maintained in a segregated account for use by the office of the auditor of state in performing audits conducted pursuant to subsection 4 and for work paper reviews conducted pursuant to subsection 5. Any funds collected by the auditor pursuant to subsection 4 shall be deposited in this account. Notwithstanding section 8.33, the funds in this account shall not revert at the end of any fiscal year.

11. Each governmental subdivision shall keep its records and accounts in such form and by such methods as to be able to exhibit in its reports the matters required by the auditor of state, unless a form or method is otherwise specifically prescribed by law. Each governmental subdivision shall keep its records and accounts in current condition.

[S13, §100-d, 1056-a11, -a13; C24, 27, 31, 35, 39, §113; C46, 50, 54, 58, 62, 66, 71, §11.6; C73, 75, 77, 79, 81, §11.6, 332.3(27); S81, §11.6; 81 Acts, ch 117, §1000]

84 Acts, ch 1123, §1; 84 Acts, ch 1128, §1; 89 Acts, ch 264, §1; 90 Acts, ch 1013, §1; 91 Acts, ch 267, §222; 92 Acts, ch 1156, §2 – 4; 92 Acts, ch 1187, §1; 92 Acts, ch 1232, §301; 92 Acts, ch 1242, §16, 17; 96 Acts, ch 1215, §20; 2004 Acts, ch 1022, §1; 2004 Acts, ch 1048, §1; 2005 Acts, ch 179, §90; 2006 Acts, ch 1117, §1; 2008 Acts, ch 1032, §118 – 120; 2008 Acts, ch 1181, §42; 2011 Acts, ch 75, §10 – 19

Subsection 1, paragraph a amended  
 Subsection 1, NEW paragraph b and former paragraph b redesignated as c  
 Subsection 1, paragraph c amended  
 Subsection 2 – 4, 7, 9, and 10 amended  
 NEW subsection 11

**11.7 through 11.10** Repealed by 2011 Acts, ch 75, § 41. See § 11.31 and 11.41(2).

#### **11.11 Scope of audits.**

The written report of the audit of a governmental subdivision shall include the auditor's opinion as to whether a governmental subdivision's financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles or with an other comprehensive basis of accounting. As a part of conducting an audit of a governmental subdivision, an evaluation of internal control and tests for compliance with laws and regulations shall be performed.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §117; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.11]

2011 Acts, ch 75, §20  
 Section stricken and rewritten

**11.12 and 11.13** Repealed by 2011 Acts, ch 75, § 41. See § 11.51 and 11.52.

#### **11.14 Reports — public inspection.**

1. A written report of an audit or examination shall be provided to the governmental subdivision and filed with the auditor of state. All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with the state auditor shall constitute a simple misdemeanor.

2. In addition to subsection 1, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station, or television station located in the governmental subdivision that was audited or examined. However, if there is no newspaper, radio station, or television station located in the governmental subdivision, such notice shall be sent to the official newspapers of the county.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §120; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.14]

2011 Acts, ch 75, §21  
 Section amended

**11.15 through 11.17** Repealed by 2011 Acts, ch 75, § 41. See § 11.42, 11.53, and 11.54.

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

1. Where an audit or examination is made under contract with, or employment of, certified public accountants, the auditor shall, in all matters pertaining to an authorized audit or examination, have all of the powers and be vested with all the authority of state auditors employed by the auditor of state, and the cost of the audit or examination shall be paid by the governmental subdivision procuring the audit or examination. A detailed statement of the cost of the audit or examination shall be filed with the governmental subdivision. Upon completion of such audit or examination, a copy of the report and a detailed, itemized statement of cost, including hours spent performing the audit or examination, shall be filed with the auditor of state in a manner specified by the auditor of state.

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

[C39, §124.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.19]  
89 Acts, ch 264, §3; 2011 Acts, ch 75, §22  
Section amended

**11.20 Bills — audit and payment.**

If the audit or examination is made by the auditor of state under this chapter, each auditor shall file with the auditor of state an itemized, certified and sworn voucher of time and expense that the auditor is actually engaged in the audit or examination. The salaries shall be included in a two-week payroll period. Upon approval of the auditor of state the director of the department of administrative services may issue warrants for the payment of the vouchers and salary payments from any unappropriated funds in the state treasury. Repayment to the state shall be made as provided by section 11.21.

[S13, §100-a, -e, 1056-a11; C24, 27, 31, 35, 39, §125; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.20]  
84 Acts, ch 1118, §1; 85 Acts, ch 67, §4; 2003 Acts, ch 145, §286; 2011 Acts, ch 75, §23  
Section amended

**11.21 Repayment — objections.**

1. Upon payment by the state of the salary and expenses, the auditor of state shall file with the warrant-issuing officer of the governmental subdivision whose offices were audited or examined a sworn statement consisting of the itemized expenses paid and prorated salary costs paid under section 11.20. Upon approval by the governing body of the governmental subdivision, payment shall be made from the proper public funds of the governmental subdivision. In the event of the disapproval by the governing body of the governmental subdivision of any items included on the statement, written objections shall be filed with the auditor of state within thirty days from the filing of the sworn statement with the warrant-issuing officer of the governmental subdivision. Disapproved items of the statement shall be paid the auditor of state upon receiving final decisions emanating from public hearing established by the auditor of state.

2. Whenever the governing body of the governmental subdivision files written objections on the question of compensation and expenses with the auditor of state, the auditor or the auditor's representative shall hold a public hearing in the governmental subdivision where the audit or examination was made and shall give the complaining board notice of the time and place of hearing. After such hearing the auditor shall have the power to reduce the compensation and expenses of the auditor whose bills have been questioned.

[S13, §100-a, -e, 1056-a11; C24, 27, 31, 35, 39, §126; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.21]  
83 Acts, ch 123, §28, 209; 2011 Acts, ch 75, §24  
Section amended

**11.23 Duty to install.** Repealed by 2011 Acts, ch 75, § 41.

REVIEW OF  
PUBLICLY FUNDED ENTITIES

**11.24 Review of entities receiving public moneys.**

1. The auditor of state may, at the request of a department, review, during normal business hours upon reasonable notice of at least twenty-four hours, the audit working papers prepared by a certified public accountant covering the receipt and expenditure of state or federal funds provided by the department to any other entity to determine if the receipt and expenditure of those funds by the entity is consistent with the laws, rules, regulations, and contractual agreements governing those funds. Upon completion of the review, the auditor of state shall report whether, in the auditor of state's judgment, the auditor of state believes the certified public accountant's working papers adequately demonstrate that the laws, rules, regulations, and contractual agreements governing the funds have been substantially complied with. If the auditor of state does not believe the certified public accountant's working papers adequately demonstrate that the laws, rules, regulations, and contractual agreements have been substantially complied with or believes a complete or partial reaudit is necessary based on the provisions of section 11.6, subsection 4, paragraph "a", subparagraph (1) or (2), the auditor of state shall notify the certified public accountant and the department of the actions the auditor of state believes are necessary to determine whether the entity is in substantial compliance with those laws, rules, regulations, and contractual agreements. The auditor of state may assist departments with actions to determine whether the entity is in substantial compliance. Departments requesting the review shall reimburse the auditor of state for the cost of the review and any subsequent assistance provided by the auditor of state.

2. The auditor of state may, at the request of a department, review the records covering the receipt and expenditure of state or federal funds provided by the department to any other entity which has not been audited by a certified public accountant to determine if the receipt and expenditure of those funds by the entity is consistent with the laws, rules, regulations, and contractual agreements governing those funds. Upon completion of the review, the auditor of state shall report whether, in the auditor of state's judgment, the auditor of state believes the entity adequately demonstrated that the laws, rules, regulations, and contractual agreements governing the funds have been substantially complied with. If the auditor of state does not believe the entity adequately demonstrated that the laws, rules, regulations, and contractual agreements have been substantially complied with, the auditor of state shall notify the department of the actions the auditor of state believes are necessary to determine whether the entity is in substantial compliance with those laws, rules, regulations, and contractual agreements. The auditor of state may assist a department with actions to determine whether the entity is in substantial compliance. Departments requesting the review shall reimburse the auditor of state for the cost of the review and any subsequent assistance provided by the auditor of state.

3. When, in the auditor of state's judgment, the auditor of state finds that sufficient information is available to demonstrate that an entity receiving state or federal funds from a department may not have substantially complied with the laws, rules, regulations, and contractual agreements governing those funds, the auditor of state shall notify the department providing those funds to the entity of the auditor of state's finding. The department shall cooperate with the auditor of state to establish actions to be taken to determine whether substantial compliance with those laws, rules, regulations, and contractual agreements has been achieved by the entity receiving the state or federal funds from the department. Departments providing the state or federal funds shall reimburse the auditor of state for any actions taken by the auditor of state to determine whether the entity has substantially complied with the laws, rules, regulations, and contractual agreements governing the funds provided by the department for costs expended after the date the auditor of state notifies the department of an issue involving substantial compliance pursuant to the requirements of this subsection.

[C81, §7A.8]

C87, §11.36

2006 Acts, ch 1153, §10; 2007 Acts, ch 22, §4; 2008 Acts, ch 1032, §193

CS2011, §11.24

Audits of community action agencies, §216A.98

Transferred from §11.36 in Code Supplement 2011

**11.25 Reports required.** Repealed by 2011 Acts, ch 75, § 41.

**11.26 Targeted small business.**

After the conclusion of each fiscal year, the auditor of state shall annually conduct a review of whether state agencies are meeting their goal for procurement activities conducted pursuant to sections 73.15 through 73.21, and compliance with the forty-eight hour notice provision in section 73.16, subsection 2. By December 31 of each year, the auditor of state shall file a written report with the governor and the general assembly which shall include the findings of the review. The auditor of state may charge a fee to cover the costs of conducting activities under this section. The first report filed pursuant to this section shall be for the fiscal year beginning July 1, 2007. However, the auditor of state shall file a report pursuant to this section by March 1, 2008, for the time period beginning July 1, 2007, and ending September 30, 2007.

2007 Acts, ch 207, §2, 18

CS2007, §11.46

CS2011, §11.26

Transferred from §11.46 in Code Supplement 2011

**11.27 Biennial report.** Repealed by 2011 Acts, ch 75, § 41.

## REPORTS

**11.28 Individual audit or examination reports.**

Audit or examination reports shall include applicable exhibits, schedules, findings, and recommendations. The format of the reports shall comply with applicable professional accounting and auditing standards or procedures established by the auditor of state. Where applicable, the reports shall also set forth the average cost per year for the inmates, members, clients, patients, and students served. The reports shall make recommendations as may be deemed of advantage and to the best interests of the taxpayers of the state.

[C35, §130-e5; C39, §130.7; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.28]

86 Acts, ch 1245, §1973; 2003 Acts, ch 145, §286; 2005 Acts, ch 121, §1; 2011 Acts, ch 75, §25

Section amended

## APPOINTMENT AND COMPENSATION

**11.31 State auditors.**

1. The auditor of state shall appoint such number of state auditors as may be necessary to make audits and examinations as required in this chapter. The auditors shall be of recognized skill and integrity and familiar with the system of accounting used in departments or governmental subdivisions and with the laws relating to the affairs of departments or governmental subdivisions. Such auditors shall be subject at all times to the direction of the auditor of state.

2. The auditor of state shall appoint such additional assistants to the auditors as may be necessary, who shall be subject to discharge at any time by the auditor of state.

3. Any auditor or assistant who is found guilty of falsifying a time and expense voucher or engagement report shall be immediately discharged by the auditor of state and shall not be eligible for reemployment. Such auditor or assistant must thereupon reimburse the auditor of state for all such compensation and expenses so found to have been overpaid and in the

event of failure to do so, the auditor of state may collect the same amount from the auditor's surety by suit, if necessary.

2011 Acts, ch 75, §33

NEW section

### **11.32 Certified accountants employed.**

Nothing in this chapter shall prohibit the auditor of state, with the prior written permission of the state executive council, from employing certified public accountants for specific assignments. The auditor of state may employ such accountants for any assignment expressly reserved to the auditor of state. Payments, after approval by the executive council, shall be made to the accountants so employed from funds from which the auditor of state would have been paid had the auditor of state performed the assignment, or if such specific funds are not available, then authorization of the expense by the executive council shall be requested, and if authorized shall be paid from the appropriations addressed in section 7D.29.

[C66, 71, 73, 75, 77, 79, 81, §11.32]

2011 Acts, ch 75, §26; 2011 Acts, ch 131, §18, 158

Section amended

### **11.36 Review of entities receiving public moneys.** Transferred to § 11.24.

### **11.41 Access to information — confidentiality.**

1. The auditor of state, when conducting any audit or review required or permitted by this chapter, shall at all times have access to all information, records, instrumentalities, and properties used in the performance of the audited or reviewed entities' statutory duties or contractual responsibilities. All audited or reviewed entities shall cooperate with the auditor of state in the performance of the audit or review and make available the information, records, instrumentalities, and properties upon the request of the auditor of state.

2. Auditors shall have the right while conducting audits or examinations to have full access to all papers, books, records, and documents of any officers or employees and shall have the right, in the presence of the custodian or the custodian's designee, to have full access to the cash drawers and cash in the official custody of the officer or employee and, during business hours, to examine the public accounts of the department or governmental subdivision in any depository which has public funds in its custody pursuant to the law.

3. If the information, records, instrumentalities, and properties sought by the auditor of state are required by law to be kept confidential, the auditor of state shall have access to the information, records, instrumentalities, and properties, but shall maintain the confidentiality of all such information and is subject to the same penalties as the lawful custodian of the information for dissemination of the information. However, the auditor of state shall not have access to the income tax returns of individuals.

2006 Acts, ch 1153, §11; 2011 Acts, ch 75, §27

NEW subsection 2 and former subsection 2 renumbered as 3

### **11.42 Disclosures prohibited.**

1. Notwithstanding chapter 22, information received during the course of any audit or examination, including allegations of misconduct or noncompliance, and all audit or examination work papers shall be maintained as confidential.

2. Information maintained as confidential as provided by this section may be disclosed for any of the following reasons:

a. As necessary to complete the audit or examination.

b. To the extent the auditor is required by law to report the same or to testify in court.

3. Upon completion of an audit or examination, a report shall be prepared as required by section 11.28 and all information included in the report shall be public information.

4. Any violation of this section shall be grounds for termination of employment with the auditor of state.

2011 Acts, ch 75, §28

NEW section

**11.46 Targeted small business.** Transferred to § 11.26.

**11.47 through 11.50** Reserved.

## ENFORCEMENT

### **11.51 Subpoenas.**

The auditor of state shall, in all matters pertaining to an authorized audit or examination, have power to issue subpoenas of all kinds, administer oaths and examine witnesses, either orally or in writing, and the expense attending the same, including the expense of taking oral examinations, shall be paid as other expenses of the auditor.

2011 Acts, ch 75, §29

Expenses, §11.21

NEW section

### **11.52 Refusal to testify.**

In case any witness duly subpoenaed refuses to attend, or refuses to produce documents, books, and papers, or attends and refuses to make oath or affirmation, or, being sworn or affirmed, refuses to testify, the auditor of state or the auditor's designee may apply to the district court, or any judge of said district having jurisdiction thereof, for the enforcement of attendance and answers to questions as provided by law in the matter of taking depositions.

2011 Acts, ch 75, §30

Procedure for contempt, §622.76, 622.77, 622.84, 622.102, chapter 665

NEW section

### **11.53 Report filed with county attorney.**

If an audit or examination discloses any irregularity in the collection or disbursement of public funds, in the abatement of taxes, or other findings the auditor believes represent significant noncompliance, a copy of the report shall be filed with the county attorney, and it shall be the county attorney's duty to cooperate with the state auditor, and, in proper cases, with the attorney general, to secure the correction of the irregularity.

2011 Acts, ch 75, §31

NEW section

### **11.54 Duty of attorney general.**

In the event an audit or examination discloses any grounds which would be grounds for removal from office, a copy of the report shall be provided and filed by the auditor of state in the office of the attorney general of the state, who shall thereupon take such action as, in the attorney general's judgment, the facts and circumstances warrant.

2011 Acts, ch 75, §32

NEW section

## CHAPTER 12

### TREASURER OF STATE

#### **12.8 Investment or deposit of surplus — appropriation — investment income — lending securities.**

1. The treasurer of state shall invest or deposit, subject to chapters 12F and 12H and as provided by law, any of the public funds not currently needed for operating expenses and shall do so upon receipt of monthly notice from the director of the department of administrative services of the amount not so needed. In the event of loss on redemption or sale of securities invested as prescribed by law, and if the transaction is reported to the executive council, neither the treasurer nor director of the department of administrative services is personally

liable but the loss shall be charged against the funds which would have received the profits or interest of the investment and there is appropriated from the funds the amount so required.

2. Investment income may be used to maintain compensating balances, pay transaction costs for investments made by the treasurer of state, and pay administrative and related overhead costs incurred by the treasurer of state in the management of money. The treasurer of state shall coordinate with the affected departments to determine how compensating balances, transaction costs, or money management and related costs will be established. All charges against a retirement system must be documented and notification of the charges shall be made to the appropriate administration of the retirement system affected.

3. The treasurer of state, with the approval of the investment board of the Iowa public employees' retirement system, may conduct a program of lending securities in the Iowa public employees' retirement system portfolio. When securities are loaned as provided by this paragraph, the treasurer shall act in the manner provided for investment of moneys in the Iowa public employees' retirement fund under section 97B.7A. The treasurer of state shall report at least annually to the investment board of the Iowa public employees' retirement system on the program and shall provide additional information on the program upon the request of the investment board or the employees of the Iowa public employees' retirement system.

[C24, 27, 31, 35, 39, §141; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.8]

84 Acts, ch 1180, §6; 85 Acts, ch 227, §6; 88 Acts, ch 1242, §1; 91 Acts, ch 268, §123; 94 Acts, ch 1001, §1; 2001 Acts, ch 68, §1, 24; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §98, 102; 2007 Acts, ch 39, §8; 2011 Acts, ch 82, §8

Investment or deposit, §12B.10

Unnumbered paragraphs 1 - 3 editorially designated as subsections 1 - 3

Subsection 1 amended

### **12.34 Linked investments — limitations — rules — maturity and renewal of certificates.**

1. The treasurer of state may invest up to the lesser of one hundred eight million dollars or twenty-five percent of the balance of the state pooled money fund in certificates of deposit in eligible lending institutions as provided in section 12.32, this section, and sections 12.35 through 12.43. One-half of the moneys invested pursuant to this section shall be made available under the program implemented pursuant to section 12.43 to increase the availability of lower cost moneys for purposes of injecting needed capital into small businesses which are fifty-one percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with disabilities. "Disability" means the same as defined in section 15.102, subsection 12. A "minority person" means the same as defined in section 15.102, subsection 12. The treasurer shall invest the remaining one-half of the moneys invested pursuant to this section to support any other eligible applicant as provided in section 12.43.

2. The treasurer of state shall adopt rules pursuant to chapter 17A to administer section 12.32, this section, and sections 12.35 through 12.43.

3. A certificate of deposit that is issued to the treasurer of state by an eligible lending institution on or after July 1, 2006, may be renewed at the option of the treasurer on an annual basis for a total term not to exceed five years. All participants with certificates of deposit issued prior to July 1, 2006, are subject, for renewal certificates of deposit, to the requirements and terms applicable to the certificates of deposit issued prior to July 1, 2006.

86 Acts, ch 1096, §4; 89 Acts, ch 234, §4; 96 Acts, ch 1058, §2, 3, 9, 10, 12; 97 Acts, ch 195, §4, 10; 99 Acts, ch 177, § 2, 7, 9; 2001 Acts, ch 24, §2; 2006 Acts, ch 1165, §3

Section not amended; internal reference change applied

### **12.38 Reports.**

By February 1 of each year, the treasurer of state shall report on the linked investments for tomorrow programs for the preceding calendar year to the governor, the economic development authority, the speaker of the house of representatives, and the president of the senate. The speaker of the house shall transmit copies of this report to the house co-chairperson of the joint economic development appropriations subcommittee and the chairpersons of the standing committees in the house which customarily consider legislation

regarding agriculture, commerce, and economic growth, and the president of the senate shall transmit copies of this report to the senate co-chairperson of the joint economic development appropriations subcommittee and the chairpersons of the standing committees in the senate which customarily consider legislation regarding agriculture, commerce, and economic growth. The report shall set forth the linked investments made by the treasurer of state under the program during the year, the total amount deposited, the number of deposits, and an estimate of foregone interest, and shall include information regarding the nature, terms, and amounts of the loans upon which the linked investments were based and a listing of eligible borrowers to which the loans were made.

86 Acts, ch 1096, §8; 89 Acts, ch 234, §8; 94 Acts, ch 1188, §31; 96 Acts, ch 1058, §6; 2006 Acts, ch 1165, §6; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **12.73 Vision Iowa fund moneys — administrative costs.**

During the term of the vision Iowa program established in section 15F.302, two hundred thousand dollars of the moneys deposited each fiscal year in the vision Iowa fund and appropriated for the vision Iowa program shall be allocated each fiscal year to the economic development authority for administrative costs incurred by the authority for purposes of administering the vision Iowa program.

2000 Acts, ch 1225, §31, 38, 39; 2001 Acts, ch 185, §34; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **12.82 School infrastructure fund and reserve funds.**

1. A school infrastructure fund is created and established as a separate and distinct fund in the state treasury under the control of the department of education. Notwithstanding any other provision of this chapter, the fund shall be used for purposes of the school infrastructure program established in section 292.2.

2. Revenue for the school infrastructure fund shall include, but is not limited to, the following, which shall be deposited with the treasurer of state or its designee as provided by any bond or security documents and credited to the fund:

a. The proceeds of bonds issued to capitalize and pay the costs of the fund and investment earnings on the proceeds.

b. Interest attributable to investment of money in the fund or an account of the fund.

c. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

3. Moneys in the school infrastructure fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

4. Any amounts remaining in the school infrastructure fund at the end of the fiscal year beginning July 1, 2010, and for each fiscal year thereafter, which are determined by the treasurer of state to be unencumbered and unobligated and otherwise unnecessary to make the payments for such fiscal year, shall be transferred to the rebuild Iowa infrastructure fund.

5. a. The treasurer of state may create and establish one or more special funds, to be known as “*bond reserve funds*”, to secure one or more issues of bonds or notes issued pursuant to section 12.81. The treasurer of state shall pay into each bond reserve fund any moneys appropriated and made available by the state or the treasurer for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions authorizing their issuance, and any other moneys which may be available to the treasurer for the purpose of the fund from any other sources. All moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

b. Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount

that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this subsection, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums, and the sinking fund payments with respect to the bonds for the payment of which other moneys of the treasurer are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the treasurer to other funds or accounts to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

c. The treasurer of state shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the treasurer at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund, will not be less than the bond reserve fund requirement for the fund. For the purposes of this subsection, the term “*bond reserve fund requirement*” means, as of any particular date of computation, an amount of money, as provided in the resolutions authorizing the bonds with respect to which the fund is established.

d. To assure the continued solvency of any bonds secured by the bond reserve fund, provision is made in paragraph “c” for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the treasurer shall, on or before January 1 of each calendar year, make and deliver to the governor the treasurer’s certificate stating the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor shall submit to both houses printed copies of a budget including the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the treasurer pursuant to this subsection shall be deposited by the treasurer in the applicable bond reserve fund.

2000 Acts, ch 1174, §22; 2001 Acts, 1st Ex, ch 5, §4, 7; 2002 Acts, ch 1119, §4; 2005 Acts, ch 19, §12; 2011 Acts, ch 133, §24, 25, 29

2011 amendment to subsection 1 and new subsection 4 take effect July 27, 2011, and apply retroactively to June 30, 2011; 2011 Acts, ch 133, §29

Subsection 1 amended

NEW subsection 4 and former subsection 4 renumbered as 5

### **12.87 General and specific bonding powers — revenue bonds — Iowa jobs program.**

1. a. The treasurer of state is authorized to issue and sell bonds on behalf of the state to provide funds for certain infrastructure projects and for purposes of the Iowa jobs program established in section 16.194. The treasurer of state shall have all of the powers which are necessary or convenient to issue, sell, and secure bonds and carry out the treasurer of state’s duties, and exercise the treasurer of state’s authority under this section and sections 12.88 through 12.90. The treasurer of state may issue and sell bonds in such amounts as the treasurer of state determines to be necessary to provide sufficient funds for certain infrastructure projects and the revenue bonds capitals fund, the revenue bonds capitals II fund, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the payment of costs of issuance of the bonds, the payment of other expenditures of the treasurer of state incident to and necessary or convenient to carry out the issuance and sale of the bonds, and the payment of all other expenditures of the treasurer of state necessary or convenient to administer the funds and to carry out the purposes for which the bonds are issued and sold. The treasurer of state may issue and sell bonds in one or more series on the terms and conditions the treasurer of state determines to be in the best interest of the state, in accordance with this section in such amounts as the treasurer of state determines to be necessary to fund the purposes for which such bonds are issued and sold as follows:

b. The treasurer of state may issue and sell bonds in amounts which provide aggregate

net proceeds of not more than six hundred ninety-five million dollars, excluding any bonds issued and sold to refund outstanding bonds issued under this section, as follows:

(1) On or after July 1, 2009, the treasurer of state may issue and sell bonds in amounts which provide aggregate net proceeds of not more than one hundred eighty-five million dollars for capital projects which qualify as vertical infrastructure projects as defined in section 8.57, subsection 6, paragraph “c”, to the extent practicable in any fiscal year and without limiting other qualifying capital expenditures.

(2) On or after July 1, 2009, the treasurer of state may issue and sell bonds in amounts which provide aggregate net proceeds of not more than three hundred sixty million dollars for purposes of the Iowa jobs program established in section 16.194 and for watershed flood rebuilding and prevention projects, soil conservation projects, sewer infrastructure projects, for certain housing and public service shelter projects and public broadband and alternative energy projects, and for projects relating to bridge safety and the rehabilitation of deficient bridges.

(3) On or after April 1, 2010, the treasurer of state may issue and sell bonds in amounts which provide aggregate net proceeds of not more than one hundred fifty million dollars for purposes of the Iowa jobs II program established in section 16.194A and for qualified projects in the departments of agriculture and land stewardship, education, natural resources, and transportation, and the economic development authority, Iowa finance authority, state board of regents, and treasurer of state.

2. Bonds issued and sold under this section are payable solely and only out of the moneys in the revenue bonds debt service fund, the revenue bonds federal subsidy holdback fund, and any bond reserve funds established pursuant to section 12.89, and only to the extent provided in the trust indenture, resolution, or other instrument authorizing their issuance. All moneys in the revenue bonds debt service fund, the revenue bonds federal subsidy holdback fund, and any bond reserve funds established pursuant to section 12.89 may be deposited with trustees or depositories in accordance with the terms of the trust indentures, resolutions, or other instruments authorizing the issuance of bonds and pledged by the treasurer of state to the payment thereof. Bonds issued and sold under this section shall contain a statement that the bonds are limited special obligations of the state and do not constitute a debt or indebtedness of the state or a pledge of the faith or credit of the state or a charge against the general credit or general fund of the state. The treasurer of state shall not pledge the credit or taxing power of this state or any political subdivision of this state or make bonds issued and sold pursuant to this section payable out of any moneys except those in the revenue bonds debt service fund, the revenue bonds federal subsidy holdback fund, and any bond reserve funds established pursuant to section 12.89.

3. The proceeds of bonds issued and sold by the treasurer of state and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested or reinvested in any investment as directed by the treasurer of state and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued and sold without regard to any limitation otherwise provided by law.

4. The bonds, if issued and sold, shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments and investment securities under the laws of the state and sold at prices, at public or private sale, and in a manner, as prescribed by the treasurer of state. Chapters 73A, 74, 74A, and 75 do not apply to the sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this section and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

5. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and

other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

6. Bonds must be authorized by a trust indenture, resolution, or other instrument of the treasurer of state.

7. The resolution, trust indenture, or any other instrument by which a pledge is created shall not be required to be recorded or filed under the Iowa uniform commercial code, chapter 554, to be valid, binding, or effective.

8. Any bonds issued and sold under the provisions of this section are declared to be issued and sold for an essential public and governmental purpose, and all bonds issued and sold under this section except as otherwise provided in any trust indentures, resolutions, or other instruments authorizing their issuance shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

9. The treasurer of state may issue and sell bonds for the purpose of refunding any bonds issued and sold pursuant to this section then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds are applied to the purchase or retirement of outstanding bonds or the redemption of outstanding bonds, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this section. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments shall be returned to the treasurer of state for deposit in the revenue bonds debt service fund established in section 12.89. All refunding bonds shall be issued, sold and secured and subject to the provisions of this section in the same manner and to the same extent as other bonds issued and sold pursuant to this section.

10. Bonds issued and sold pursuant to this section are limited special obligations of the state and are not a debt or indebtedness of the state, nor of any political subdivision of the state, and do not constitute a pledge of the faith and credit of the state or a charge against the general credit or general fund of the state. The issuance and sale of any bonds pursuant to this section by the treasurer of state do not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply moneys from or to levy or pledge any form of taxation whatever to, or to continue the appropriation of the funds for, the payment of the bonds. Bonds issued and sold under this section are payable solely and only from moneys in the revenue bonds debt service fund and any reserve fund created in section 12.89 and only to the extent provided in the trust indenture, resolution, or other instrument authorizing their issuance.

11. The treasurer of state may enter into or obtain authorizing documents and other agreements and ancillary arrangements with respect to the bonds as the treasurer of state determines to be in the best interests of the state, including but not limited to trust indentures, resolutions, other instruments authorizing the issuance of the bonds, liquidity facilities, remarketing or dealer agreements, letter of credit agreements, insurance policies, guaranty agreements, reimbursement agreements, indexing agreements, or interest rate exchange agreements.

12. Neither the treasurer of state, the Iowa jobs board, nor any person acting on behalf of the treasurer of state or the Iowa jobs board while acting within the scope of their employment or agency, is subject to personal liability resulting from carrying out the powers and duties conferred by this section and sections 12.88 through 12.90.

13. As used in this section and sections 12.88 through 12.90, the term “bonds” means bonds, notes, or other evidence of obligations.

2009 Acts, ch 173, §1, 36; 2010 Acts, ch 1138, §47; 2010 Acts, ch 1184, §79, 96; 2011 Acts, ch 25, §6; 2011 Acts, ch 118, §87, 89

Code editor directive applied  
Subsection 1 amended

### **12.89A Revenue bonds federal subsidy holdback fund.**

1. A revenue bonds federal subsidy holdback fund is created and established as a separate and distinct fund in the state treasury. The treasurer of state shall act as custodian of the fund and disburse moneys contained in the fund.

2. The moneys in such fund shall include all of the following:

a. The revenues required to be deposited in the fund pursuant to section 8.57, subsection 6, paragraph “e”, subparagraphs (1) and (2).

b. Interest attributable to investment moneys in the fund.

c. Any other moneys from any other sources which may be legally available to the treasurer of state for the purpose of the fund.

3. The moneys in the revenue bonds federal subsidy holdback fund are appropriated and shall be used or transferred to the revenue bonds debt service fund created in section 12.89, subsection 1, solely for the purpose of making payments of principal and interest on federal subsidy bonds when due, if the treasurer of state or the treasurer’s designee has not received a federal subsidy scheduled to be received for such payment by the due date.

4. The moneys on deposit in the revenue bonds federal subsidy holdback fund shall be used or transferred to the revenue bonds debt service fund created in section 12.89, subsection 1, solely for the purpose of making payments of principal and interest on federal subsidy bonds prior to any use or transfer of moneys on deposit in any bond reserve fund created for such federal subsidy bonds by the treasurer of state pursuant to section 12.89, subsection 3, paragraph “a”.

5. At any time during each fiscal year that there are moneys on deposit in the revenue bonds federal subsidy holdback fund that are not needed to pay principal and interest on federal subsidy bonds during such fiscal year as determined by the treasurer of state or the treasurer’s designee, such moneys on deposit in the revenue bonds federal subsidy holdback fund shall be credited to the rebuild Iowa infrastructure fund of the state.

6. For purposes of this section:

a. “*Federal subsidy*” means any payment from the federal government with respect to federal subsidy bonds.

b. “*Federal subsidy bonds*” means any bonds issued and sold pursuant to section 12.87 for which a federal subsidy is expected to be paid on or before any date on which interest on such bonds is due and payable.

2010 Acts, ch 1184, §81; 2011 Acts, ch 25, §7

Subsection 5 amended

## **CHAPTER 12B**

### **SECURITY OF THE REVENUE**

This chapter not enacted as a part of this title; transferred from chapter 452 in Code 1993

#### **12B.10 Public funds investment standards.**

1. a. In addition to investment standards and requirements otherwise provided by law, the investment of public funds by the treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, shall comply with this section, except where otherwise provided by another statute specifically referring to this section.

b. The treasurer of state and the treasurer of each political subdivision shall at all times keep funds coming into their possession as public money in a vault or safe to be provided for that purpose or in one or more depositories approved pursuant to chapter 12C. However, the treasurer of state, state agencies authorized to invest public funds, and political subdivisions shall invest, unless otherwise provided, any public funds not currently needed in investments authorized by this section.

2. The treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, when investing or depositing public funds, shall exercise the care,

skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the goals of this subsection. This standard requires that when making investment decisions, a public entity shall consider the role that the investment or deposit plays within the portfolio of assets of the public entity and the goals of this subsection. The primary goals of investment prudence shall be based in the following order of priority:

- a. Safety of principal is the first priority.
- b. Maintaining the necessary liquidity to match expected liabilities is the second priority.
- c. Obtaining a reasonable return is the third priority.

3. Investments of public funds shall be made in accordance with written policies. A written investment policy shall address the goals set out in subsection 2 and shall also address, but is not limited to, compliance with state law, diversification, maturity, quality, and capability of investment management.

The trading of securities in which any public funds are invested for the purpose of speculation and the realization of short-term trading profits is prohibited.

Investments by a political subdivision must have maturities that are consistent with the needs and use of that political subdivision or agency.

4. a. The treasurer of state and all other state agencies authorized to invest funds shall only purchase and invest in the following:

- (1) Obligations of the United States government, its agencies, and instrumentalities.
- (2) Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 12C.

(3) Prime bankers' acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this subparagraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

(4) Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this subparagraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

(5) Repurchase agreements whose underlying collateral consists of the investments set out in subparagraphs (1) through (4) if the treasurer of state or state agency takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

(6) Investments authorized for the Iowa public employees' retirement system in section 97B.7A, except that investment in common stocks is not permitted.

(7) An open-end management investment company organized in trust form registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, and operated in accordance with 17 C.F.R. § 270.2a-7.

(8) Investments authorized under subsection 7.

(9) Obligations of the Iowa finance authority issued pursuant to chapter 16, bearing interest at market rates, provided that at the time of purchase the Iowa finance authority has an issuer credit rating within the two highest classifications or the obligations to be purchased are rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A.

- b. Futures and options contracts are not permissible investments.

5. a. Political subdivisions of this state, including entities organized pursuant to chapter

28E whose primary function is other than to jointly invest public funds, shall purchase and invest only in the following:

- (1) Obligations of the United States government, its agencies, and instrumentalities.
- (2) Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 12C.
- (3) Prime bankers' acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this subparagraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.
- (4) Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this subparagraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.
- (5) Repurchase agreements whose underlying collateral consists of the investments set out in subparagraph (1) if the political subdivision takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.
- (6) An open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, and operated in accordance with 17 C.F.R. § 270.2a-7.
- (7) A joint investment trust organized pursuant to chapter 28E prior to and existing in good standing on the effective date of this Act or a joint investment trust organized pursuant to chapter 28E after April 28, 1992, provided that the joint investment trust shall either be rated within the two highest classifications by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A and operated in accordance with 17 C.F.R. § 270.2a-7, or be registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, and operated in accordance with 17 C.F.R. § 270.2a-7. The manager or investment advisor of the joint investment trust shall be registered with the federal securities and exchange commission under the Investment Advisor Act of 1940, 15 U.S.C. § 80b.
- (8) Warrants or improvement certificates of a levee or drainage district.
- (9) Investments authorized under subsection 7.
  - b. Futures and options contracts are not permissible investments.
  6. The following investments are not subject to this section:
    - a. Investments by the public safety peace officers' retirement system governed by chapter 97A.
    - b. Investments by the Iowa public employees' retirement system governed by chapter 97B.
    - c. Investments by the Iowa finance authority governed by chapter 16.
    - d. Investments by the state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are limited to the following:
      - (1) Those investments set out in subsection 4.
      - (2) The common fund for nonprofit organizations.
      - (3) Common stocks.
      - (4) For investments of short-term operating funds, the funds shall not be invested in investments having effective maturities exceeding sixty-three months.
    - e. A pension and annuity retirement system governed by chapter 294.
    - f. Investments by the statewide fire and police retirement system governed by chapter 411.
    - g. Investments by the judicial retirement system governed by chapter 602, article 9.

h. Investments under the deferred compensation plan established by the executive council pursuant to section 509A.12.

i. Investments made by city hospitals as provided in section 392.6. However, investments by city hospitals are limited to the following:

(1) The same types of investments as the treasurer of state and other state agencies may make under this section.

(2) Investment in common stocks.

j. Investments by the tobacco settlement authority governed by chapter 12E.

k. Investments by municipal utility retirement systems governed under chapter 412.

l. Investments in a qualified trust established pursuant to governmental accounting standards board statement number forty-three that is governed by a board of trustees of a joint investment trust organized pursuant to chapter 28E and that is registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80a.

7. Notwithstanding sections 12C.2, 12C.4, 12C.6, 12C.6A, and any other provision of law relating to the deposits of public funds, if public funds are deposited in a depository, as defined in section 12C.1, any uninsured portion of the public funds invested through the depository may be invested in certificates of deposit arranged by the depository that are issued by one or more federally insured banks or savings associations regardless of location for the account of the public funds depositor if all of the following requirements are satisfied:

a. The full amount of the principal and any accrued interest of each certificate of deposit issued shall be covered by federal deposit insurance.

b. The depository, either directly or through an agent or subcustodian, shall act as custodian of the certificates of deposit.

c. The day the certificates of deposit are issued, the depository shall have received deposits in an amount eligible for federal deposit insurance from, and issued certificates of deposit to, customers of other financial institutions wherever located that are equal to or greater than the amount of public funds invested under this subsection by the public funds depositor through the depository.

8. As used in this section, “*public funds*” means the same as defined in section 12C.1, subsection 2.

[R60, §804; C73, §918; C97, §1462; S13, §1462; C24, 27, 31, 35, 39, §7412; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.10]

84 Acts, ch 1194, §1; 84 Acts, ch 1230, §4; 85 Acts, ch 194, §1; 87 Acts, ch 105, §3; 88 Acts, ch 1027, §1; 88 Acts, ch 1187, §1; 90 Acts, ch 1233, §30; 91 Acts, ch 249, §1; 92 Acts, ch 1156, §16

C93, §12B.10

94 Acts, ch 1012, §1; 96 Acts, ch 1187, §75; 97 Acts, ch 185, §1; 2000 Acts, ch 1156, §1; 2000 Acts, ch 1208, §20, 25; 2001 Acts, ch 68, §2, 24; 2001 Acts, ch 102, §1; 2003 Acts, ch 179, §91; 2006 Acts, ch 1023, § 1 – 4; 2008 Acts, ch 1075, §1; 2011 Acts, ch 55, §1

Subsection 6, NEW paragraph 1

## CHAPTER 12C

### DEPOSIT OF PUBLIC FUNDS

This chapter not enacted as a part of this title; transferred from chapter 453 in Code 1993

#### 12C.1 Deposits in general — definitions.

1. All funds held by the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated: for the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, and sheriff, by the board of supervisors; for the city treasurer or other designated financial officer of a city, by

the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; and for an electric power agency as defined in section 28F.2 or 390.9, by the governing body of the electric power agency. However, the treasurer of state and the treasurer of each political subdivision or the designated financial officer of a city shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 12B.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of “public funds” contained in subsection 2. Notwithstanding provisions of this section to the contrary, public funds of a state government deferred compensation plan established by the executive council may also be invested in the investment products authorized under section 509A.12.

2. As used in this chapter unless the context otherwise requires:

a. “*Bank*” means a corporation or limited liability company engaged in the business of banking and organized under the laws of this state, another state, or the United States. “*Bank*” also means a savings and loan, savings association, or savings bank organized under the laws of this state, another state, or the United States.

b. “*Credit union*” means a cooperative, nonprofit association incorporated under chapter 533 or the federal Credit Union Act, 12 U.S.C. § 1751 et seq., and that is insured by the national credit union administration and includes an office of a credit union.

c. “*Depository*” means a bank, a savings and loan, or a credit union in which public funds are deposited under this chapter.

d. “*Financial institution*” means a bank or a credit union.

e. “*Public funds*” and “*public deposits*” mean any of the following:

(1) The moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision. Moneys of the state include moneys which are transmitted to a depository for purposes of completing an electronic financial transaction pursuant to section 159.35.

(2) The moneys of any court or public body noted in subsection 1.

(3) The moneys of a legal or administrative entity created pursuant to chapter 28E.

(4) The moneys of an electric power agency as defined in section 28F.2 or 390.9.

(5) Federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

(6) Moneys placed in a depository for the purpose of completing an electronic financial transaction pursuant to section 8A.222 or 331.427.

f. “*Public officer*” means the person authorized by and acting for a public body to deposit public funds of the public body.

g. “*Savings and loan*” means a corporation authorized to operate under chapter 534 or the federal Home Owner’s Loan Act of 1933, 12 U.S.C. § 1461 et seq., and includes a savings and loan association, a savings bank, or any branch of a savings and loan association or savings bank.

h. “*Superintendent*” means the superintendent of banking of this state when the depository is a bank, and the superintendent of credit unions of this state when the depository is a credit union.

i. “*Uninsured public funds*” means any amount of public funds of a public funds depositor on deposit in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the federal deposit insurance corporation or the national credit union administration.

3. A deposit of public funds in a depository pursuant to this chapter shall be secured as follows:

a. If a depository is a credit union, then public deposits in the credit union shall be secured pursuant to sections 12C.16 through 12C.19 and sections 12C.23 and 12C.24.

b. If a depository is a bank, public deposits in the bank shall be secured pursuant to sections 12C.23A and 12C.24.

4. Ambiguities in the application of this section shall be resolved in favor of preventing the loss of public funds on deposit in a depository.

[C24, 27, §139, 4319, 5548, 5651, 7404; C31, 35, §7420-d1; C39, §7420.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §453.1; 81 Acts, ch 148, §1; 82 Acts, ch 1202, §1]

83 Acts, ch 97, §1, 3; 83 Acts, ch 186, §1014, 10201; 84 Acts, ch 1230, §5; 85 Acts, ch 194, §2; 89 Acts, ch 39, §12; 92 Acts, ch 1156, §20 – 22

C93, §12C.1

93 Acts, ch 48, §3; 97 Acts, ch 185, §5; 99 Acts, ch 117, §1 – 4, 15; 99 Acts, ch 208, §42, 74; 2001 Acts, ch 158, §4; 2001 Acts, 1st Ex, ch 4, §1, 2, 36; 2002 Acts, ch 1096, §1, 2, 17; 2003 Acts, ch 18, §1; 2003 Acts, ch 48, §1; 2003 Acts, ch 179, §58, 84; 2010 Acts, ch 1018, §1, 2; 2010 Acts, ch 1028, §1, 2, 14; 2011 Acts, ch 132, §39, 106

Subsection 1 amended

## CHAPTER 12H

### RESTRICTIONS ON IRAN-RELATED INVESTMENTS

#### 12H.1 Legislative findings and intent.

The general assembly is deeply concerned over the support the country of Iran has provided for acts of international terrorism. Therefore, the general assembly intends that state funds and funds administered by the state, including public employee retirement funds, should not be invested in companies that provide power production-related services, mineral extraction activities, oil-related activities, or military equipment to the government of Iran.

2011 Acts, ch 82, §1

NEW section

#### 12H.2 Definitions.

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

1. “*Active business operations*” means all business operations that are not inactive business operations.

2. “*Business operations*” means engaging in commerce in any form in Iran, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

3. “*Company*” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

4. “*Direct holdings*” in a company means all securities of that company held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

5. “*Inactive business operations*” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

6. “*Indirect holdings*” in a company means all securities of that company held in an account or fund managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this chapter. Indirect holdings include but are not limited to mutual funds, fund of funds, private equity funds, hedge funds, and real estate funds.

7. “*Military equipment*” means weapons, arms, military supplies, and equipment that readily may be used for military purposes including but not limited to radar systems

or military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any terrorist organization.

8. “*Mineral extraction activities*” include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

9. “*Oil-related activities*” include but are not limited to owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

10. “*Power production activities*” means any business operation that involves a project commissioned by any Iranian government entity whose purpose is to facilitate power-generation and delivery including but not limited to establishing power generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

11. “*Public fund*” means the treasurer of state, the state board of regents, the public safety peace officers’ retirement system created in chapter 97A, the Iowa public employees’ retirement system created in chapter 97B, the statewide fire and police retirement system created in chapter 411, or the judicial retirement system created in chapter 602.

12. “*Scrutinized company*” means any company that is not a social development company that meets any of the following criteria:

a. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, Iranian government-commissioned consortiums or projects, or companies involved in Iranian government-commissioned consortiums or projects; and meets any of the additional following criteria:

(1) More than ten percent of the company’s revenues or assets linked to Iran involve oil-related activities or mineral extraction activities and the company has failed to take substantial action.

(2) More than ten percent of the company’s revenues or assets linked to Iran involve power production activities and the company has failed to take substantial action.

b. The company supplies military equipment to Iran, unless it clearly shows that the military equipment cannot be used to facilitate international acts of terrorism.

13. “*Social development company*” means a company whose primary purpose in Iran is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

14. “*Substantial action*” means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations.

2011 Acts, ch 82, §2  
NEW section

### **12H.3 Identification of companies — notice.**

1. a. By March 1, 2012, the public fund shall make its best efforts to identify or have identified all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future and shall create and make available to the public a scrutinized companies list for that public fund. The list shall further identify whether

the company has inactive business operations or active business operations. The public fund shall review and update, if necessary, the scrutinized companies list and the determination of whether a company has inactive or active business operations on a quarterly basis thereafter.

b. In making its best efforts to identify or have identified scrutinized companies and companies with inactive business operations or active business operations, the public fund may review and rely, in the best judgment of the public fund, on publicly available information regarding companies with business operations in Iran, and including other information that may be provided by nonprofit organizations, research firms, international organizations, and government entities. The public fund may also contact asset managers and institutional investors for the public fund to identify scrutinized companies based upon industry-recognized lists of such companies that the public fund may have indirect holdings in.

c. The Iowa public employees' retirement system, acting on behalf of the system and other public funds subject to this section, may develop and issue a request for proposals for third-party services to complete the identification of scrutinized companies and the compilation of a scrutinized companies list. The request for proposals may request bids for optional services related to this purpose, including but not limited to provision of notice of such scrutinized companies as required in subsection 2. The Iowa public employees' retirement system shall consult with all other public funds on the development of the request for proposals, however selection of a successful proposal and the final scope of services to be provided shall be determined only by those public funds that have agreed to utilize the third-party services. If more than one public fund decides to utilize the third-party services, the participating public funds shall equally share the costs of such services.

2. a. For each company on the scrutinized companies list with only inactive business operations in which the public fund has direct or indirect holdings, the public fund shall send or have sent a written notice informing the company of the requirements of this chapter and encouraging it to continue to refrain from initiating active business operations in Iran until it is able to avoid scrutinized business operations. The public fund or its representative shall continue to provide such written notice on an annual basis if the company remains a scrutinized company with inactive business operations.

b. For each company on the scrutinized companies list with active business operations in which the public fund has direct or indirect holdings, the public fund shall send or have sent a written notice informing the company of its status as a scrutinized company with active business operations and that it may become subject to divestment and restrictions on investing in the company by the public fund. The notice shall offer the company the opportunity to clarify its Iran-related activities and shall encourage the company to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid becoming subject to divestment and restrictions on investment in the company by the public fund. The public fund or its representative shall continue to provide such written notice on an annual basis if the company remains a scrutinized company with active business operations.

2011 Acts, ch 82, §3

NEW section

#### **12H.4 Prohibited investments — divestment.**

1. The public fund shall not acquire publicly traded securities of a company on the public fund's most recent scrutinized companies list with active business operations so long as such company remains on the public fund's scrutinized companies list as a company with active business operations as provided in this section.

2. a. The public fund shall sell, redeem, divest, or withdraw all publicly traded securities of a company on the public fund's list of scrutinized companies with active business operations, so long as the company remains on that list, no sooner than ninety days, but no later than eighteen months, following the first written notice sent to the scrutinized company with active business operations as required by section 12H.3.

b. This subsection shall not be construed to require the premature or otherwise imprudent

sale, redemption, divestment, or withdrawal of an investment, but such sale, redemption, divestment, or withdrawal shall be completed as provided by this subsection.

3. The requirements of this section shall not apply to the following:

a. A company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran.

b. Indirect holdings of a scrutinized company with active business operations. The public fund shall, however, submit letters to the managers of such investment funds containing companies with scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar fund with indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund is encouraged to replace all applicable investments with investments in the similar fund consistent with prudent investing standards.

2011 Acts, ch 82, §4

NEW section

### **12H.5 Reports.**

1. *Scrutinized companies list.* Each public fund shall, within thirty days after the scrutinized companies list is created or updated as required by section 12H.3, make the list available to the public.

2. *Annual report.* On October 1, 2012, and each October 1 thereafter, each public fund shall make available to the public, and file with the general assembly, an annual report covering the prior fiscal year that includes the following:

a. The scrutinized companies list as of the end of the fiscal year.

b. A summary of all written notices sent as required by section 12H.3 during the fiscal year.

c. All investments sold, redeemed, divested, or withdrawn as provided in section 12H.4 during the fiscal year.

2011 Acts, ch 82, §5

NEW section

### **12H.6 Legal obligations.**

With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies as required by this chapter, the public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the public fund's securities portfolios.

2011 Acts, ch 82, §6

NEW section

### **12H.7 Applicability.**

1. The requirements of sections 12H.3, 12H.4, and 12H.5 shall not apply upon the occurrence of any of the following:

a. The Congress or president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of United States foreign policy.

b. A controlling circuit or district court of the United States issues an opinion that declares the mandatory divestment of the type provided for in this chapter or similar statutes of other states is preempted by the federal law of the United States.

2. The requirements of sections 12H.3, 12H.4, and 12H.5 shall not apply to Iran if the United States revokes all sanctions imposed against the government of Iran.

2011 Acts, ch 82, §7

NEW section

**CHAPTER 13**  
**ATTORNEY GENERAL**  
  
**SUBCHAPTER I**  
**GENERAL PROVISIONS**

**13.3 Disqualification — substitute.**

1. If, for any reason, the attorney general is disqualified from appearing in any action or proceeding, the executive council shall authorize the appointment of a suitable person for that purpose. There is appropriated from moneys in the general fund not otherwise appropriated an amount necessary to pay the reasonable expense for the person appointed. The department involved in the action or proceeding shall be requested to recommend a suitable person to represent the department and when the executive council concurs in the recommendation, the person recommended shall be appointed.

2. If the governor or a department is represented by an attorney other than the attorney general in a court proceeding as provided in this section, at the conclusion of the court proceedings, the court shall review the fees charged to the state to determine if the fees are fair and reasonable. The executive council shall not authorize reimbursement of attorney fees in excess of those determined by the court to be fair and reasonable.

[C24, 27, 31, 35, 39, §150; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.3]

92 Acts, ch 1240, §12; 2011 Acts, ch 131, §19, 158

Section amended

**13.7 Special counsel.**

Compensation shall not be allowed to any person for services as an attorney or counselor to an executive department of the state government, or the head of an executive department of state government, or to a state board or commission. However, the executive council may authorize employment of legal assistance, at a reasonable compensation, in a pending action or proceeding to protect the interests of the state, but only upon a sufficient showing, in writing, made by the attorney general, that the department of justice cannot for reasons stated by the attorney general perform the service. The reasons and action of the council shall be entered upon its records. If the attorney general determines that the department of justice cannot perform legal service in an action or proceeding, the executive council shall request the department involved in the action or proceeding to recommend legal counsel to represent the department. If the attorney general concurs with the department that the person recommended is qualified and suitable to represent the department, the person recommended shall be employed. If the attorney general does not concur in the recommendation, the department shall submit a new recommendation. This section does not affect the general counsel for the utilities board of the department of commerce, the legal counsel of the department of workforce development, or the general counsel for the property assessment appeal board.

[S13, §208-b; C24, 27, 31, 35, 39, §152; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.7; 81 Acts, ch 22, §1]

83 Acts, ch 127, §1; 96 Acts, ch 1186, §23; 2005 Acts, ch 150, §120; 2011 Acts, ch 131, §20, 158

For future repeal, effective July 1, 2013, of 2005 amendments to this section, see 2005 Acts, ch 150, §134

Section amended

## CHAPTER 15

### ECONOMIC DEVELOPMENT AUTHORITY

Administration of disaster assistance loan and credit guarantee program and fund; 2009 Acts, ch 179, §187, 196

For provisions regarding transition of department of economic development employees to the economic development authority and limitations on the Iowa innovation corporation's employment of former department employees, see 2011 Acts, ch 118, §19

For provisions regarding continuation of financial assistance by the economic development authority, transfer of funds under the control of the department of economic development to the economic development authority, continuation of licenses, permits, or contracts by the economic development authority, continuation of financial assistance awards under the grow Iowa values financial assistance program, and availability of federal funds to employ certain personnel, see 2011 Acts, ch 118, §20, 89

For provisions regarding transfer of funds under the control of the office of energy independence to the economic development authority, continuation of licenses, permits, or contracts by the economic development authority, continued administration of grants or loans awarded from the Iowa power fund, continued administration of federal grant funds by the economic development authority, and employment status of certain office of energy independence employees, see 2011 Acts, ch 118, §51, 89

For provisions regarding continuing validity of department of economic development administrative rules, see 2011 Acts, ch 118, §18

### SUBCHAPTER I

#### AUTHORITY — ORGANIZATION

##### **15.101 Findings and purpose — collaboration described.**

1. The general assembly finds that economic development is an important public purpose and that both the public and private sectors have a shared interest in fostering the economic vitality of the state. Therefore, it is the purpose of this subchapter to implement economic development policy in the state by means of a collaboration between government and the private sector.

2. The collaboration shall involve the economic development authority and the Iowa innovation corporation, both of which shall work together to further economic development policy according to the provisions of this subchapter.

86 Acts, ch 1245, §801; 2011 Acts, ch 118, §1, 89

Section stricken and rewritten

##### **15.102 Definitions.**

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

1. “*Authority*” means the economic development authority created in section 15.105.
2. “*Board*” means the members of the authority appointed by the governor and in whom the powers of the authority are vested pursuant to section 15.105.
3. “*Business enterprise*” means a work or improvement located within the state, including but not limited to real property, buildings, equipment, furnishings, and any other real and personal property or any interest therein, financed, refinanced, acquired, owned, constructed, reconstructed, extended, rehabilitated, improved, or equipped, directly or indirectly, in whole or in part, by the authority or through loans made by it and which is designed and intended for the purpose of providing facilities for manufacturing, industrial, processing, warehousing, wholesale or retail commercial, recreational, hotel, office, research, business, or other related purposes, including but not limited to machinery and equipment deemed necessary or desirable for the operation thereof.
4. “*Chief executive officer*” means the chief executive officer of the corporation.
5. “*Community microenterprise development organization*” means a community

development, economic development, social service, or nonprofit organization that provides training, access to financing, and technical assistance to microenterprises.

6. “*Corporation*” means the Iowa innovation corporation created pursuant to section 15.107.

7. “*Director*” means the director of the authority, appointed pursuant to section 15.106C, or the director’s designee.

8. “*Financial assistance*” means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty payments.

9. “*Microenterprise*” means any business with five or fewer employees which generally lacks collateral and has difficulty securing financing from conventional business lending sources. “*Microenterprise*” includes start-up, home-based, and self-employed businesses.

10. “*Small business*” means any enterprise which is located in this state, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than four million dollars computed as the average of the three preceding fiscal years. This definition does not apply to any program or activity for which a definition for small business is provided for the program or activity by federal law or regulation or other state law.

11. “*Targeted industries*” means the same as defined in section 15.411, subsection 1.

12. a. “*Targeted small business*” means a small business which is fifty-one percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with a disability provided the business meets all of the following requirements:

- (1) Is located in this state.
- (2) Is operated for profit.
- (3) Has an annual gross income of less than four million dollars computed as an average of the three preceding fiscal years.

b. As used in this subsection:

(1) “*Disability*” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. “*Disability*” does not include any of the following:

- (a) Homosexuality or bisexuality.
- (b) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.

(c) Compulsive gambling, kleptomania, or pyromania.

(d) Psychoactive substance abuse disorders resulting from current illegal use of drugs.

(2) “*Major life activity*” includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

(3) “*Minority person*” means an individual who is an African American, Latino, Asian or Pacific Islander, American Indian, or Alaskan Native American.

86 Acts, ch 1245, §802; 90 Acts, ch 1156, §2; 91 Acts, ch 103, §1; 94 Acts, ch 1076, §2; 2007 Acts, ch 207, §3 – 5, 18; 2008 Acts, ch 1178, §1; 2009 Acts, ch 41, §11; 2010 Acts, ch 1070, §1; 2011 Acts, ch 118, §2 – 4, 89

NEW subsection 1 and former subsection 1 amended and renumbered as 2

NEW subsections 3 and 4 and former subsection 2 renumbered as 5

Former subsection 3 stricken

NEW subsection 6 and former subsection 4 amended and renumbered as 7

NEW subsection 8 and former subsections 5 – 8 renumbered as 9 – 12

### 15.103 Economic development board.\*

1. a. The Iowa economic development board is created, consisting of fifteen voting members appointed by the governor and seven ex officio, nonvoting members. The ex officio, nonvoting members are four legislative members; one president, or the president’s designee, of the university of northern Iowa, the university of Iowa, or Iowa state university of science and technology designated by the state board of regents on a rotating basis; and

one president, or the president's designee, of a private college or university appointed by the Iowa association of independent colleges and universities; and one superintendent, or the superintendent's designee, of a community college, appointed by the Iowa association of community college presidents. The legislative members are two state senators, one appointed by the president of the senate after consultation with the majority leader of the senate and one appointed by the minority leader of the senate from their respective parties; and two state representatives, one appointed by the speaker and one appointed by the minority leader of the house of representatives from their respective parties. Not more than eight of the voting members shall be from the same political party. Beginning with the first appointment to the board made after July 1, 2005, at least one voting member shall have been less than thirty years of age at the time of appointment. The governor shall appoint the voting members of the board to staggered terms of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate, and the governor's appointments shall include persons knowledgeable of the various elements of the authority's responsibilities.

b. Each of the following areas of expertise shall be represented by at least one voting member of the board who has professional experience in that area of expertise:

- (1) Finance, insurance, or investment banking.
- (2) Advanced manufacturing.
- (3) Statewide agriculture.
- (4) Life sciences.
- (5) Small business development.
- (6) Information technology.
- (7) Economics or alternative and renewable energy including the alternative and renewable energy sectors listed in section 476.42, subsection 1, paragraph "a", subparagraph (1).
- (8) Labor.
- (9) Marketing.
- (10) Entrepreneurship.

c. At least nine of the voting members of the board shall be actively employed in the private, for-profit sector of the economy.

2. A vacancy on the board shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

3. The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. However, the chairperson and the vice chairperson shall not be from the same political party. The board shall meet at the call of the chairperson or when any eight members of the board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

4. Members of the board, the director, and other employees of the authority shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations for those purposes and the authority is subject to the budget requirements of chapter 8. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

5. If a member of the board has an interest, either direct or indirect, in a contract to which the authority is or is to be a party, the interest shall be disclosed to the board in writing and shall be set forth in the minutes of a meeting of the board. The member having the interest shall not participate in action by the board with respect to the contract.

6. As part of the organizational structure of the authority, the board shall establish a due diligence committee and a loan and credit guarantee committee composed of members of the board. The committees shall serve in an advisory capacity to the board and shall carry out any duties assigned by the board in relation to programs administered by the authority. The loan and credit guarantee committee shall advise the board on the winding up of loan guarantees made under the loan and credit guarantee program established pursuant to

section 15E.224, Code 2009, and on the proper amount of the allocation described in section 15G.111, subsection 4, paragraph “g”.

86 Acts, ch 1245, §803; 88 Acts, ch 1081, §1; 90 Acts, ch 1223, §9; 90 Acts, ch 1253, §121; 2004 Acts, ch 1082, §7; 2005 Acts, ch 150, §4; 2006 Acts, ch 1010, §171, 177; 2006 Acts, ch 1142, §15; 2008 Acts, ch 1156, §16, 58; 2009 Acts, ch 123, §18; 2009 Acts, ch 133, §5, 6; 2010 Acts, ch 1009, §5, 7; 2011 Acts, ch 25, §126; 2011 Acts, ch 118, §87, 89

Confirmation, see §2.32

\*Repeal of this section may have been intended; corrective legislation is pending; see 2011 Acts, ch 118, §5

For provisions regarding initial members of the economic development authority board, see 2011 Acts, ch 118, §21 Subsection 1, paragraph b, subparagraph (7) amended

#### **15.104 Duties of the board.**

The board shall:

1. Perform duties related to the administration of the economic development fund and economic development financial assistance program as described in chapter 15G.

2. Implement the requirements of chapter 73.

3. Review and approve or disapprove a life science enterprise plan or amendments to that plan as provided in chapter 10C\* and according to rules adopted by the board. A life science plan shall make a reasonable effort to provide for participation by persons who are individuals or family farm entities actively engaged in farming as defined in section 10.1. The persons may participate in the life science enterprise by holding an equity position in the life science enterprise or providing goods or service to the enterprise under contract. The plan must be filed with the board not later than June 30, 2005. The life science enterprise may file an amendment to a plan at any time. A life science enterprise is not eligible to file a plan, unless the life science enterprise files a notice with the board. The notice shall be a simple statement indicating that the life science enterprise may file a plan as provided in this section. The notice must be filed with the board not later than June 1, 2005. The notice, plan, or amendments shall be submitted by a life science enterprise as provided by the board. The board shall consult with the department of agriculture and land stewardship during its review of a life science plan or amendments to that plan. The plan shall include information regarding the life science enterprise as required by rules adopted by the board, including but not limited to all of the following:

a. A description of life science products to be developed by the enterprise.

b. The time frame required by the enterprise to develop the life science products.

c. The amount of capital investment required by the enterprise to develop the life science products.

d. The number of acres of land required to produce the life science products.

e. The type and extent of participation in the life science enterprise by persons who are individuals or family farm entities. If the plan does not provide for participation or minimal participation, the plan shall include a detailed explanation of the reasonable effort made by the life science enterprise to provide for participation.

4. Approve the budget of the authority as prepared by the director.

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

6. Review grants or contracts awarded by the authority, with respect to the authority's adherence to the guidelines and procedures.

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

8. By January 31 of each year, submit a report to the general assembly and the governor that covers its activities during the preceding fiscal year. The report shall include all of the following:

a. *Financial assistance.* Data on all assistance provided to eligible businesses under the high quality jobs program described in section 15.326.

b. *Projects funded through the economic development financial assistance program established in section 15G.112.* For each job creation or retention business finance project receiving moneys from the economic development fund, the following information:

(1) The net number of new jobs created as of June 30 of the prior year. For the purposes

of this subparagraph, “*net number of new jobs*” is the number of new or retained jobs as identified in the contract.

(2) The number of jobs created, as of June 30 of the prior year, that are at or above the qualifying wage threshold for the project. For the purposes of this subparagraph, “*qualifying wage threshold*” has the same meaning as defined in section 15G.101.

(3) The number of retained jobs, as of June 30 of the prior year. For the purposes of this subparagraph, “*retained jobs*” means the number of retained jobs as identified in the contract.

(4) The total amount expended by a business, as of June 30 of the prior year, toward the total project cost as identified in the contract.

(5) The project’s location.

(6) The amount, if any, of private and local matching funds, as of June 30 of the prior year.

(7) The amount spent on research and development activities, as of June 30 of the prior year.

c. *Industrial new jobs training Act.* Data on all assistance or benefits provided under the Iowa industrial new jobs training Act established in chapter 260E.

d. *Workforce development fund.* The proposed allocation of moneys from the workforce development fund to be made for the next fiscal year for the programs and purposes contained in section 15.343, subsection 2.

(1) The director shall submit a copy of the proposed allocation to the chairpersons of the joint economic development appropriations subcommittee of the general assembly. Notwithstanding section 8.39, the proposed allocation may provide for increased or decreased funding levels if the demand for a program indicates that the need is greater or less than the allocation for that program.

(2) The director shall submit a report each quarter to the board. The report shall include the status of the funds and may include the director’s proposed revisions. The proposed revisions may be approved by the board in January and April of each year.

(3) The director shall also provide quarterly reports to the legislative services agency on the status of the funds.

e. *Employee training and retraining goals and objectives.* Pursuant to section 15.108, subsection 6, the upcoming year’s goals and objectives, including both short-term and long-term methods of improving program performance, creating employment opportunities for residents, and enhancing the delivery of services.

f. *Accelerated career education programs.* The data related to the accelerated career education programs established in chapter 260G and the activities of those programs during the previous fiscal year.

g. *Coordination with community colleges and state board of regents.* Pursuant to section 15.108, subsection 3, paragraph “a”, subparagraph (1), an assessment of the degree to which the authority has coordinated with the community colleges and the state board of regents institutions in the avoidance of duplication of economic development efforts, including the degree to which there are future coordination needs. The state board of regents institutions and the community colleges shall be given an opportunity to review and comment on this portion of the authority’s annual report prior to its printing or release.

h. *Endow Iowa program.* In cooperation with the lead philanthropic entity, as defined in section 15E.303, a summary of the activities conducted under the endow Iowa grant program created in section 15E.304. This portion of the annual report shall include a summary of the endow Iowa tax credits approved by the authority in the prior calendar year, including the number of credits approved, the amount approved, a summary of the benefiting donations by size, and the number of community foundations and affiliate organizations benefiting from the tax credit program.

i. *Economic development fund expenditures.* Detailed financial data that delineate expenditures made under each component of the economic development fund created in section 15G.111.

j. *Pilot project cities — withholding agreement, tax credits.* Data on the pilot project cities established pursuant to section 403.19A, including all of the following:

(1) The amount each project received from each state economic development and tax credit program.

- (2) The number of new jobs created as a result of the pilot program.
- (3) The average wage of the jobs created as a result of the pilot project.
- (4) An evaluation of the investment made by the state of Iowa in the pilot project cities program, including but not limited to the items described in subparagraphs (1) through (3).

*k. Targeted industries development — innovation and commercialization.* A report of the expenditures of moneys appropriated and allocated to the authority for certain programs authorized pursuant to sections 15.411 and 15.412 relating to the development and commercialization of businesses in the targeted industry areas of advanced manufacturing, bioscience, and information technology, including a summary of the activities of the technology commercialization committee created pursuant to section 15.116 and the Iowa innovation council established pursuant to section 15.117A and including copies of any documents, reports, or plans produced by the council.

*l. Targeted small business activities.* A section that is a compilation of the following reports required pursuant to section 15.108, subsection 7, paragraph “c”:

(1) A summary of the report filed by December 1 of each year by the department of administrative services with the economic development authority regarding targeted small business procurement activities conducted during the previous fiscal year.

(2) A summary of the report filed by December 1 of each year by the department of inspections and appeals with the of economic development authority regarding certifications of targeted small businesses. At a minimum, the summary shall include the number of certified targeted small businesses for the previous year, the increase or decrease in that number during the previous fiscal year compared to the prior fiscal year, and the number of targeted small businesses that have been decertified in the previous fiscal year.

(3) A summary of the internal report compiled by December 1 of each year by the economic development authority regarding the targeted small business financial assistance program. At a minimum, the summary shall contain the number of loans, loan guarantees, and grants distributed during the previous fiscal year, the individual amounts provided to targeted small businesses during the previous fiscal year, and how many financial assistance awards to targeted small businesses were the subject of repayment or collection activity during the previous fiscal year.

(4) A list of the procurement goals established pursuant to section 73.16, subsection 2, and compiled by the economic development authority’s targeted small business marketing and compliance manager and the performance of each agency in meeting the goals. The performance of each agency shall be based upon the reports required pursuant to section 73.16, subsection 2.

86 Acts, ch 1245, §804; 86 Acts, ch 1238, §43; 87 Acts, ch 17, §2; 2000 Acts, ch 1197, §8, 10; 2001 Acts, ch 11, §1; 2003 Acts, ch 72, §1; 2005 Acts, ch 16, §5, 7; 2005 Acts, ch 150, §5; 2005 Acts, ch 179, §108; 2008 Acts, ch 1122, §5, 6; 2008 Acts, ch 1191, §119; 2009 Acts, ch 82, §11; 2009 Acts, ch 123, §19 – 21; 2010 Acts, ch 1070, §2; 2011 Acts, ch 34, §3; 2011 Acts, ch 113, §41, 56; 2011 Acts, ch 118, §87, 89

\* Chapter 10C repealed by 2011 Acts, ch 118, §35, 89

Code editor directive applied

Subsection 6 amended

Subsection 8, paragraph j stricken and former paragraphs k – m redesignated as j – l

### **15.105 Economic development authority.**

1. The economic development authority is created, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions, to undertake programs which implement economic development policy in the state, and to undertake certain finance programs.

a. (1) The powers of the authority are vested in and shall be exercised by a board of eleven voting members appointed by the governor subject to confirmation by the senate. The voting members shall be comprised of the following:

- (a) Two members from each United States congressional district in the state.
- (b) Three members selected at large.

(2) Of the voting members appointed pursuant to subparagraph (1), the governor shall appoint the following:

(a) One person who is a member of the Iowa innovation council established in section 15.117A.

(b) One person who has professional experience in finance, insurance, or investment banking.

(c) One person who has professional experience in advanced manufacturing.

(d) One person with professional experience in small business development.

(e) One person with professional experience representing the interests of organized labor.

(f) Six persons who are actively employed in the private, for-profit sector of the economy or who otherwise have substantial expertise in economic development.

(3) The governor shall not appoint to the authority board any person who is either the spouse or a relative within the first degree of consanguinity of a serving member of the authority board or the board of directors of the corporation.

b. There shall be four ex officio, nonvoting legislative members consisting of the following:

(1) Two state senators, one appointed by the president of the senate after consultation with the majority leader of the senate and one appointed by the minority leader of the senate from their respective parties.

(2) Two state representatives, one appointed by the speaker and one appointed by the minority leader of the house of representatives from their respective parties.

c. (1) There shall be three ex officio, nonvoting members consisting of the following:

(a) The president of the state board of regents, or the president's designee.

(b) One person, selected by the Iowa association of independent colleges and universities, who is the president of a private college or university in the state, or that person's designee.

(c) One person, selected by the Iowa association of community college presidents, who is the president of a community college, or that person's designee.

(2) A person serving as a designee pursuant to subparagraph (1) shall serve a one-year term as an ex officio member of the authority board.

2. Members of the authority shall be appointed for staggered terms of four years beginning and ending as provided in section 69.19. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority may be removed from office by the governor for misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. Members of the authority board shall not serve as directors of the corporation.

3. a. Seven voting members of the authority constitute a quorum.

b. The affirmative vote of a majority of the quorum described in paragraph "a" is necessary for any action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose.

c. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. Members of the authority are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. Members of the authority and the director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or when two members so request.

7. Members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the director shall serve as secretary to the authority.

8. a. The members of the authority shall develop a strategic plan for economic development in the state.

b. (1) The strategic plan shall identify the authority's goals for the next calendar year and shall include a set of metrics that will be used to gauge and assess the extent to which the authority achieves those goals. Such metrics shall include, but are not limited to:

(a) The number of net new jobs created in the state.

(b) The average wage and benefit levels for such jobs.

(c) The impact to average household income for Iowa families as a result of the jobs created.

(d) Such other information as the authority or the director deems relevant.

(2) The strategic plan shall be submitted to the general assembly and the governor's office on or before January 31 of each year.

9. The net earnings of the authority, beyond that necessary to implement the public purposes and programs herein authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the authority, including the power to terminate the authority, except that no law shall impair the obligation of any contract or contracts entered into by the authority to the extent that any such law would contravene Article I, section 21, of the Constitution of the State of Iowa, or Article I, section 10, of the Constitution of the United States.

10. Members of the authority, or persons acting on behalf of the authority while acting within the scope of their agency or employment, are not subject to personal liability resulting from carrying out the powers and duties in this chapter.

11. The authority shall be the successor entity to the economic development board and the department of economic development which are hereby eliminated. The authority shall assume all duties and responsibilities previously assigned to the economic development board and the department of economic development to the extent that such duties and responsibilities are not otherwise assigned by the provisions of this subchapter.

86 Acts, ch 1245, §805; 2011 Acts, ch 118, §5, 89

Confirmation, see §2.32

For provisions regarding initial members of the economic development authority board, see 2011 Acts, ch 118, §21  
Section stricken and rewritten

#### **15.106 Conflicts of interest.**

1. *a.* If a member or employee of the authority has an interest, either direct or indirect, in a contract to which the authority is, or is to be, a party, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority.

*b.* The member or employee having the interest shall not participate in any action of the authority with respect to that contract. A violation of a provision of this subsection is misconduct in office under section 721.2. However, a resolution of the authority is not invalid because of a vote cast by a member in violation of this subsection or of section 15.105, subsection 3, unless the vote was decisive in the passage of the resolution.

*c.* For the purposes of this subsection, "*action of the authority with respect to that contract*" means only an action directly affecting a separate contract, and does not include an action which benefits the general public or which affects all or a substantial portion of the contracts included in a program of the authority.

2. The director shall not have an interest in a bank or other financial institution in which the funds of the authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under a trust indenture to which the authority is a party. The director shall not receive, in addition to fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, recommending, or aiding in any purchase or sale of property, or loan, made by the authority, nor shall the director be pecuniarily interested, either as principal, coprincipal, agent, or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation or business unit, in any such purchase, sale, or loan.

3. Not more than one principal executive, employee, or other representative from a business or its affiliates may serve concurrently on the authority board, the board of directors

of the corporation, or any combination thereof. For purposes of this subsection, “affiliate” means the same as defined in section 423.1.

86 Acts, ch 1245, §806; 88 Acts, ch 1158, §1; 2001 Acts, ch 11, §2; 2001 Acts, ch 61, §1; 2003 Acts, ch 145, §137; 2009 Acts, ch 82, §12; 2011 Acts, ch 118, §6, 89

Section stricken and rewritten

#### **15.106A General powers of the authority.**

1. The authority has any and all powers necessary and convenient to carry out its purposes and duties and exercise its specific powers, including but not limited to the power to:

a. Sue and be sued in its own name.  
 b. Have and alter a corporate seal.  
 c. Make and alter bylaws for its management consistent with the provisions of this chapter.

d. Make and execute agreements, contracts, and other instruments of any and all types on such terms and conditions as the authority may find necessary or convenient to the purposes of the authority, with any public or private entity, including but not limited to contracts for goods and services. All political subdivisions, other public agencies, and state departments and agencies may enter into contracts and otherwise cooperate with the authority.

e. Adopt by rule pursuant to chapter 17A procedures relating to competitive bidding, including the identification of those circumstances under which competitive bidding by the authority, either formally or informally, shall be required. In any bidding process, the authority may administer its own bidding and procurement or may utilize the services of the department of administrative services or any other agency. Except when such rules apply, the authority and all contracts made by it in carrying out its public and essential governmental functions with respect to any of its programs shall be exempt from the provisions and requirements of all laws or rules of the state which require competitive bids in connection with the letting of such contracts.

f. Acquire, hold, improve, mortgage, lease, and dispose of real and personal property, including but not limited to the power to sell at public or private sale, with or without public bidding, any such property, or other obligation held by it.

g. Procure insurance against any loss in connection with its operations and property interests.

h. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount, and donor, shall be clearly set out in the authority’s annual report along with the record of other receipts.

i. Provide to public and private entities technical assistance and counseling related to the authority’s purposes.

j. In cooperation with other local, state, or federal governmental agencies, conduct research studies, develop estimates of unmet economic development needs, gather and compile data useful to facilitating decision making, and enter into agreements to carry out programs within or without the state which the authority finds to be consistent with the goals of the authority.

k. Enter into agreements with the federal government, tribes, and other states to undertake economic development activities in the state of Iowa.

l. Own or acquire intellectual property rights including but not limited to copyrights, trademarks, service marks, and patents, and enforce the rights of the authority with respect to such intellectual property rights.

m. Make, alter, interpret, and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A.

n. Form committees or panels as necessary to facilitate the authority’s duties. Committees or panels formed pursuant to this paragraph shall be subject to the provisions of chapters 21 and 22.

o. Establish one or more funds within the state treasury under the control of the authority. Notwithstanding section 8.33 or 12C.7, or any other provision to the contrary, moneys invested by the treasurer of state pursuant to this subsection shall not revert to the general fund of the state and interest accrued on the moneys shall be moneys of the authority and

shall not be credited to the general fund. The nonreversion of moneys allowed under this paragraph does not apply to moneys appropriated to the authority by the general assembly.

p. Select projects to receive assistance by the exercise of diligence and care.

q. Exercise generally all powers typically exercised by private enterprises engaged in business pursuits unless the exercise of such a power would violate the terms of this chapter or the Constitution of the State of Iowa.

r. Issue negotiable bonds and notes as provided in section 15.106D.

2. Notwithstanding any other provision of law, any purchase or lease of real property, other than on a temporary basis, when necessary in order to implement the programs of the authority or protect the investments of the authority, shall require written notice from the authority to the government oversight standing committees of the general assembly and the prior approval of the executive council.

3. The powers enumerated in this section are cumulative of and in addition to those powers enumerated elsewhere in this chapter and such powers do not limit or restrict any other powers of the authority.

2011 Acts, ch 118, §7, 89

NEW section

### **15.106B Specific program powers.**

1. In addition to the general powers described in section 15.106A, the authority shall have all powers convenient and necessary to carry out its programs.

2. For purposes of this section, “*powers convenient and necessary*” includes but is not limited to the power to:

a. Undertake more extensive research and discussion of the strategic plan developed by the members of the authority in order to better formulate and implement state economic development policy.

b. Establish a nonprofit corporation pursuant to section 15.107, for the purpose of receiving and disbursing funds from public or private sources to be used to further the overall development and economic well-being of the state.

c. Provide export documentation to Iowa businesses that are exporting goods and services if no other government entity is providing export documentation in a form deemed necessary for international commerce.

d. (1) Pursuant to a contract executed between the authority and the corporation, the authority may delegate to the corporation the performance of the following functions on behalf of the authority:

(a) Marketing and promotional activities.

(b) Policy research.

(c) Economic analysis.

(d) Expansion of international markets for Iowa-produced or Iowa-based products.

(e) Consulting services.

(f) Services related to statewide commercialization development as provided for in section 15.411, subsection 2.

(2) A contract executed pursuant to this paragraph “d” shall not delegate an essential government function, including the budgetary or personnel management responsibilities of the authority, and shall not delegate any sovereign power of the state.

(3) The terms of a contract executed pursuant to this paragraph “d” may provide for compensation at the fair market value of the services to be provided under the contract.

(4) Notwithstanding section 8A.311 and any rules promulgated thereunder by the department of administrative services, the authority may enter into contracts with the corporation for the sole source procurement of services. In entering into such sole source contracts, the authority shall negotiate a fair and reasonable price for the services and shall thoroughly document the circumstances of such sole source procurements.

(5) A contract executed pursuant to this paragraph “d” shall be drafted and executed with the assistance and advice of the attorney general.

3. The authority may enter into contracts on behalf of the Iowa innovation council

established in section 15.117A. Such contracts may delegate the performance of functions to the corporation only if the contracts meet the requirements of subsection 2, paragraph “d”.

4. a. If the authority enters into a contract, including but not limited to a contract executed pursuant to subsection 2, paragraph “d”, with a nonprofit corporation organized under chapter 504 or under the similar laws of another jurisdiction, the authority shall ensure that the terms of the contract shall provide for the disclosure of all gifts, grants, bequests, donations, or other conveyances of financial assistance to the corporation from all private and public sources. Such disclosure shall include information from the corporation’s current fiscal year and its most recent three fiscal years and shall include the name and address of the person or entity making the conveyance and the amount.

b. If the authority enters into a contract for the provision of financial assistance to a business, the authority shall ensure that the terms of the contract provide for the disclosure of all donations the business has ever made to the corporation. The authority shall not consider the amount or frequency of such donations when evaluating the merits of the business’s application or when determining the amount of financial assistance to be awarded to the business.

c. The authority shall not enter into a contract for services, including a contract executed pursuant to subsection 2, paragraph “d”, that exceeds two years in duration.

2011 Acts, ch 118, §8, 89

NEW section

#### **15.106C Director — responsibilities.**

1. The operations of the authority shall be administered by a director who shall be appointed by the governor, subject to confirmation by the senate, and who shall serve for a four-year term beginning and ending as provided in section 69.19. An appointment by the governor to fill a vacancy in the office of the director shall be for the balance of the unexpired four-year term.

2. The director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view or to favor a political candidate for office. The director shall ensure that the authority is operated free from political influence.

3. The director shall advise the authority on matters relating to economic development and act on the authority’s behalf to carry out all directives from the authority board in regard to the operation of the authority.

4. The director shall employ personnel as necessary to carry out the duties and responsibilities of the authority. For nonprofessional employees, employment shall be consistent with chapter 8A, subchapter IV. The employment of professional employees shall be exempt from the provisions of chapter 8A, subchapter IV, and chapter 20.

5. A person shall not be employed concurrently by both the authority and the corporation.

6. A person leaving employment with the authority shall not be employed by the corporation until a period of two years has passed. A person leaving employment with the corporation shall not be employed by the authority until a period of two years has passed.

7. a. The director may create organizational divisions within the authority in the manner the director deems most efficient to carry out the duties and responsibilities of the authority.

b. In structuring the authority, the director shall create a small business development division and ensure that the division focuses administrative efforts, program resources, and financial assistance awards on small businesses.

c. (1) On or before September 15, 2011, the authority shall submit a report to the governor and the general assembly assessing the extent to which each of the authority’s programs can be used to provide assistance to small businesses and making recommendations for legislative changes to such programs in order to better and more intensively focus economic development efforts on such small businesses. The report shall also address the extent to which the authority’s programs address local economic development needs and efforts.

(2) This paragraph “c” is repealed on June 30, 2012.

2011 Acts, ch 118, §9, 87, 89

Confirmation, see §2.32

NEW section

**15.106D Private activity bonds and notes.**

1. The authority may issue its negotiable bonds and notes in principal amounts as, in the opinion of the authority, are necessary to finance the cost of business enterprises, to finance the working capital needs of businesses, to refinance existing indebtedness incurred for any of the foregoing purposes or any combination of the foregoing, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the authority incident to and necessary or convenient to carry out the purposes of this section. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code, chapter 554.

2. All bonds issued by the authority shall be limited obligations of the authority. The principal of and interest on such bonds shall be payable solely out of the revenues derived from the business enterprise to be financed by the bonds so issued under the provisions of this section. Bonds and interest coupons issued under authority of this section shall not constitute an indebtedness of the authority within the meaning of any state constitutional provision or statutory limitation, and shall not constitute nor give rise to a pecuniary liability of the authority or a charge against its general credit. Bonds or notes are not an obligation of this state or any political subdivision of this state, other than the authority, within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this section, and the authority may not pledge the credit or taxing power of this state or any political subdivision of this state, other than the authority, or make its debts payable out of any moneys except as provided in this section.

3. Bonds and notes must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of such authorized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the revenues derived from the business enterprise to be financed by the bonds so issued under the provisions of this section, constitute special obligations of the authority, and do not constitute an indebtedness of the authority, this state, or any political subdivision of this state within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the authority or a facsimile of the seal of the authority, and the coupons attached shall be signed with the facsimile signature of the chairperson or vice chairperson, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance.

5. The authority may issue its bonds for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this chapter. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to the provisions of this

section in the same manner and to the same extent as other bonds issued pursuant to this section.

6. The authority may issue negotiable bond anticipation notes and may renew them from time to time, but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable solely out of the revenues derived from the business enterprise to be financed by the notes so issued under the provisions of this section, or from the proceeds of the sale of bonds of the authority in anticipation of which the notes were issued. Notes shall be issued in the same manner and for the same purposes as bonds. Notes and the resolutions authorizing them may contain any provisions, conditions, or limitations, not inconsistent with the provisions of this subsection, which the bonds or a bond resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in the resolution authorizing their issuance. Notes shall be as fully negotiable as bonds of the authority.

7. It is the intent of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority whether or not the parties have notice of the lien. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code, chapter 554, to be valid, binding, or effective against the parties.

8. Neither the members of the authority nor any person executing its bonds, notes, or other obligations shall be liable personally on the bonds, notes, or other obligations or be subject to any personal liability or accountability by reason of the issuance of the authority's bonds or notes.

2011 Acts, ch 118, §10, 89

NEW section

#### **15.106E Review of authority operations.**

Commencing July 1, 2014, the general assembly shall conduct a review of the authority and its activities and shall issue a report with findings and recommendations by January 1, 2015.

2011 Acts, ch 118, §11, 89

NEW section

#### **15.107 Iowa innovation corporation.**

1. The authority shall establish the Iowa innovation corporation as a nonprofit corporation organized under chapter 504 and qualifying under section 501(c)(3) of the Internal Revenue Code as an organization exempt from taxation. Unless otherwise provided in this subchapter, the corporation is subject to the provisions of chapter 504. The corporation shall be established for the purpose of receiving and disbursing funds from public or private sources to be used to further the overall development and economic well-being of the state.

2. The corporation shall collaborate with the authority as described in this subchapter, but the corporation shall not be considered, in whole or in part, an agency, department, or administrative unit of the state.

a. The corporation shall not receive appropriations from the general assembly.

b. The corporation shall not be required to comply with any requirements that apply to a state agency, department, or administrative unit and shall not exercise any sovereign power of the state.

c. The corporation does not have authority to pledge the credit of the state, and the state shall not be liable for the debts or obligations of the corporation. All debts and obligations of the corporation shall be payable solely from the corporation's funds.

3. a. The corporation shall be established so that donations and bequests to it qualify

as tax deductible under state income tax laws and under section 501(c)(3) of the Internal Revenue Code.

b. The corporation shall be established for the purpose of expanding economic development opportunities in the state of Iowa and for Iowa businesses operating in foreign markets in connection with the public purpose of economic development in Iowa. The corporation may effectuate this purpose by performing certain functions delegated to it by the authority pursuant to section 15.106B.

4. The articles of the corporation shall provide for its governance and its efficient management. In providing for its governance, the articles of the corporation shall address the following:

a. A board of directors to govern the corporation.

(1) The board of directors shall initially be comprised of seven members appointed by the governor to concurrent terms of four years. Two of such members shall be subject to confirmation by the senate.

(2) For appointments subsequent to the initial appointments pursuant to subparagraph (1), two of the members shall be appointed by the governor, subject to confirmation by the senate, to staggered terms of four years each, and the remaining five members shall be selected by a majority vote of the board of directors of the corporation for terms the length of which shall be provided in the articles of the corporation.

(3) The governor and the board of directors of the corporation shall not appoint or select any person who is either the spouse or a relative within the first degree of consanguinity of a serving member of the board of directors or of the authority board.

b. The appointment of a chief executive officer by the board to manage the corporation's daily operations.

c. The delegation of such powers and responsibilities to the chief executive officer as may be necessary for the corporation's efficient operation.

d. The employment of personnel necessary for the efficient performance of the duties assigned to the corporation. All such personnel shall be considered employees of a private, nonprofit corporation and shall be exempt from the personnel requirements imposed on state agencies, departments, and administrative units.

e. The financial operations of the corporation including the authority to receive and expend funds from public and private sources and to use its property, money, or other resources for the purpose of the corporation.

5. The board of directors of the corporation and the chief executive officer shall act to ensure all of the following:

a. That the corporation review and, at the board's direction, implement the applicable portions of the strategic plan developed by members of the authority pursuant to section 15.105.

b. That the corporation prepares an annual budget that includes funding levels for the corporation's activities and that shows sufficient moneys are available to support those activities.

c. That the corporation annually completes and files an information return as described in section 422.15 and that the information return is submitted to the general assembly.

86 Acts, ch 1245, §807; 2011 Acts, ch 118, §12, 89

Confirmation, see §2.32

Section stricken and rewritten

#### **15.107A Duties and responsibilities of the corporation.**

1. The corporation's board of directors and the chief executive officer shall determine the activities and priorities of the corporation within the general parameters of the duties and responsibilities described in this section and in this subchapter.

2. The corporation shall, to the extent its articles so provide and within its public purpose, do all of the following with the purpose of increasing innovation in Iowa's economy and bringing more innovative businesses to the state:

a. Consult with the Iowa innovation council in the creation of a comprehensive strategic plan as described in section 15.117A, subsection 6, paragraph "a".

- b. Act as an innovation intermediary by aligning local technologies, assets, and resources to work together on advancing innovation.
- c. Perform any functions delegated by the authority pursuant to section 15.106B, subsection 2, paragraph “d”.
  - (1) In performing such functions, the corporation shall not subcontract the performance of a delegated function except as provided in subparagraph (2).
  - (2) The corporation may subcontract services under the following conditions:
    - (a) The services are necessary to accomplish the functions delegated to the corporation.
    - (b) The contract delegating the function contains a list of the services that may be subcontracted pursuant to this subparagraph (2).
    - (c) The contract delegating the function requires that any agreement to subcontract a service must be approved by the authority prior to the execution of such an agreement by the corporation.
- d. Encourage, stimulate, and support the development and expansion of the state’s economy.
  - e. Develop and implement effective marketing and promotional programs.
  - f. Provide pertinent information to prospective new businesses.
  - g. Formulate and pursue programs for encouraging the location of new businesses in the state and for retaining and fostering the growth of existing businesses.
  - h. Solicit the involvement of the private sector, including support and funding, for economic development initiatives in the state.
  - i. Coordinate the economic development efforts of other state and local entities in an effort to achieve policy consistency.
  - j. Collect and maintain any economic data and research that is relevant to the formulation and implementation of effective policies.
  - k. Cooperate with and provide information to state agencies, local governments, community colleges, and the board of regents on economic development matters, including the areas of workforce development and job training.

2011 Acts, ch 118, §13, 89

NEW section

### **15.107B Annual reporting requirements.**

1. On or before January 31 of each year, the director shall submit to the authority board a report that describes the activities of the authority during the preceding fiscal year. The report may include such information as the director deems necessary or as otherwise required by law.
2. The report submitted pursuant to subsection 1 shall at a minimum include the following:
  - a. A summary of the report filed by December 1 of each year by the department of administrative services with the authority regarding targeted small business procurement activities conducted during the previous fiscal year.
  - b. A summary of the report filed by December 1 of each year by the department of inspections and appeals with the authority regarding certifications of targeted small businesses. At a minimum, the summary shall include the number of certified targeted small businesses for the previous year, the increase or decrease in that number during the previous fiscal year compared to the prior fiscal year, and the number of targeted small businesses that have been decertified in the previous fiscal year.
  - c. A summary of the internal report compiled by December 1 of each year by the authority regarding the targeted small business financial assistance program. At a minimum, the summary shall contain the number of loans, loan guarantees, and grants distributed during the previous fiscal year, the individual amounts provided to targeted small businesses during the previous fiscal year, and how many financial assistance awards to targeted small businesses were the subject of repayment or collection activity during the previous fiscal year.
  - d. A list of the procurement goals established pursuant to section 73.16, subsection 2, and compiled by the authority’s targeted small business marketing and compliance manager and

the performance of each agency in meeting the goals. The performance of each agency shall be determined based upon the reports required pursuant to section 73.16, subsection 2.

e. An assessment of economic development efforts in the state as measured by the goals and metrics contained in the strategic plan developed by the members of the authority pursuant to section 15.105.

2011 Acts, ch 118, §14, 89

NEW section

#### **15.107C Oversight of corporation.**

1. In performing delegated functions pursuant to section 15.107A or when engaged in activities that utilize public funding, the corporation shall comply with the provisions of this section.

2. a. The corporation shall submit an annual report to the governor, general assembly, and the auditor of state by January 15. The report shall include the corporation's operations and activities during the prior fiscal year to the extent that such operations and activities pertain to the functions delegated to the corporation by the authority, as provided in sections 15.106B and 15.107A.

b. The report shall describe how the operations and activities serve the interests of the state and further economic development.

c. An annual audit of the corporation performed by a certified public accountant in accordance with generally accepted accounting principles shall be filed with the office of auditor of state and made available to the public.

3. The deliberations or meetings of the board of directors of the corporation that pertain to the performance of delegated functions or activities that utilize public funding shall be conducted in accordance with chapter 21.

4. All of the following shall be subject to chapter 22:

a. Minutes of the meetings conducted in accordance with subsection 3.

b. All records pertaining to the performance by the corporation of delegated functions or activities that utilize public funding.

5. Notwithstanding other provisions of this section to the contrary, if the corporation receives confidential information from the authority under the process described in section 15.118, the corporation shall comply with the provisions of section 15.118 in the same manner as the authority.

2011 Acts, ch 118, §15, 89

NEW section

#### **15.108 Primary responsibilities.**

The authority has the following areas of primary responsibility:

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

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

b. Provide staff assistance to the corporation formed under authority of sections 15E.11 to 15E.16 to receive and disburse funds to further the overall development and well-being of the state.

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

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

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

label or trademark to an applicant, the state, and any state agency, official, or employee involved in the authorization, is immune from a civil suit for damages, including but not limited to a suit based on contract, breach of warranty, negligence, strict liability, or tort. Authorization of the use of a marketing label or trademark by the state, or any state agency, official, or employee, is not an express or implied guarantee or warranty concerning the safety, fitness, merchantability, or use of the applicant's product or service. This paragraph does not create a duty of care to the applicant or any other person.

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

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

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

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

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

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

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

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

(1) Provide the mechanisms to promote and facilitate the coordination of management and technical assistance services to Iowa businesses and industries and to communities by the authority, by the community colleges, and by the state board of regents institutions, including the small business development centers, the center for industrial research and service, and extension activities. In order to achieve this goal, the authority may establish periodic meetings with representatives from the community colleges and the state board of regents institutions to develop this coordination. The community colleges and the state board of regents institutions shall cooperate with the authority in seeking to avoid duplication of economic development services through greater coordinating efforts in the utilization of space, personnel, and materials and in the development of referral and outreach networks. The authority shall also establish a registry of applications for federal funds related to management and technical assistance programs.

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

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

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

(5) Encourage cities, counties, local and regional government organizations, and local and regional economic development organizations to develop and implement comprehensive

community and economic development plans. In evaluating financial assistance applications, the authority shall award supplementary credit to applications submitted by cities, counties, local and regional government organizations, and local and regional economic development organizations that have developed a comprehensive community and economic development plan.

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

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

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

(3) Provide planning assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations. Subject to the availability of funds for this purpose, the authority may provide financial assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations for the purpose of developing community and economic development plans.

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

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

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

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

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

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

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

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

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

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

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

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

c. Coordinate and develop with the department of transportation, the department of natural resources, the department of cultural affairs, the vision Iowa board, other state agencies, and local and regional entities public interpretation, marketing, and education programs that encourage Iowans and out-of-state visitors to participate in the recreational and leisure opportunities available in Iowa. The authority shall establish and administer a program that helps connect both Iowa residents and residents of other states to new and existing Iowa experiences as a means to enhance the economic, social, and cultural well-being of the state. The program shall include a broad range of new opportunities, both

rural and urban, including main street destinations, green space initiatives, and artistic and cultural attractions.

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

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

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

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

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

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

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

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

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

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

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

o. Establish a revolving fund to receive contributions to be used for cooperative advertising efforts. Fees and royalties obtained as a result of licensing the use of logos and other creative materials for sale by private vendors on selected products may be deposited in the fund. The authority shall adopt by rule a schedule for fees and royalties to be charged.

p. Establish, if the authority deems necessary, a revolving fund to receive contributions and funds from the product sales center to be used for start-up or expansion of tourism special events, fairs, and festivals as established by authority rule.

6. *Employee training and retraining.* To develop employee training and retraining strategies in coordination with the department of education and department of workforce development as tools for business development, business expansion, and enhanced competitiveness of Iowa industry, which will promote economic growth and the creation of new job opportunities and to administer related programs. To carry out this responsibility, the authority shall:

a. Coordinate and perform the duties specified under the Iowa industrial new jobs training Act in chapter 260E, the Iowa jobs training Act in chapter 260F, and the workforce development fund in section 15.341.

b. In performing the duties set out in paragraph "a", the authority shall:

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

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

(3) Stimulate the creation of innovative employee training and skills development activities, including business consortium and supplier network training programs, and new employee development training models.

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

(5) Review workforce development initiatives as they relate to the state's economic development agenda, recommending action as necessary to meet the needs of Iowa's communities and businesses.

(6) Incorporate workforce development as a component of community-based economic development activities.

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

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

b. Establish and administer the regulatory information service provided for in section 15E.17.

c. Aid for the development and implementation of the Iowa targeted small business procurement Act established in sections 73.15 through 73.21 and the targeted small business financial assistance program established in section 15.247.

(1) (a) By December 1 of each year, the department of administrative services shall file a written report with the economic development authority regarding the Iowa targeted small business procurement Act activities during the previous fiscal year. At a minimum, the report shall include a summary of all activities undertaken by the department of administrative services in an effort to maximize the utilization of the targeted small business procurement Act.

(b) By December 1 of each year, the department of inspections and appeals shall file a written report with the economic development authority regarding certifications of targeted small businesses. At a minimum, the report shall include the number of certified targeted small businesses for the previous year and the increase or decrease in that number during the previous fiscal year compared to the prior fiscal year, the number of targeted small businesses that have been decertified over the previous fiscal year, and a summary of all activities undertaken by the department of inspections and appeals regarding targeted small business certification.

(c) By December 1 of each year, the economic development authority shall compile an internal report regarding the targeted small business financial assistance program. At a minimum, the report shall contain the number of loans, loan guarantees, and grants distributed during the previous fiscal year, the individual amounts provided to targeted small businesses during the previous fiscal year, and how many financial assistance awards to targeted small businesses were the subject of repayment or collection activity during the previous fiscal year.

(d) By December 1 of each year, the targeted small business marketing and compliance manager of the economic development authority shall compile a list of the procurement goals established pursuant to section 73.16, subsection 2, and the performance of each agency in meeting the goals. The compilation of the performance of each agency shall be based upon the reports required to be filed under section 73.16, subsection 2.

(e) By January 15 of each year, the economic development authority shall submit to the governor and the general assembly a compilation of reports required under this subparagraph.

(2) The director, with cooperation from the other state agencies, shall publicize the procurement goal program established in sections 73.15 through 73.21 to targeted small businesses and to agencies of state government, attempt to locate targeted small businesses able to perform contracts, and encourage program participation. The director may request the cooperation of the department of administrative services, the state department of transportation, the state board of regents, or any other agency of state government in publicizing this program.

(3) The director, in conjunction with other state agencies, shall publicize the financial assistance program established in section 15.247 to targeted small businesses.

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

(5) The economic development authority shall establish targeted small business advocate service providers for purposes of providing mentoring, outreach, and professional development services to targeted small businesses certified pursuant to section 10A.104. Targeted small business advocate service providers shall be established through a request for proposals process. Entities eligible to bid under the request for proposals process shall include but not be limited to a business accelerator, a small business development center, or any organization that provides mentoring, outreach, and professional development services to businesses. A person serving on or staffing a governor's task force on targeted small businesses during calendar year 2006 shall not be eligible to be part of a bid under the request for proposals process until after July 1, 2009. A person serving on or staffing a governor's targeted small business advisory council shall not be eligible to be part of a bid under the request for proposals process until three years following the termination of service or staffing the advisory council. The advice and services provided by providers shall extend to all areas of business management in its practical application, including but not limited to accounting, engineering, drafting, grant writing, obtaining financing, locating bond markets, market analysis, and projections of profit and loss.

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

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

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

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

(1) Developing a uniform small business vendor application form which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses which desire to sell goods and services to the state. This form shall also contain information which can be used to determine certification as a targeted small business pursuant to section 10A.104, subsection 8.

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

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

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

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

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

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

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

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

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

a. Collect and assemble, or cause to have collected and assembled, all pertinent

information available regarding the industrial, agricultural, and public and private recreation and tourism opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced from them; power and water resources; transportation facilities; available markets; the banking and financing facilities; the availability of industrial sites; the advantages of the state as a whole, and the particular sections of the state, as industrial locations; the development of a grain alcohol motor fuel industry and its related products; and other fields of research and study as the board deems necessary. This information, as far as possible, shall consider both the encouragement of new industrial enterprises in the state and the expansion of industries now existing within the state, and allied fields to those industries. The information shall also consider the changing composition of the Iowa family and the level of poverty among different age groups and different family structures in Iowa society and their impact on Iowa families.

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

c. Except as otherwise provided in sections 8A.110, 260C.14, and 262.9, provide that an inventor whose research is funded in whole or in part by the state shall assign to the state a proportionate part of the inventor's rights to a letter patent resulting from that research. Royalties or earnings derived from a letter patent shall be paid to the treasurer of state and credited by the treasurer to the general fund of the state. However, the authority in conjunction with other state agencies, including the board of regents, shall provide incentives to inventors whose research is funded in whole or in part by the state for having their products produced in the state. These incentives may include taking a smaller portion of the inventor's royalties or earnings than would otherwise occur under this paragraph or other provisions of the law.

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

e. At the director's discretion, accept payment by credit card of any fees, interest, penalties, subscriptions, registrations, purchases, or other payments, or any portion of such payments, which are due or collected by the authority. The authority may adjust the amount of the payment to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

f. Provide technical assistance to individuals who are pursuing the purchase and operation of employee-owned businesses.

10. *Economic development planning and research activities.* To provide leadership and support for economic and community development activities statewide. To carry out this responsibility, the authority may establish a research center for economic development programs and services whose duties may include but are not limited to the following:

a. Implementation of a comprehensive statewide economic development planning process and provision of leadership, coordination, and support to regional and local economic and community planning efforts.

b. Coordination of the delivery of economic and community development programs with other local, regional, state, federal, and private sector programs and activities.

c. Collection and analysis of data and information, development of databases and performing research to keep abreast of Iowa's present economic base, changing market demands, and emerging trends, including identification of targeted markets and development of marketing strategies.

d. Provision of access to databases to facilitate sales and exports by Iowa businesses.

e. Establishment of a database of community and economic information to aid local, regional, and statewide economic development and service delivery efforts.

11. *Housing development.*

a. To provide assistance to local governments, housing organizations, economic development groups, and other local entities to increase the development of housing in the state and to improve the quality of existing housing in order to maximize the effects of other economic development efforts.

b. To carry out this responsibility, the authority shall:

(1) Provide housing needs assessments.

(2) Provide a one-stop source, in coordination with other agencies of the state, for housing development assistance.

(3) Establish programs which assist communities or local entities in developing housing to meet a range of community needs, including programs to assist homeless shelter operations and programs to assist in the development of housing to enhance economic development opportunities in the community.

86 Acts, ch 1142, §1; 86 Acts, ch 1238, §44; 86 Acts, ch 1245, §808; 87 Acts, ch 101, §2; 87 Acts, ch 106, §1; 88 Acts, ch 1098, §1; 88 Acts, ch 1273, §6 – 8; 89 Acts, ch 196, §1; 89 Acts, ch 209, §1; 89 Acts, ch 258, §12; 90 Acts, ch 1047, §1; 90 Acts, ch 1140, §1; 90 Acts, ch 1156, §3; 90 Acts, ch 1255, §2; 91 Acts, ch 28, §1; 91 Acts, ch 109, §1; 92 Acts, ch 1089, §1; 92 Acts, ch 1244, §11; 93 Acts, ch 167, §9; 93 Acts, ch 180, §34, 35; 94 Acts, ch 1023, §4; 94 Acts, ch 1199, §16; 96 Acts, ch 1186, §1 – 4, 23; 97 Acts, ch 15, §1, 2; 97 Acts, ch 214, §1; 98 Acts, ch 1175, §1, 2; 99 Acts, ch 197, §20, 23; 2001 Acts, ch 61, §2 – 5; 2003 Acts, ch 44, §9; 2003 Acts, ch 71, §1; 2003 Acts, ch 145, §138, 286; 2003 Acts, 1st Ex, ch 1, §76, 133

[2003 Acts, 1st Ex, ch 1, §76, 133, amendment adding new paragraph g to subsection 9, stricken pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2006 Acts, ch 1100, §1; 2007 Acts, ch 126, §5; 2007 Acts, ch 207, §6, 18; 2008 Acts, ch 1122, §4, 7 – 9; 2008 Acts, ch 1178, §2; 2010 Acts, ch 1031, §261; 2010 Acts, ch 1049, §1; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 122, §11, 14

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 5, paragraph c amended

### **15.109 Additional duties.**

The economic development authority shall coordinate the development of state and local government programs in order to promote efficient and economic use of federal, state, local, and private resources. The authority shall:

1. Provide technical and financial assistance to local and regional government organizations in Iowa, analyze intergovernmental relations in Iowa, and recommend policies to state agencies, local governments, the governor, and the general assembly.

2. Apply for, receive, administer, and use federal or other funds available for achieving the purposes of this chapter. For purposes of this subsection, the term “*federal funds*” includes federal tax credits, grants, or other economic benefits allocated or provided by the United States government to encourage investment in low-income or other specified areas or to otherwise promote economic development. The authority may enter into an agreement pursuant to chapter 28E, or any other agreement, with a person, including for-profit and nonprofit legal entities, in order to directly or indirectly apply for, receive, administer, and use federal funds. As part of such agreements and in furtherance of this public purpose and in addition to powers and duties conferred under other provisions of law, the authority may, including for or on behalf of for-profit or nonprofit legal entities, appoint, remove, and replace board members and advisors; provide oversight; make its personnel and resources available to perform administrative, management, and compliance functions; coordinate investments; and engage in other acts as reasonable and necessary to encourage investment in low-income or other areas or to promote economic development. The authority, including authority officials and employees in their official and personal capacities, are immune from liability for all acts or omissions under this subsection.

3. At the time the authority approves assistance for an applicant, provide the person with information regarding the nature and source of other technical assistance available in the state to assist the applicant on design and management matters concerning energy efficiency and waste reduction. The authority shall review the extent to which recommendations made to grantees are in fact implemented by the grantees.

4. Establish a sustainable community development initiative. The purpose of the initiative is to improve the sustainability of Iowa communities by ensuring long-term economic growth and fostering environmentally conscious growth and development. In establishing the initiative, the authority shall:

a. Create a plan to ensure that all of the authority's current community growth and

development programs, efforts, and initiatives incorporate an environmentally conscious approach and policies that promote sustainability.

b. Cooperate with local governments by providing information, technical assistance, and financial incentives to communities pursuing sustainable growth.

[C71, 73, 75, 77, 79, 81, §7A.3, 7A.7; 82 Acts, ch 1210, §5]

C83, §7A.3

86 Acts, ch 1245, §101, 102

C87, §15.109

90 Acts, ch 1252, §2; 2004 Acts, ch 1175, §318; 2008 Acts, ch 1190, §31; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **15.110 Restrictions relating to councils of governments.**

The authority shall not require a city or county to be a dues paying member of a council of governments.

90 Acts, ch 1262, §23; 2011 Acts, ch 118, §87, 89

Councils of governments; see chapter 28H

Code editor directive applied

#### **15.112 Farmworks matching funds.**

If the federal government funds the “farmworks” national demonstration project for distressed family farmers, the authority shall allocate to the project from the rural enterprise fund or another fund, an amount equal to four percent of the federal funding each year for a three-year period on a dollar-for-dollar matching basis with local or private contributions.

93 Acts, ch 180, §38; 2011 Acts, ch 118, §87, 89

Code editor directive applied

#### **15.115 Technology commercialization specialist.**

The authority shall ensure that businesses in the state are well informed about the technology patents, licenses, and options available to them from colleges and universities in the state and to ensure the authority’s business development and marketing efforts are conducted in a way that maximizes the advantage to the state of research and technology commercialization efforts at colleges and universities in the state. The authority shall establish a technology commercialization specialist position which shall be responsible for the obligations imposed by this section and for performance of all of the following activities:

1. Establishing and maintaining communication with personnel in charge of intellectual property management and technology at colleges and universities in the state.

2. Meeting at least quarterly with personnel in charge of intellectual property management and technology commercialization regarding new technology disclosures and technology patents, licenses, or options available to Iowa businesses at colleges and universities in the state.

3. Being knowledgeable regarding intellectual property, patent, license, and option policies of colleges and universities in the state as well as applicable federal law.

4. Establishing and maintaining an internet website to link other internet websites which provide electronic access to information regarding available patents, licenses, or options for technology at colleges and universities in the state.

5. Establishing and maintaining communications with business and development organizations in the state regarding available technology patents, licenses, and options.

6. Cooperating with colleges and universities in the state in establishing technology fairs or other public events designed to make businesses in the state aware of available technology patents, licenses, or options available to businesses in the state.

2005 Acts, ch 150, §27; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **15.116 Technology commercialization committee.**

To evaluate and make recommendations to the authority on appropriate funding for the projects and programs applying for financial assistance from the innovation and commercialization development fund created in section 15.412, the economic development

authority shall create a technology commercialization committee composed of members with expertise in the areas of biosciences, engineering, manufacturing, pharmaceuticals, materials, information solutions, software, and energy. At least one member of the technology commercialization committee shall be a member of the economic development authority. An organization designated by the authority, composed of members from both the public and private sectors and composed of subunits or subcommittees in the areas of already identified bioscience platforms, education and workforce development, commercialization, communication, policy and governance, and finance, shall provide funding recommendations to the technology commercialization committee.

2005 Acts, ch 150, §28; 2009 Acts, ch 123, §22, 33; 2011 Acts, ch 118, §84, 87, 89  
Code editor directives applied

#### **15.117A Iowa innovation council.**

1. An Iowa innovation council is established within the authority. The authority shall provide the council with staff and administrative support. The authority may expend moneys allocated to the innovation and commercialization division in order to provide such support. The authority may adopt rules for the implementation of this section.

2. The council shall consist of the following members:

a. Twenty-nine voting members as follows:

(1) Twenty members selected by the board to serve staggered, two-year terms beginning and ending as provided in section 69.19. Of the members selected by the board, seven shall be representatives from businesses in the targeted industries and thirteen shall be individuals who serve on the technology commercialization committee created in section 15.116, or other committees of the board, and who have expertise with the targeted industries. At least ten of the members selected pursuant to this subparagraph shall be executives actively engaged in the management of a business in a targeted industry. The members selected pursuant to this paragraph shall reflect the size and diversity of businesses in the targeted industries and of the various geographic areas of the state.

(2) One member, selected by the governor, who also serves on the Iowa capital investment board created in section 15E.63.

(3) The director of the authority, or the director's designee.

(4) The chief technology officer appointed pursuant to section 15.117.

(5) The person appointed as the chief information officer pursuant to section 8A.201A, or, if no person has been so appointed, the director of the department of administrative services, or the director's designee.

(6) The president of the state university of Iowa, or the president's designee.

(7) The president of Iowa state university of science and technology, or the president's designee.

(8) The president of the university of northern Iowa, or the president's designee.

(9) Two community college presidents from geographically diverse areas of the state, selected by the Iowa association of community college trustees.

b. Four members of the general assembly serving two-year terms in a nonvoting, ex officio capacity, with two from the senate and two from the house of representatives and not more than one member from each chamber being from the same political party. The two senators shall be designated one member each by the president of the senate after consultation with the majority leader of the senate, and by the minority leader of the senate. The two representatives shall be designated one member each by the speaker of the house of representatives after consultation with the majority leader of the house of representatives, and by the minority leader of the house of representatives.

3. To be eligible to serve as a designee pursuant to subsection 2, a person must have sufficient authority to make decisions on behalf of the organization being represented. A person named as a designee pursuant to subsection 2 shall not name a designee nor permit a substitute to attend council meetings.

4. The chief technology officer appointed pursuant to section 15.117 shall be the chairperson of the council and shall be responsible for convening meetings of the council and coordinating its activities and shall convene the council at least annually. The council

shall annually elect one of the voting members to serve as vice chairperson. A majority of the members of the council constitutes a quorum. However, the chief technology officer shall not convene a meeting of the council unless the director of the authority, or the director's designee, is present at the meeting.

5. The purpose of the council is to advise the authority on the development and implementation of public policies that enhance innovation and entrepreneurship in the targeted industries, with a particular focus on the information, technology, and skills that increasingly dominate the twenty-first century economy. Such advice may include evaluating Iowa's competitive position in the global economy, reviewing the technology typically utilized in the state's manufacturing sector, assessing the state's overall scientific research capacity, keeping abreast of the latest scientific research and technological breakthroughs and offering guidance as to their impact on public policy, recommending strategies that foster innovation, increase new business formation, and otherwise promote economic growth in the targeted industries, and offering guidance about future developments in the targeted industries.

6. The council shall do all of the following:

a. Create a comprehensive strategic plan for implementing specific policies that further the purpose of the council as described in subsection 5. In creating the plan and implementing such policies, the council may consult with the corporation established pursuant to section 15.107.

b. Review annually all the economic development programs administered by the authority and the board that relate to the targeted industries and make recommendations for adjustments that enhance efficiency and effectiveness. In reviewing the programs, the council shall, to the greatest extent possible, utilize economic development data and research in order to make objective, fact-based recommendations.

c. Act as a forum where issues affecting the research community, the targeted industries, and policymakers can be discussed and addressed and where collaborative relationships can be formed.

d. Coordinate state government applications for federal funds relating to research and economic development affecting the targeted industries.

e. Conduct industry research and draft documents that provide background information for use in decision making by the general assembly, the governor, the authority, and other policymaking bodies within state government.

2010 Acts, ch 1070, §4; 2011 Acts, ch 34, §4; 2011 Acts, ch 118, §16, 85, 89

Code editor directive applied

Subsection 2, paragraph a, subparagraph (5) amended

Subsection 6, paragraph a amended

### **15.118 Confidentiality of information in financial assistance applications.**

1. The board and the authority shall give due regard to the confidentiality of certain information disclosed by applicants for financial assistance during the application process, the contract administration process, and the period following closeout of a contract in the manner described in this section.

2. All information contained in an application for financial assistance submitted to the authority shall remain confidential while the authority is reviewing the application, processing requests for confidentiality, negotiating with the applicant, and preparing the application for consideration by the director or the board. The authority may release certain information in an application for financial assistance to a third party for technical review. If the authority releases such information to a third party, the authority shall ensure that the third party protects such information from public disclosure. After the authority has considered a request for confidentiality, any information not deemed confidential shall be made publicly available. Any information deemed confidential by the authority shall also be kept confidential during and following administration of a contract executed pursuant to a successful application.

3. The authority shall consider the written request of an applicant or award recipient to keep confidential certain details of an application, a contract, or the materials submitted in support of an application or a contract. If the request includes a sufficient explanation as

to why the public disclosure of such details would give an unfair advantage to competitors, the authority shall keep certain details confidential. If the authority elects to keep certain details confidential, the authority shall release only the nonconfidential details in response to a request for records pursuant to chapter 22. If confidential details are withheld from a request for records pursuant to chapter 22, the authority shall release an explanation of why the information was deemed confidential and a summary of the nature of the information withheld and the reasons for withholding it. In considering requests for confidential treatment, the authority shall narrowly construe the provisions of this section in order to appropriately balance an applicant's need for confidentiality against the public's right to information about the authority's activities.

4. If a request for confidentiality is denied by the authority, an applicant may withdraw the application and any supporting materials, and the authority shall not retain any copies of the application or supporting materials. Upon notice that an application has been withdrawn, the authority shall not release a copy in response to a request for records pursuant to chapter 22.

5. The authority shall adopt by rule a process for considering requests to keep information confidential pursuant to this section. The authority may adopt emergency rules pursuant to chapter 17A to implement this section. The rules shall include criteria for guiding the authority's decisions about the confidential treatment of applicant information. The criteria may include but are not limited to the following:

a. The nature and extent of competition in the applicant's industry sector.

b. The likelihood of adverse financial impact to the applicant if the information were to be released.

c. The risk that the applicant will locate in another state if the request is denied.

d. Any other factor the authority reasonably considers relevant.

2008 Acts, ch 1149, §1; 2011 Acts, ch 118, §87, 89

Code editor directive applied

#### **15.119 Aggregate tax credit limit for certain economic development programs.**

1. a. Notwithstanding any provision to the contrary in any of the programs listed in subsection 2, the authority, except as provided in paragraph "b", shall not authorize for any one fiscal year an amount of tax credits for the programs specified in subsection 2 that is in excess of one hundred twenty million dollars.

b. The authority may authorize an amount of tax credits during a fiscal year that is in excess of the amount specified in paragraph "a", but the amount of such excess shall be counted against the total amount of tax credits that may be authorized for the next fiscal year.

2. The authority, with the approval of the board, shall adopt by rule a procedure for allocating the aggregate tax credit limit established in this section among the following programs:

a. The high quality job creation program administered pursuant to sections 15.326 through 15.336.

b. The film, television, and video project promotion program administered pursuant to sections 15.391 through 15.393.

c. The corporate tax research credit under the quality jobs enterprise zone program pursuant to section 15A.9, subsection 8.

d. The enterprise zones program administered pursuant to sections 15E.191 through 15E.197.

e. The assistive device tax credit program administered pursuant to section 422.33, subsection 9.

f. The tax credits for investments in qualifying businesses and community-based seed capital funds issued pursuant to section 15E.43. In allocating tax credits pursuant to this subsection, the authority shall allocate two million dollars for purposes of this paragraph.

g. The tax credits for investments in an innovation fund pursuant to section 15E.52. In allocating tax credits pursuant to this subsection, the authority shall allocate eight million dollars for purposes of this paragraph.

*h.* The redevelopment tax credit program for brownfields and grayfields administered pursuant to sections 15.293A and 15.293B.

3. In allocating the amount of tax credits authorized pursuant to subsection 1 among the programs specified in subsection 2, the authority shall not allocate more than five million dollars for purposes of subsection 2, paragraph “*h*”.

4. The authority shall submit to the department of revenue on or before August 15 of each year a report on the tax credits allocated pursuant to this section and the tax credits awarded under each of the programs described in subsection 2.

2009 Acts, ch 135, §1, 3; 2010 Acts, ch 1138, §4; 2011 Acts, ch 34, §5; 2011 Acts, ch 116, §1, 2; 2011 Acts, ch 118, §87, 89; 2011 Acts, ch 130, §36, 47, 71

2011 amendment to subsection 2, by 2011 Acts, ch 130, §36, applies retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 130, §47

See Code editor’s note on simple harmonization

Code editor directive applied

Subsection 2 amended

NEW subsection 3 and former subsection 3 renumbered as 4

## SUBCHAPTER II

### ACTIVITIES

#### PART 1

##### **15.201 Agricultural marketing program.**

The authority shall operate an agricultural marketing program designed to lead to more advantageous marketing of Iowa agricultural products. The authority may develop and carry out activities to implement this program, and shall:

1. Investigate the subject of marketing agricultural products and recommend efficient and economical methods of marketing.

2. Promote the sales, distribution, and merchandising of agricultural products.

3. Furnish information and assistance to the public concerning the marketing of agricultural products.

4. Cooperate with the division of agriculture of the Iowa state university of science and technology in farm marketing education and research and avoid unnecessary duplications.

5. Gather and diffuse useful information concerning all phases of the marketing of Iowa farm products in cooperation with other public or private agencies.

6. Ascertain sources of supply of Iowa agricultural products, and prepare and publish from time to time lists of names and addresses of producers and consignors and furnish the lists to persons applying for them.

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

86 Acts, ch 1245, §809; 2011 Acts, ch 118, §87, 89

Code editor directive applied

##### **15.202 Grants and gifts.**

The authority may, with the approval of the director, accept grants and allotments of funds from the federal government and enter into cooperative agreements with the secretary of agriculture of the United States for projects to effectuate any of the purposes of the agricultural marketing program; and may accept grants, gifts, or allotments of funds from any person for the purpose of carrying out the agricultural marketing program. The authority shall make an itemized accounting of such funds to the director at the end of each fiscal year.

86 Acts, ch 1245, §810; 2011 Acts, ch 118, §87, 89

Code editor directive applied

## PART 4

**15.240 Community microenterprise development organization grant program.**

1. The authority shall award grants to community microenterprise development organizations. A grant shall not be awarded to a community microenterprise development organization unless the community microenterprise development organization can match at least twenty percent of the funds to be awarded. The matching funds may be from private foundations, federal or local government funds, financial institutions, or individuals.

2. In awarding grants to community microenterprise development organizations, the authority shall consider all of the following:

a. The overall geographic diversity of the applicants for grants, including both urban and rural communities.

b. The ability of a community microenterprise development organization to provide services to low-income and moderate-income individuals and underserved communities. In determining the ability to provide services, all of the following shall be considered:

(1) The ability to identify potential microentrepreneurs within a community.

(2) The capacity to perform client assessment and screening.

(3) The ability to provide business training and technical assistance, including information about access to markets, business management, and financial literacy.

(4) The capacity to provide assistance in securing financing.

c. The scope of services offered and the efficient delivery of such services, especially to low-income, moderate-income, and minority individuals.

d. The ability to monitor the progress of clients and to identify those clients in need of additional technical and financial assistance.

e. The ability to build relationships and coordinate resources with other entities supporting microentrepreneurs. These entities may include but are not limited to community colleges, cooperative extension services, small business development centers, chambers of commerce, community economic development organizations, workforce centers, and community nonprofit service providers that serve low-income and moderate-income individuals.

f. The ability to coordinate activities with any targeted small business advocate services operating in the community.

g. The amount and sufficiency of operating funds available.

h. Any other criteria the authority deems reasonable.

2008 Acts, ch 1178, §3; 2011 Acts, ch 118, §87, 89

Code editor directive applied

**15.246 Case management program.**

1. The authority shall establish and administer a case management program, contingent upon the availability of funds authorized for the program, and conducted in coordination with other state or federal programs providing financial or technical assistance administered by the authority. The case management program shall assist in furnishing information about available assistance to clients seeking to establish or expand small business ventures, furnishing information about available financial or technical assistance, evaluating small business venture proposals, completing viable business start-up or expansion plans, and completing applications for financial or technical assistance under the programs administered by the authority.

2. In administering the program, the authority may contract with service providers to deliver case management assistance under this section. A service provider may be any entity which the authority determines is qualified to deliver case management assistance, including a state agency, a private for-profit or not-for-profit corporation, or other association or organization. The authority shall establish rules necessary to carry out this section, including schedules for providing contract payments to service providers, based on the number of hours of case management assistance provided to a client.

88 Acts, ch 1098, §2; 2001 Acts, ch 61, §6; 2003 Acts, ch 71, §2; 2011 Acts, ch 118, §87, 89

Code editor directive applied

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

1. As used in this section, “*small business*” and “*targeted small business*” mean the same as defined in section 15.102, subsections 10 and 12.

2. A “targeted small business financial assistance program” is established within the authority. A targeted small business financial assistance program account is established within the strategic investment fund created in section 15.313, to allow the authority to provide for loans, loan guarantees, or grants to eligible targeted small businesses.

a. A targeted small business in any year shall receive under this program not more than fifty thousand dollars in a loan, grant, or guarantee, or a combination of loans, grants, or guarantees. A grant shall only be awarded when additional financing is secured by the applicant. In order to receive a grant, the applicant must demonstrate a minimum of ten percent cash investment in the project. A targeted small business shall not receive a grant, loan, or guarantee, or a combination of grants, loans, or guarantees under the program that provide more than ninety percent funding of a project.

b. The program shall provide guarantees not to exceed eighty percent for loans of up to seven years made by qualified lenders. The authority shall establish a financial assistance reserve account from funds allocated to the program account, from which any default on a guaranteed loan under this section shall be paid. In administering the program the authority shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the loan reserve account may be used for the payment of a default.

c. The authority shall maintain records of all financial assistance approved pursuant to this section and information regarding the effectiveness of the financial assistance in establishing or expanding small business ventures.

3. a. All moneys designated for the targeted small business financial assistance program shall be credited to the program account. The authority shall determine the actuarially sound reserve requirement for the amount of guaranteed loans outstanding.

b. Of the moneys credited to the program account, the authority may allocate an amount necessary for marketing and compliance and an amount for the provision of the mentoring services required under subsection 7.

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

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

6. Payments of interest, recaptures of awards, and repayments of moneys loaned under this program shall be deposited into the strategic investment fund.

7. In order to receive financial assistance under this section a targeted small business shall participate in mentoring services from a targeted small business advocate service provider.

8. a. In order to receive financial assistance under this section, an application for financial assistance submitted on or after July 1, 2007, must be approved by the targeted small business financial assistance board created in this subsection.

b. The targeted small business financial assistance board shall consist of seven members appointed by the director representing backgrounds in the areas of finance, insurance, or banking. The members shall be successful business owners in the private, for-profit sector. At least one member shall be a member of the economic development authority appointed by the economic development authority. All of the following populations shall be represented separately by at least one member:

- (1) Latino.
- (2) African American.
- (3) Asian or Pacific Islander.
- (4) Caucasian woman.
- (5) Native American.
- (6) A person with a disability as defined in section 15.102.

c. A person within the third degree of consanguinity of an employee of the authority, a person within the third degree of consanguinity of a member of the targeted small business

financial assistance board or member's relative, or a business with any financial ties to a member shall not be eligible for financial assistance under the program during the employee's employment or the member's tenure on the board, as applicable. Members shall serve two year terms and may be reappointed. A member shall not serve more than two terms.

d. The targeted small business financial assistance board shall consider all applications for financial assistance under the program submitted on or after July 1, 2007.

88 Acts, ch 1273, §9; 89 Acts, ch 83, §6; 90 Acts, ch 1156, §4; 92 Acts, ch 1244, §14, 15; 2003 Acts, ch 71, §3; 2007 Acts, ch 207, §7, 8, 18; 2009 Acts, ch 41, §12; 2009 Acts, ch 133, §7; 2010 Acts, ch 1184, §29; 2011 Acts, ch 118, §84, 85, 89

Code editor directives applied

## PART 5

### 15.251 Industrial new job training program certificates — fee.

The authority may charge, within thirty days following the sale of certificates under chapter 260E, the board of directors of the merged area a fee of up to one percent of the gross sale amount of the certificates issued. The amount of this fee shall be deposited and allowed to accumulate in a job training fund created in the authority. At the end of each fiscal year, all funds deposited under this subsection into the job training fund during the fiscal year shall be transferred to the workforce development fund account established in section 15.342A.

86 Acts, ch 1245, §816; 89 Acts, ch 270, §1; 90 Acts, ch 1255, §3; 93 Acts, ch 180, §40; 94 Acts, ch 1199, §17; 99 Acts, ch 183, §1; 2001 Acts, ch 61, §7; 2011 Acts, ch 118, §87, 89

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying the funding provided for in this section

Code editor directive applied

### 15.252 Rules.

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

86 Acts, ch 1238, §45; 86 Acts, ch 1245, §817; 89 Acts, ch 270, §2; 2011 Acts, ch 118, §87, 89

Code editor directive applied

## PART 7

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

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

1. a. The department\* and the state department of transportation shall jointly establish a statewide long-range plan for developing and operating welcome centers throughout the state. The plan shall be submitted to the general assembly by January 15, 1988. The plan shall address, but not be limited to, the following:

(1) Integrating state, regional, and local tourism and recreation marketing and promotion plans.

(2) Recommending a wide range of centers, including state-developed and state-operated to privately managed facilities.

(3) Establishing design, service, and maintenance quality standards which all welcome centers will maintain. Included in the standards shall be a provision requiring that space or facilities be available for purposes of displaying and offering for sale Iowa-made products, crafts, and arts. The space or facilities may be operated by the department\* or leased to and operated by other persons.

(4) Making projections of increased tourist spending, indirect economic benefits, and direct revenue production which are estimated to occur as a result of implementing a statewide welcome center program.

(5) Projecting estimated acquisition, construction, exhibit, staffing, and maintenance costs.

(6) Integrating electronic data telecommunications systems.

(7) Identifying sites for maintaining existing centers as well as locations for new centers.

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

2. The responsibilities of the authority include the following:

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

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

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

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

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

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

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

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

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

(3) Priority shall be given to proposals that have the best local match, that are to be located where there is a very high number of travelers passing, and for which the department\*, after consultation with the departments of transportation, natural resources, and cultural affairs, considers the chances of success to be nearly perfect.

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

87 Acts, ch 178, §2; 2008 Acts, ch 1032, §201; 2011 Acts, ch 118, §87, 89

RISE fund, see chapter 315

\*Reference to "department of economic development" probably intended; corrective legislation is pending

Code editor directive applied

### 15.273 Cooperative tourism program.

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

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

89 Acts, ch 236, §9; 2011 Acts, ch 118, §85, 89  
Code editor directive applied

### 15.274 Promotional program for national historic landmarks and cultural and entertainment districts.

The economic development authority, in cooperation with the state department of transportation and the department of cultural affairs, shall establish and administer a program designed to promote knowledge of and access to buildings, sites, districts, structures, and objects located in this state that have been designated by the secretary of the interior of the United States as a national historic landmark, unless the national historic landmark is protected under section 22.7, subsection 20, and certified cultural and entertainment districts, as established pursuant to section 303.3B. The program shall be designed to maximize the visibility and visitation of national historic landmarks in this state and buildings, sites, structures, and objects located in certified cultural and entertainment districts, as established pursuant to section 303.3B. Methods used to maximize the visibility and visitation of such locations may include the use of tourism literature, signage on highways, maps of the state and cities, and internet websites. For purposes of this section, “highway” means the same as defined in section 325A.1.

2005 Acts, ch 109, §1; 2006 Acts, ch 1010, §7; 2011 Acts, ch 118, §85, 89  
Code editor directive applied

## PART 9

### 15.291 Definitions.

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

1. “*Brownfield site*” means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the property on which the individual or commercial facility is located. A brownfield site does not include property which has been placed, or is proposed for placement, on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

2. “*Council*” means the brownfield redevelopment advisory council established in section 15.294.

3. “*Grayfield site*” means an industrial or commercial property meeting all of the following requirements:

a. The property has been developed and has infrastructure in place but the property’s current use is outdated or prevents a better or more efficient use of the property. Such property includes vacant, blighted, obsolete, or otherwise underutilized property.

b. The property’s improvements and infrastructure are at least twenty-five years old and one or more of the following conditions exists:

(1) Thirty percent or more of a building located on the property that is available for occupancy has been vacant or unoccupied for a period of twelve months or more.

(2) The assessed value of the improvements on the property has decreased by twenty-five percent or more.

(3) The property is currently being used as a parking lot.

(4) The improvements on the property no longer exist.

4. “*Green development*” means development which meets or exceeds the sustainable design standards established by the state building code commissioner pursuant to section 103A.8B.

5. “*Qualifying investment*” means costs that are directly related to a qualifying redevelopment project and that are incurred after the project has been registered and approved by the board. “*Qualifying investment*” only includes the purchase price, the cleanup costs, and the redevelopment costs.

6. “*Qualifying redevelopment project*” means a brownfield or a grayfield site being redeveloped or improved by the property owner. “*Qualifying redevelopment project*” does not include a previously remediated or redeveloped brownfield site.

7. “*Sponsorship*” means an agreement between a city or county and an applicant for assistance under the brownfield redevelopment program where the city or county agrees to offer assistance or guidance to the applicant.

2000 Acts, ch 1101, §1; 2008 Acts, ch 1173, §1; 2011 Acts, ch 116, §3, 12

2011 amendment to subsection 5 applies retroactively to January 1, 2011, for tax years beginning on or after that date; 2011 Acts, ch 116, §12

Subsection 5 amended

### **15.292 Brownfield redevelopment program.**

1. The authority shall establish and administer a brownfield redevelopment program for purposes of providing financial and technical assistance for the acquisition, remediation, or redevelopment of brownfield sites. Financial assistance under the program shall be provided from the brownfield redevelopment fund created in section 15.293. The authority may provide information on alternative forms of assistance.

2. A person owning a site may apply for assistance under the program if the site for which assistance is sought meets the definition of a brownfield site and the applicant has secured sponsorship prior to applying. Sponsorship is not required if the applicant is a city or county.

3. *a.* A person who is not an owner of a site may apply for financial assistance under the program if the site for which financial assistance is sought meets the definition of a brownfield site and the applicant has secured sponsorship prior to applying. Sponsorship is not required if the applicant is a city or county.

*b.* Prior to applying for financial assistance under this subsection, an applicant shall enter into an agreement with the owner of the brownfield site for which financial assistance is sought. The agreement shall be submitted with an application for financial assistance and shall include, at a minimum, the following:

(1) An agreement regarding the estimated total cost for remediating the brownfield site.

(2) An agreement that the owner shall transfer title of the property to the applicant upon completion of the remediation of the property.

(3) An agreement that, upon the subsequent sale of the property by the applicant to a person other than the original owner, the original owner shall receive not more than seventy-five percent of the estimated total cost of remediation.

*c.* An applicant shall not receive financial assistance of more than twenty-five percent of the agreed-upon estimated total cost of remediation.

*d.* Upon the subsequent sale of the property by the applicant to a person other than the original owner, the applicant shall repay the authority for financial assistance received by the applicant. The repayment shall be in an amount equal to the sales price less the amount paid to the original owner pursuant to the agreement between the applicant and the original owner. The repayment amount shall not exceed the amount of financial assistance received by the applicant.

4. An application for assistance under the program shall include any information required by the authority, including the following:

*a.* A business plan which includes a remediation plan.

*b.* A budget for remediating or redeveloping the site.

c. A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

d. Evidence of sponsorship.

e. Other information the authority deems necessary in order to process and review the application.

5. In reviewing an application for financial assistance, the authority and the brownfield redevelopment advisory council established in section 15.294 shall consider all of the following:

a. Whether the brownfield site meets the definition of a brownfield site.

b. Whether other alternative forms of assistance exist for which the applicant may be eligible.

6. The board may approve, deny, or defer each application for financial assistance from the brownfield redevelopment fund created in section 15.293.

2000 Acts, ch 1101, §2; 2011 Acts, ch 116, §4; 2011 Acts, ch 118, §87, 89

Code editor directive applied  
Subsections 1 and 4 amended

### **15.293 Brownfield redevelopment fund.**

1. A brownfield redevelopment fund is created in the state treasury under the control of the authority and consisting of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the authority for placement in the fund.

2. Payments of interest, repayments of moneys loaned pursuant to this part, and recaptures of loans shall be deposited in the fund.

3. The fund shall be used to provide grants, loans, forgivable loans, loan guarantees, and other forms of assistance under the brownfield redevelopment program established in section 15.292.

4. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.

2000 Acts, ch 1101, §3; 2011 Acts, ch 118, §87, 89

Code editor directive applied

### **15.293A Redevelopment tax credits.**

1. a. A redevelopment tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for a portion of a taxpayer's equity investment, as provided in subsection 3, in a qualifying redevelopment project.

b. An individual may claim a tax credit under this subsection of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

c. Any tax credit in excess of the taxpayer's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer first receives the tax credit.

2. a. (1) The authority shall accept and, in conjunction with the council and the board, review applications for tax credits pursuant to this section.

(2) Upon review of an application, the authority may register the project under the program. If the authority registers the project, the authority shall, in conjunction with the council and the board, make a preliminary determination as to the amount of tax credit for which the investor qualifies.

(3) After registering the project, the authority shall issue a letter notifying the investor of successful registration under the program. The letter shall include the amount of tax credit for which the investor has received preliminary approval. The letter shall state that the amount is a preliminary determination only. The amount of tax credit included on a certificate

issued pursuant to this section shall be contingent upon completion of the requirements of subparagraphs (4) and (5).

(4) Upon completion of a registered project, an audit of the project, completed by an independent certified public accountant licensed in this state, shall be submitted to the authority.

(5) Upon review of the audit and verification of the amount of the investment, the authority may issue a certificate to the investor stating the amount of tax credit the investor may claim.

b. (1) To claim a redevelopment tax credit under this section, a taxpayer must attach one or more tax credit certificates to the taxpayer's tax return. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2009.

(2) The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the credit, the name of the qualifying investor, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

(3) The tax credit certificate, unless rescinded by the authority, shall be accepted by the department of revenue as payment for taxes imposed pursuant to chapter 422, divisions II, III, and V, and in chapter 432, and for the moneys and credits tax imposed in section 533.329, subject to any conditions or restrictions placed by the authority upon the face of the tax credit certificate and subject to the limitations of this section.

(4) Tax credit certificates issued under this section may be transferred to any person or entity. Within ninety days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue.

(5) Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the economic development authority shall not be transferable.

(6) A tax credit shall not be claimed by a transferee under this section until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329.

3. The amount of the tax credit shall equal one of the following:

a. Twelve percent of the taxpayer's qualifying investment in a grayfield site.

b. Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of a green development.

c. Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.

d. Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of a green development.

4. For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the redeveloped property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the credit computed under this part.

5. The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed ten percent of the maximum amount of tax credits available in any one fiscal year pursuant to subsection 6.

6. For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued

by the authority shall not exceed one million dollars. For each subsequent fiscal year, the amount of tax credits that may be issued by the authority shall be subject to the limitation in section 15.119.

7. An investment shall be deemed to have been made on the date the qualifying redevelopment project is completed.

8. A registered project shall be completed within thirty months of the project's approval unless the authority, with the approval of the board, provides additional time to complete the project. A project shall not be provided more than twelve months of additional time. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit pursuant to this section.

9. The authority shall develop a system for registration and authorization of projects receiving tax credits pursuant to this part and shall control distribution of all tax credits distributed to investors pursuant to this part. In developing the system, the authority shall provide for a list of applicants for the tax credit and maintain it from year to year so that if the maximum aggregate amount of tax credits available under the program is reached in one year, an applicant can be given priority consideration for the credit in an ensuing year.

10. The authority shall develop rules for the qualification of qualifying redevelopment projects and qualifying investments. The department of revenue shall adopt these criteria as administrative rules and shall adopt any other rules pursuant to chapter 17A necessary for the administration of this part.

11. The authority may cooperate with the department of natural resources and local governments in an effort to disseminate information regarding the availability of tax credits for investments in qualifying redevelopment projects under this part.

12. If the recipient of a tax credit issued pursuant to this section has also applied to the authority, the board, or any other agency of state government for additional financial assistance, the authority, the board, or agency of state government shall not consider the receipt of a tax credit issued pursuant to this section when considering the application for additional financial assistance.

13. This section is repealed on June 30, 2021.

2008 Acts, ch 1173, §2; 2011 Acts, ch 116, §5 – 7, 12; 2011 Acts, ch 118, §84, 85, 89

2011 amendments by 2011 Acts, ch 116, §5 – 7, apply retroactively to January 1, 2011, for tax years beginning on or after that date; 2011 Acts, ch 116, §12

See Code editor's note

Code editor directive applied

Subsections 2, 6 – 9 amended

Subsection 12 stricken and former subsection 13 renumbered as 12

NEW subsection 13

### **15.293B Approval — requirements — repayment.**

1. The authority shall accept and review applications for tax credits pursuant to section 15.293A and, with the approval of the council, make recommendations regarding the applications to the board.

2. An investor applying for a tax credit shall provide the authority with all of the following:

a. Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

b. Information about the financing sources of the investment which are directly related to the qualifying redevelopment project for which the taxpayer is seeking approval for a tax credit, as provided in section 15.293A.

3. If a taxpayer receives a tax credit pursuant to section 15.293A, but fails to comply with any of the requirements, the taxpayer loses any right to the tax credit, and the department of revenue shall seek recovery of the value of the credit received.

4. This section is repealed on June 30, 2021.

2008 Acts, ch 1173, §3; 2011 Acts, ch 116, §8 – 10; 2011 Acts, ch 118, §87, 89

Code editor directive applied

Subsection 1 stricken and rewritten

Subsection 2, unnumbered paragraph 1 amended

NEW subsection 4

**15.294 Brownfield redevelopment advisory council.**

1. The authority shall establish a brownfield redevelopment advisory council consisting of five members. The advisory council shall be composed of all of the following:

- a. The director of the economic development authority, or the director's designee.
- b. The director of the department of natural resources, or the director's designee.
- c. The director of transportation, or the director's designee.
- d. One person selected by the board of directors of the Iowa league of cities.
- e. One member of the economic development authority selected by the authority.

2. The director of the economic development authority, or the director's designee, shall serve as the chairperson of the advisory council.

3. The advisory council shall review each application received by the economic development authority for assistance under the brownfield redevelopment program and make recommendations to the authority regarding all of the following:

- a. The completeness of the application.
- b. Suggestions for alternative forms of assistance for which the applicant may be eligible.

The alternative forms of assistance may include assistance programs available through other departments.

c. Whether the applicant should receive financial assistance from the brownfield redevelopment fund created in section 15.293.

4. The council, in conjunction with the authority, shall consider applications for redevelopment tax credits as described in sections 15.293A and 15.293B, and may recommend to the board which applications to approve and the amount of such tax credits that each project is eligible to receive.

2000 Acts, ch 1101, §4; 2008 Acts, ch 1173, §4; 2011 Acts, ch 116, §11; 2011 Acts, ch 118, §84, 85, 89

See Code editor's note  
Code editor directives applied  
Subsection 4 amended

**15.295 Rules.**

The authority, in consultation with the department of natural resources, shall adopt rules pursuant to chapter 17A as necessary to administer this part.

2000 Acts, ch 1101, §5; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## PART 10

**15.301 Save our small businesses fund and program.**

1. a. A save our small businesses fund is created in the state treasury under the control of the authority and consisting of any moneys appropriated to the fund by the general assembly and any other moneys available and obtained or accepted by the authority for placement in the fund.

b. Payments of interest, repayments of moneys loaned pursuant to this section, and recaptures of loans shall be deposited in the fund. The fund shall be used to provide financial assistance in the form of low-interest loans as provided under the program created in this section.

c. (1) If, on March 31, 2011, there are unobligated moneys in the fund, such unobligated moneys shall revert to the general fund of the state.

(2) For each quarter, beginning with the first quarter after the reversion of moneys pursuant to subparagraph (1) and ending with the last quarter prior to the reversion of moneys pursuant to subparagraph (3), the authority shall, on the last day of the quarter, transfer to the general fund of the state the balance of unencumbered moneys in the fund.

(3) On March 31, 2016, all moneys in the fund shall revert to the general fund of the state.

2. a. The authority shall establish and administer a program for purposes of providing financial assistance to eligible small businesses. For purposes of this section, "financial assistance" means loans at an interest rate not to exceed three and nine-tenths percent per

annum and “eligible small business” means a small business meeting the requirements of subsection 3.

b. (1) The authority may designate an organization to administer the provisions of this section on the authority’s behalf.

(2) In order to be designated, an organization must be a nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code and must be designated by the United States small business administration as a statewide microloan program provider.

(3) If the authority elects to designate an organization pursuant to subparagraph (1), the authority shall enter into an agreement with the organization for purposes of ensuring that the program is administered pursuant to the requirements of this section.

(4) An organization designated pursuant to subparagraph (1) may accept, evaluate, and approve applications for financial assistance from eligible small businesses pursuant to the requirements of this section and may monitor the compliance of eligible businesses with the terms of an agreement entered into with the authority.

(5) All disbursements of moneys to recipients of financial assistance approved by an organization designated pursuant to subparagraph (1) shall be made by the authority.

(6) All repayments of principal and interest on financial assistance provided under the program shall be remitted to the authority and deposited in the fund.

(7) The authority, with the assistance of an organization designated pursuant to subparagraph (1), may seek the recapture of financial assistance provided pursuant to this section as provided in subsection 4.

c. Financial assistance under the program shall be provided from the fund created in subsection 1.

d. Financial assistance to a small business shall be at least two thousand five hundred dollars, but shall not exceed fifty thousand dollars.

e. The department\*, under the terms of an agreement with the organization designated pursuant to paragraph “b”, shall begin to provide financial assistance from the fund not later than August 1, 2010, and shall to the extent practicable obligate all available moneys in the fund prior to March 31, 2011.

f. A loan made to a small business under the program may be for any period of time, but the terms of such loan shall provide for the repayment of principal and interest prior to the date the moneys in the fund revert pursuant to subsection 1, paragraph “c”, subparagraph (3).

3. A business is eligible to apply for financial assistance under the program if the business meets all of the following criteria at the time of application:

a. The business has thirty-five or fewer full-time equivalent employees.

b. The business is located in Iowa.

c. The business is owned, operated, and actively managed by a resident of Iowa.

d. The business has a business plan and has received assistance in the development stage or the expansion stage from a small business development center or from a qualified public or nonprofit small business consultant as defined by the authority.

e. If a business has been a going concern for two years or more, the business has not been found to be in violation of any environmental or worker safety laws, rules, or regulations.

f. The business only employs individuals legally authorized to work in this state.

g. The business does not engage in the production, depiction, or distribution of obscene material. For purposes of this paragraph, “obscene material” means the same as defined in section 728.1.

h. The business is not in bankruptcy and is not imminently contemplating filing for bankruptcy.

4. Upon approval of the application for financial assistance by the authority or an organization designated pursuant to subsection 2, paragraph “b”, the eligible business shall enter into an agreement with the authority which shall include but not be limited to all of the following provisions:

a. If an eligible business, after receiving financial assistance, does not continue to meet one or more of the criteria for eligibility under subsection 3, except for subsection 3,

paragraph “a”, all or a portion of the financial assistance received is subject to disallowance, recapture, or immediate repayment.

b. If, after receiving financial assistance, an eligible business ceases operations within the state or removes a significant portion of its operations to a location outside of the state, all or a portion of the financial assistance received is subject to disallowance, recapture, or immediate repayment.

5. a. An eligible business shall not receive more than one award of financial assistance under this section.

b. An eligible business that receives financial assistance under this section may subsequently apply for financial assistance under other programs administered by the authority.

c. An eligible business that receives financial assistance under this section shall not use such financial assistance for purposes of meeting payroll obligations to employees.

6. a. The small business development centers shall track the number of referrals for assistance made to the authority for assistance under this section and shall include that number in the small business development center’s annual report to the general assembly.

b. The authority in conjunction with an organization designated pursuant to subsection 2, paragraph “b”, shall by January 15 of each year submit a report on the program administered pursuant to this section to the general assembly. The report shall include information on the number of businesses that receive loans under the program and any other information the authority deems relevant to assessing the success of the program.

7. The authority shall adopt rules pursuant to chapter 17A as necessary to administer the program. The authority may adopt emergency rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph “b”, as necessary for the administration of this section.

2010 Acts, ch 1184, §42, 44; 2011 Acts, ch 118, §87, 89

\*Reference to “department of economic development” probably intended; corrective legislation is pending

Code editor directive applied

## PART 11

### 15.313 Strategic investment fund.

1. a. An Iowa strategic investment fund is created as a revolving fund consisting of any money appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the authority from the federal government or private sources for placement in the fund.

b. Notwithstanding section 8.33, moneys in the strategic investment fund at the end of each fiscal year shall not revert to any other fund but shall remain in the strategic investment fund for expenditure for subsequent fiscal years.

2. The assets of the fund shall be used by the authority to assist in relocation or expansion projects for existing businesses as well as entrepreneurial start-up and expansion projects. Moneys in the fund shall be used for projects designed to meet any of the following purposes:

a. To assist communities in the state by providing financial assistance for small business gap financing, new business opportunities, and new product and entrepreneurial development.

b. To provide financial and technical assistance to early-stage industry companies and entrepreneurs.

c. To provide financial and technical assistance to targeted small businesses as defined in section 15.102.

d. To provide comprehensive management assistance for applicants or recipients of assistance from the fund.

e. To access federal funds available under any federal microloan demonstration program.

f. To provide technical and financial assistance to help persons with disabilities become self-sufficient by establishing or expanding business ventures.

g. To assist businesses in retooling or upgrading production equipment to meet contemporary technology standards.

3. At the beginning of each fiscal year, the board shall establish goals for the strategic investment fund relating to the intended strategic focus for the fiscal year. The director shall report on a monthly basis to the board on the status of the fund. Unobligated and unencumbered moneys remaining in the strategic investment fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

92 Acts, ch 1244, §18; 94 Acts, ch 1119, §2, 3; 96 Acts, ch 1219, §95; 99 Acts, ch 197, §21; 2000 Acts, ch 1230, §14; 2002 Acts, ch 1041, §2; 2003 Acts, ch 71, §4; 2004 Acts, ch 1101, §12; 2008 Acts, ch 1032, §122; 2009 Acts, ch 123, §24; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## PART 13

### 15.327 Definitions.

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

1. "Authority" means the economic development authority created in section 15.105.
  2. "Benefit" has the same meaning as defined in section 15G.101.
  3. "Community" means a city, county, or entity established pursuant to chapter 28E.
  4. "Contractor or subcontractor" means a person who contracts with the eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility of the eligible business.
  5. "Created job" has the same meaning as defined in section 15G.101.
  6. "Eligible business" means a business meeting the conditions of section 15.329.
  7. "Fiscal impact ratio" has the same meaning as defined in section 15G.101.
  8. "Maintenance period completion date" has the same meaning as defined in section 15G.101.
  9. "Program" means the high quality jobs program.
  10. "Project completion date" has the same meaning as defined in section 15G.101.
  11. "Qualifying investment" means a capital investment in real property including the purchase price of land and existing buildings and structures, site preparation, improvements to the real property, building construction, and long-term lease costs. "Qualifying investment" also means a capital investment in depreciable assets.
  12. "Qualifying wage threshold" has the same meaning as defined in section 15G.101.
  13. "Retained job" has the same meaning as defined in section 15G.101.
- 94 Acts, ch 1008, §5; 96 Acts, ch 1185, §1; 96 Acts, ch 1199, §1; 98 Acts, ch 1175, §5; 2003 Acts, ch 145, §286; 2005 Acts, ch 150, §43, 68, 69; 2009 Acts, ch 123, §11; 2011 Acts, ch 118, §55, 56, 89

NEW subsection 1 and former subsections 1 - 4 renumbered as 2 - 5  
Former subsection 5 stricken

### 15.329 Eligible business.

1. To be eligible to receive incentives under this part, a business shall meet all of the following requirements:

a. If the qualifying investment is ten million dollars or more, the community has approved by ordinance or resolution the start-up, location, or expansion of the business for the purpose of receiving the benefits of this part.

b. The business has not closed or substantially reduced operations in one area of this state and relocated substantially the same operations in a community in another area of this state. This paragraph shall not be construed to prohibit a business from expanding its operation in a community if existing operations of a similar nature in this state are not closed or substantially reduced.

c. The business shall create or retain jobs as part of a project, and the jobs created or retained shall meet one of the following qualifying wage thresholds:

(1) If the business is creating jobs, the business shall demonstrate that the jobs will pay at least one hundred percent of the qualifying wage threshold at the start of the project

completion period, at least one hundred thirty percent of the qualifying wage threshold by the project completion date, and at least one hundred thirty percent of the qualifying wage threshold until the maintenance period completion date.

(2) If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least one hundred thirty percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

d. The business shall provide a sufficient package of benefits to each employee holding a created or retained job. The board, at the recommendation of the authority, shall adopt rules determining what constitutes a sufficient package of benefits.

e. The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the authority after calculating the fiscal impact ratio of the project.

f. The business shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.

g. Notwithstanding the qualifying wage threshold requirements in paragraph “c”, if a business is also the recipient of financial assistance under another program administered by the authority, and the other program requires the payment of higher wages than the wages required under this subsection, the business shall be required to pay the higher wages.

2. A business providing a sufficient package of benefits to each employee holding a created or retained job shall qualify for a credit against the qualifying wage threshold requirements described in subsection 1, paragraph “c”. The credit shall be calculated in the manner described in section 15G.112, subsection 4, paragraph “b”.

3. Any business located in a quality jobs enterprise zone is ineligible to receive the economic development incentives under the program.

4. If the authority finds that a business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the business shall not qualify for economic development assistance under this part, unless the authority finds that the violations did not seriously affect public health or safety, or the environment, or if it did, that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether the business is disqualified for economic development assistance under this part, the authority shall be exempt from chapter 17A.

5. The authority shall also consider a variety of factors including but not limited to the following in determining the eligibility of a business to participate in the program:

a. The quality of the jobs to be created or retained. In rating the quality of the jobs, the authority shall place greater emphasis on those jobs that have a higher wage scale, have a lower turnover rate, are full-time or career-type positions, provide comprehensive health benefits, or have other related factors which could be considered to be higher in quality, than to other jobs. Businesses that have wage scales substantially below that of existing Iowa businesses in that area should be rated as providing the lowest quality of jobs and should therefore be given the lowest ranking for providing such assistance.

b. The impact of the proposed project on other businesses in competition with the business being considered for assistance. The authority shall make a good-faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The authority shall make a good-faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created or retained as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created or retained.

c. The economic impact to this state of the proposed project. In measuring the economic impact, the authority shall place greater emphasis on projects which can demonstrate the existence of one or more of the following conditions:

- (1) A business with a greater percentage of sales out-of-state or of import substitution.
- (2) A business with a higher proportion of in-state suppliers.
- (3) A project which would provide greater diversification of the state economy.
- (4) A business with fewer in-state competitors.

- (5) A potential for future job growth.
- (6) A project which is not a retail operation.

6. The authority may waive any of the requirements of this section for good cause shown. 94 Acts, ch 1008, §6; 99 Acts, ch 192, §33; 2005 Acts, ch 150, §44, 68, 69; 2008 Acts, ch 1032, §201; 2009 Acts, ch 82, §14; 2009 Acts, ch 123, §12; 2009 Acts, ch 184, §32; 2011 Acts, ch 118, §87, 89

For aggregate limitations on amount of tax credits, see §15.119  
Code editor directive applied

### 15.330 Agreement.

A business shall enter into an agreement with the authority specifying the requirements that must be met to confirm eligibility pursuant to this part. The authority shall consult with the community during negotiations relating to the agreement. The agreement shall contain, at a minimum, the following provisions:

1. A business that is approved to receive incentives shall, for the length of the agreement, certify annually to the authority the compliance of the business with the requirements of the agreement. If the business receives a local property tax exemption, the business shall also certify annually to the community the compliance of the business with the requirements of the agreement.

2. The repayment of incentives by the business if the business does not meet any of the requirements of this part or the resulting agreement.

3. If a business that is approved to receive incentives under this part experiences a layoff within the state or closes any of its facilities within the state, the authority shall have the discretion to reduce or eliminate some or all of the incentives. If a business has received incentives under this part and experiences a layoff within the state or closes any of its facilities within the state, the business may be subject to repayment of all or a portion of the incentives that it has received.

4. A project completion date, a maintenance period completion date, the number of jobs to be created or retained, or certain other terms and obligations described in section 15G.112, subsection 1, paragraph “d”, as the authority deems necessary in order to make the requirements in project agreements uniform. The authority, with the approval of the board, may adopt rules as necessary for making such requirements uniform. Such rules shall be in compliance with the provisions of this part and with the provisions of chapter 15G.

94 Acts, ch 1008, §7; 2004 Acts, ch 1003, §1, 12; 2005 Acts, ch 150, §45, 68, 69; 2009 Acts, ch 123, §13; 2011 Acts, ch 118, §87, 89

For aggregate limitations on amount of tax credits, see §15.119  
Code editor directive applied

### 15.333 Investment tax credit.

1. An eligible business may claim a tax credit equal to a percentage of the new investment directly related to new jobs created or retained by the location or expansion of an eligible business under the program. The tax credit shall be amortized equally over five calendar years. The tax credit shall be allowed against taxes imposed under chapter 422, division II, III, or V, and against the moneys and credits tax imposed in section 533.329. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust. The percentage shall be determined as provided in section 15.335A. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

2. For purposes of this subsection, “*new investment directly related to new jobs created by the location or expansion of an eligible business under the program*” means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs “e” and “j”, purchased for use in the operation of the eligible business, the purchase price of

which has been depreciated in accordance with generally accepted accounting principles, the purchase price of real property and any buildings and structures located on the real property, and the cost of improvements made to real property which is used in the operation of the eligible business. “*New investment directly related to new jobs created by the location or expansion of an eligible business under the program*” also means the annual base rent paid to a third-party developer by an eligible business for a period not to exceed ten years, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer’s costs to build or renovate the building for the eligible business. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. If, however, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

- a. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one full year after being placed in service.
- b. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two full years after being placed in service.
- c. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three full years after being placed in service.
- d. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four full years after being placed in service.
- e. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five full years after being placed in service.

94 Acts, ch 1008, §10; 99 Acts, ch 172, §1; 2000 Acts, ch 1213, §1, 10; 2001 Acts, ch 123, §1; 2001 Acts, ch 141, §1, 8; 2002 Acts, ch 1119, §5; 2002 Acts, 2nd Ex, ch 1001, §47, 49, 52; 2003 Acts, ch 125, §8; 2003 Acts, ch 145, §286; 2003 Acts, ch 150, §1 – 3; 2004 Acts, ch 1003, §4, 12; 2005 Acts, ch 135, §103; 2005 Acts, ch 150, §48, 68, 69; 2007 Acts, ch 174, §82; 2009 Acts, ch 123, §15; 2010 Acts, ch 1138, §27, 28; 2011 Acts, ch 34, §6; 2011 Acts, ch 118, §85, 89

For aggregate limitations on amount of tax credits, see §15.119

See Code editor’s note on simple harmonization

Subsection 1, paragraph b stricken and former paragraph a redesignated as an unnumbered paragraph

### **15.335 Research activities credit.**

1. a. An eligible business may claim a corporate tax credit for increasing research activities in this state during the period the eligible business is participating in the program.

b. For purposes of this section, “*research activities*” includes the development and deployment of innovative renewable energy generation components manufactured or assembled in this state. For purposes of this section, “*innovative renewable energy generation components*” does not include a component with more than two hundred megawatts of installed effective nameplate capacity.

c. The tax credits for innovative renewable energy generation components shall not exceed two million dollars.

2. a. In the case of an eligible business whose gross revenues do not exceed twenty million dollars per year, the credit equals the sum of the following:

(1) Ten percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Ten percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

b. In the case of an eligible business whose gross revenues exceed twenty million dollars per year, the credit equals the sum of the following:

(1) Three percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Three percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

3. For purposes of subsection 2, the state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

4. a. In lieu of the credit amount computed in subsection 2, an eligible business may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in section 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

b. For purposes of the alternate credit computation method in paragraph "a", the credit percentages applicable to qualified research expenses described in section 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are as follows:

(1) In the case of an eligible business whose gross revenues do not exceed twenty million dollars per year, the credit percentages are seven percent and three percent, respectively.

(2) In the case of an eligible business whose gross revenues exceed twenty million dollars per year, the credit percentages are two and one-tenth percent and nine-tenths percent, respectively.

5. The credit allowed in this section is in addition to the credit authorized in section 422.10 and section 422.33, subsection 5. However, if the alternative credit computation method is used in section 422.10 or section 422.33, subsection 5, the credit allowed in this section shall also be computed using that method.

6. If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

7. a. For purposes of this section, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative simplified credit such amounts are for research conducted within this state.

b. For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2011.

8. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following year.

9. The department of revenue shall by February 15 of each year issue an annual report to the general assembly containing the total amount of all claims made by employers under this section, and the portion of the claims issued as refunds, for all claims processed during the previous calendar year. The report shall contain the name of each claimant for whom a tax credit in excess of five hundred thousand dollars was issued and the amount of the credit received.

94 Acts, ch 1008, §12; 94 Acts, ch 1165, §44; 96 Acts, ch 1199, §4; 97 Acts, ch 135, §1, 9; 98 Acts, ch 1078, §1, 10, 14; 99 Acts, ch 95, §1, 12, 13; 2000 Acts, ch 1146, §1, 9, 11; 2000 Acts, ch 1194, §1, 21; 2001 Acts, ch 127, §1, 9, 10; 2002 Acts, ch 1069, §1, 10, 14; 2003 Acts, ch 139, §1, 11, 12; 2004 Acts, ch 1073, §1; 2005 Acts, ch 24, §1, 10, 11; 2005 Acts, ch 150, §70; 2006 Acts, ch 1140, §1, 10, 11; 2007 Acts, ch 12, §1, 7, 8; 2008 Acts, ch 1011, §1, 9; 2008 Acts, ch 1032, §201; 2009 Acts, ch 171, §1; 2009 Acts, ch 179, §102, 153, 232; 2010 Acts, ch 1138, §7, 8; 2011 Acts, ch 41, §8, 9, 14 – 16

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

For aggregate limitations on amount of tax credits, see §15.119

2010 amendment applies to tax credits awarded on or after July 1, 2010; 2010 Acts, ch 1138, § 8

2011 amendment to subsection 4 takes effect April 12, 2011, and applies retroactively to July 1, 2010, for tax credits awarded on or after that date; 2011 Acts, ch 41, §14, 15

2011 amendment to subsection 7 takes effect April 12, 2011, and applies retroactively to January 1, 2010, for tax years beginning on or after that date; 2011 Acts, ch 41, §14, 16  
Subsections 4 and 7 amended

### **15.335A Tax incentives.**

1. Tax incentives are available to eligible businesses as provided in this section. The incentives are based upon the number of jobs created or retained that pay at least one hundred thirty percent of the qualifying wage threshold as computed pursuant to section 15G.112, subsection 4, and the amount of the qualifying investment made according to the following schedule:

a. The number of jobs is zero and economic activity is furthered by the qualifying investment and the amount of the qualifying investment is one of the following:

(1) Less than one hundred thousand dollars, then the tax incentive is the investment tax credit of up to one percent.

(2) At least one hundred thousand dollars but less than five hundred thousand dollars, then the tax incentives are the investment tax credit of up to one percent and the sales tax refund.

(3) At least five hundred thousand dollars, then the tax incentives are the investment tax credit of up to one percent, the sales tax refund, and the additional research and development tax credit.

b. The number of jobs is one but not more than five and the amount of the qualifying investment is one of the following:

(1) Less than one hundred thousand dollars, then the tax incentive is the investment tax credit of up to two percent.

(2) At least one hundred thousand dollars but less than five hundred thousand dollars, then the tax incentives are the investment tax credit of up to two percent and the sales tax refund.

(3) At least five hundred thousand dollars, then the tax incentives are the investment tax credit of up to two percent, the sales tax refund, and the additional research and development tax credit.

c. The number of jobs is six but not more than ten and the amount of the qualifying investment is one of the following:

(1) Less than one hundred thousand dollars, then the tax incentive is the investment tax credit of up to three percent.

(2) At least one hundred thousand dollars but less than five hundred thousand dollars, then the tax incentives are the investment tax credit of up to three percent and the sales tax refund.

(3) At least five hundred thousand dollars, then the tax incentives are the investment tax credit of up to three percent, the sales tax refund, and the additional research and development tax credit.

d. The number of jobs is eleven but not more than fifteen and the amount of the qualifying investment is one of the following:

(1) Less than one hundred thousand dollars, then the tax incentive is the investment tax credit of up to four percent.

(2) At least one hundred thousand dollars but less than five hundred thousand dollars, then the tax incentives are the investment tax credit of up to four percent and the sales tax refund.

(3) At least five hundred thousand dollars, then the tax incentives are the investment tax credit of up to four percent, the sales tax refund, and the additional research and development tax credit.

e. The number of jobs is sixteen or more and the amount of the qualifying investment is one of the following:

(1) Less than one hundred thousand dollars, then the tax incentive is the investment tax credit of up to five percent.

(2) At least one hundred thousand dollars but less than five hundred thousand dollars,

then the tax incentives are the investment tax credit of up to five percent and the sales tax refund.

(3) At least five hundred thousand dollars, then the tax incentives are the investment tax credit of up to five percent, the sales tax refund, and the additional research and development tax credit.

f. The number of jobs is thirty-one but not more than forty and the amount of the qualifying investment is at least ten million dollars, then the tax incentives are the local property tax exemption, the investment tax credit of up to six percent, the sales tax refund, and the additional research and development tax credit.

g. The number of jobs is forty-one but not more than sixty and the amount of the qualifying investment is at least ten million dollars, then the tax incentives are the local property tax exemption, the investment tax credit of up to seven percent, the sales tax refund, and the additional research and development tax credit.

h. The number of jobs is sixty-one but not more than eighty and the amount of the qualifying investment is at least ten million dollars, then the tax incentives are the local property tax exemption, the investment tax credit of up to eight percent, the sales tax refund, and the additional research and development tax credit.

i. The number of jobs is eighty-one but not more than one hundred and the amount of the qualifying investment is at least ten million dollars, then the tax incentives are the local property tax exemption, the investment tax credit of up to nine percent, the sales tax refund, and the additional research and development tax credit.

j. The number of jobs is at least one hundred one and the amount of the qualifying investment is at least ten million dollars, then the tax incentives are the local property tax exemption, the investment tax credit of up to ten percent, the sales tax refund, and the additional research and development tax credit.

2. For purposes of this section:

a. “*Additional research and development tax credit*” means the research activities credit as provided under section 15.335.

b. “*Benefits*” means the same as defined in section 15G.101.

c. “*County wage*” means the same as defined in section 15G.101.

d. “*Investment tax credit*” means the investment tax credit or the insurance premium tax credit as provided under section 15.333 or 15.333A, respectively.

e. “*Local property tax exemption*” means the property tax exemption as provided under section 15.332.

f. “*Qualifying wage threshold*” means the same as defined in section 15G.101.

g. “*Regional wage*” means the same as defined in section 15G.101.

h. “*Sales tax refund*” means the sales and use tax refund as provided under section 15.331A or the corporate tax credit for certain sales taxes paid by third-party developers as provided under section 15.331C.

3. A community may apply to the economic development authority for a project-specific waiver from the qualifying wage threshold requirement provided in subsection 1 in order to seek tax incentives for an eligible business. The authority may grant a project-specific waiver from the qualifying wage threshold requirement in subsection 1 for the remainder of a calendar year, based on county wage or regional wage calculations brought forth by the applicant county including but not limited to any of the following:

a. The county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.

b. The regional wage calculated without wage data from up to two adjacent counties.

c. The county wage calculated without wage data from the largest city in the county.

d. A qualifying wage guideline for a specific project based upon unusual economic circumstances present in the city or county.

e. The annualized, average hourly wage paid by all businesses in the county located outside the largest city of the county.

f. The annualized, average hourly wage paid by all businesses other than the largest employer in the entire county.

4. Each calendar year, the authority shall not approve more than three million six hundred

thousand dollars worth of investment tax credits for projects with qualifying investments of less than one million dollars.

5. The authority shall negotiate the amount of tax incentives provided to an applicant under the program in accordance with this section and section 15G.112, as applicable.

2005 Acts, ch 150, §50, 69; 2008 Acts, ch 1191, §160; 2009 Acts, ch 123, §16; 2010 Acts, ch 1009, §1, 4; 2011 Acts, ch 118, §84, 85, 89

For aggregate limitations on amount of tax credits, see §15.119

Code editor directives applied

## PART 15

### 15.342A Workforce development fund account.

A workforce development fund account is established in the office of the treasurer of state under the control of the authority. The account shall receive funds pursuant to section 422.16A up to a maximum of four million dollars per year. The account shall also receive funds pursuant to section 15.251 with no dollar limitation.

96 Acts, ch 1180, §1; 99 Acts, ch 183, §2; 2000 Acts, ch 1196, §1, 10; 2000 Acts, ch 1230, §15, 35; 2001 Acts, ch 188, §21; 2011 Acts, ch 118, §87, 89

Code editor directive applied

### 15.343 Workforce development fund.

1. a. A workforce development fund is created as a revolving fund in the state treasury under the control of the authority consisting of any moneys appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the authority from the federal government or private sources for placement in the fund. The fund shall also include moneys appropriated to the fund from the workforce development fund account established in section 15.342A.

b. Notwithstanding section 8.33, moneys in the workforce development fund at the end of each fiscal year shall not revert to any other fund but shall remain in the workforce development fund for expenditure for subsequent fiscal years.

2. The assets of the fund shall be used by the authority for the following programs and purposes:

a. Training and retraining programs for targeted industries.

b. Projects under chapter 260F. The authority shall require a match from all businesses participating in a training project under chapter 260F.

c. Apprenticeship programs under section 260C.44, including new or statewide building trades apprenticeship programs.

d. Innovative skill development activities.

e. To cover the costs of the administration of workforce development programs and services available through the authority. A portion of these funds may be used to support efforts by the community colleges to provide workforce services to Iowa employers.

3. Moneys in the workforce development fund shall be allocated as follows:

a. Three million dollars shall be used for purposes provided in section 260F.6.

b. One million dollars shall be used for purposes provided in section 260F.6B.

95 Acts, ch 184, §3; 96 Acts, ch 1180, §2, 4 – 6; 96 Acts, ch 1186, §5 – 7; 99 Acts, ch 183, §3; 2000 Acts, ch 1230, §16; 2001 Acts, ch 188, §22; 2003 Acts, ch 35, §45, 49; 2008 Acts, ch 1032, §201; 2008 Acts, ch 1122, §10, 11; 2011 Acts, ch 118, §87, 89

Code editor directive applied

### 15.344 Common system — assessment and tracking.

The authority shall use information from the customer tracking system administered by the department of workforce development under section 84A.5 to determine the economic impact of the programs. To the extent possible, the authority shall track individuals and businesses who have received assistance or services through the fund to determine whether

the assistance or services have resulted in increased wages paid to the individuals or paid by the businesses.

96 Acts, ch 1180, §7; 2011 Acts, ch 118, §87, 89  
Code editor directive applied

## PART 18

### 15.368 World food prize award and support.

1. Commencing with the fiscal year beginning July 1, 2009, there is annually appropriated from the general fund of the state to the authority one million dollars for the support of the world food prize award.

2. The Iowa state capitol is designated as the primary location for the annual ceremony to award the world food prize.

2008 Acts, ch 1191, §30; 2011 Acts, ch 118, §87, 89  
Appropriation of \$650,000 for fiscal year beginning July 1, 2010; 2010 Acts, ch 1188, §3  
Appropriation of \$500,000 for fiscal year beginning July 1, 2011; 2011 Acts, ch 130, §3, 71  
Appropriation of \$250,000 for fiscal year beginning July 1, 2012; 2011 Acts, ch 130, §50, 71  
Code editor directive applied

## PART 21

### 15.393 Film, television, and video project promotion program — tax credits and income exclusion.

1. The authority shall establish and administer a film, television, and video project promotion program that provides for the registration of projects to be shot on location in the state. A project that is registered under the program is entitled to the assistance provided in subsection 2. A fee may be charged for registering. The amount of the fee charged for registering shall be determined by the authority by rule. Registration fees collected by the authority under this section shall be used to administer the program. The authority shall not register a project unless the authority determines that all of the following criteria are met:

a. The project is a legitimate effort to produce an entire film, television, or video episode or a film, television, or video segment in the state.

b. The project will include expenditures of at least one hundred thousand dollars in the state and have an economic impact on the economy of the state or locality sufficient to justify assistance under the program.

c. The project will further tourism, economic development, and population retention or growth in the state or locality.

d. Other criteria established by rule relating to the economic impact and promotional aspects of the project on the state or locality.

2. A project registered with the authority under the program is eligible for the following assistance:

a. (1) For tax years beginning on or after January 1, 2007, a qualified expenditure tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for a portion of a taxpayer's qualified expenditures in a project registered under the program. The tax credit shall equal an amount not to exceed twenty-five percent of the qualified expenditures on a project. The authority may negotiate the amount of the tax credit. An individual may claim a tax credit under this paragraph "a" of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

(2) A qualified expenditure by a taxpayer is a payment to an Iowa resident or an Iowa-based business for the sale, rental, or furnishing of tangible personal property or for services directly related to the registered project including but not limited to aircraft, vehicles, equipment, materials, supplies, accounting, animals and animal care, artistic and design services, graphics, construction, data and information services, delivery and pickup services, labor and personnel, lighting, makeup and hairdressing, film, music, photography, sound, video and related services, printing, research, site fees and rental, travel related to Iowa distant locations, trash removal and cleanup, and wardrobe.

(a) For purposes of this subparagraph, “*labor and personnel*” includes compensation paid to the principal producer, principal director, and principal cast members if the principal producer, principal director, or principal cast member is an Iowa resident or an Iowa-based business, and if the compensation paid meets one of the following conditions:

(i) If the qualified expenditures are at least ten million dollars but less than twenty million dollars, the compensation paid to each principal producer, principal director, and principal cast member does not exceed two hundred fifty thousand dollars each.

(ii) If the qualified expenditures are at least twenty million dollars, the compensation paid to each principal producer, principal director, and principal cast member does not exceed one million dollars each.

(b) For purposes of this subparagraph, “*labor and personnel*” includes compensation paid to personnel other than the principal producer, principal director, or principal cast members if the compensation paid meets one of the following conditions:

(i) If the qualified expenditures are less than ten million dollars, the compensation paid to labor and personnel other than the principal producer, the principal director, and principal cast members, does not exceed one hundred fifty thousand dollars each.

(ii) If the qualified expenditures are at least ten million dollars but less than twenty million dollars, the compensation paid to labor and personnel other than the principal producer, the principal director, and the principal cast members, does not exceed two hundred thousand dollars each.

(iii) If the qualified expenditures are at least twenty million dollars, the compensation paid to labor and personnel other than the principal producer, the principal director, and the principal cast members, does not exceed three hundred thousand dollars each.

(c) The department of revenue, in consultation with the economic development authority, shall by rule establish a list of eligible and negotiable expenditures.

(3) After verifying the eligibility for a tax credit under this paragraph “a”, the economic development authority shall issue a film, television, and video project promotion program tax credit certificate to be attached to the person’s tax return. The tax credit certificate shall contain the taxpayer’s name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred. Tax credit certificates issued under this paragraph “a” may be transferred to any person or entity. Within ninety days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee’s name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within thirty days of receiving the transferred tax credit certificate and the transferee’s statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the economic development authority shall not be transferable. A tax credit shall not be claimed by a transferee under this paragraph “a” until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for any tax year the original transferor could have claimed

the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329.

(4) A taxpayer claiming a tax credit under this paragraph “a”, a business in which such taxpayer has an equity interest, and a business in which such taxpayer participates in its management is not eligible to receive the adjusted gross income reduction under paragraph “c”.

b. (1) For tax years beginning on or after January 1, 2007, an investment tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for a portion of a taxpayer’s investment in a project registered under the program. The tax credit shall equal an amount not to exceed twenty-five percent of the qualified expenditures on the project. The authority may negotiate the amount of the tax credit. An individual may claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer’s liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. A taxpayer shall not claim a tax credit under this paragraph “b” for qualified expenditures for which a tax credit is claimed under paragraph “a”.

(2) After verifying the eligibility for a tax credit under this paragraph “b”, the economic development authority shall issue a film, television, and video project promotion program tax credit certificate to be attached to the person’s tax return. The tax credit certificate shall contain the taxpayer’s name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred. Tax credit certificates issued under this paragraph “b” may be transferred to any person or entity. Within ninety days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee’s name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within thirty days of receiving the transferred tax credit certificate and the transferee’s statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the economic development authority shall not be transferable. A tax credit shall not be claimed by a transferee under this paragraph “b” until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329.

c. For the tax year in which a qualified expenditure occurred, and for the ensuing three tax years, a taxpayer may claim a reduction in adjusted gross income not to exceed in a tax

year twenty-five percent of the amount of the qualified expenditure for purposes of taxes imposed in chapter 422, divisions II and III, for payments received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under this section which meets the criteria of a qualified expenditure under paragraph “a”, subparagraph (2).

3. The authority shall promote the program and the assistance available under the program on an internet website.

4. A project that depicts or describes any obscene material, as defined in section 728.1, shall not be eligible to receive assistance under this section.

5. The authority shall not register a new project pursuant to this section until July 1, 2013. 2007 Acts, ch 162, §3, 13; 2007 Acts, ch 174, §99; 2008 Acts, ch 1032, §4, 5; 2008 Acts, ch 1122, §3; 2009 Acts, ch 109, §1 – 6; 2010 Acts, ch 1138, §5, 6; 2011 Acts, ch 118, §§5, 89

For aggregate limitations on amount of tax credits, see §15.119

2009 amendments to this section apply to projects registered on or after July 1, 2009; 2009 Acts, ch 109, §6

Code editor directive applied

## PART 22

**15.401 Renewable fuels.** Repealed by 2008 Acts, ch 1169, § 26, 30. See § 159A.14.  
Section not amended; internal reference change applied

## PART 23

### **15.411 Targeted industries development — financial assistance.**

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

a. “*Internship*” means temporary employment of a student that focuses on providing the student with work experience in the student’s field of study.

b. “*Targeted industries*” means the industries of advanced manufacturing, biosciences, and information technology.

2. The authority shall, upon board approval, contract with service providers on a case-by-case basis for services related to statewide commercialization development in the targeted industries. Services provided shall include all of the following:

a. Assistance provided directly to businesses by experienced serial entrepreneurs for all of the following activities:

- (1) Business plan development.
- (2) Due diligence.
- (3) Market assessments.
- (4) Technology assessments.
- (5) Other planning activities.

b. Operation and coordination of various available competitive seed and prototype development funds.

c. Connecting businesses to private angel investors and the venture capital community.

d. Assistance in obtaining access to an experienced pool of managers and operations talent that can staff, mentor, or advise start-up enterprises.

e. Support and advice for accessing sources of early stage financing.

3. The authority shall establish and administer a program to provide financial and technical assistance to encourage prototype and concept development activities that have a clear potential to lead to commercially viable products or services within a reasonable period of time in the targeted industries. Financial assistance shall be awarded on a per project basis upon board approval. The amount of financial assistance available for a single project shall not exceed one hundred fifty thousand dollars. In order to receive financial assistance, an applicant must demonstrate the ability to secure one dollar of nonstate moneys for every two dollars received from the authority.

4. The authority shall, upon board approval, establish and administer a program to

provide financial assistance for projects designed to encourage collaboration between commercial users and developers of information technology in the state for the purpose of commercializing existing software and applications technologies. Financial assistance shall not exceed one hundred thousand dollars per project. In order to receive financial assistance, an applicant must demonstrate the ability to secure two dollars of nonstate moneys for every one dollar received from the authority. Financial assistance shall be awarded to projects that will result in technologies being developed as commercial products for sale by Iowa companies rather than as custom applications for proprietary use by a participating firm.

5. The authority shall, upon board approval, establish and administer a program to provide financial assistance to businesses or departments of businesses engaged in the delivery of information technology services in the state for the purpose of upgrading the high-level technical skills of existing employees. The amount of financial assistance shall not exceed twenty-five thousand dollars for any business site. In order to receive financial assistance, an applicant must demonstrate the ability to secure two dollars of nonstate moneys for every one dollar received from the authority.

6. The authority shall, upon board approval, establish and administer a targeted industries internship program for Iowa students. For purposes of this subsection, “*Iowa student*” means a student of an Iowa community college, private college, or institution of higher learning under the control of the state board of regents, or a student who graduated from high school in Iowa but now attends an institution of higher learning outside the state of Iowa. The purpose of the program is to link Iowa students to small and medium sized Iowa firms in the targeted industries through internship opportunities. An Iowa employer may receive financial assistance in an amount of one dollar for every two dollars paid by the employer to an intern. The amount of financial assistance shall not exceed three thousand one hundred dollars for any single internship, or nine thousand three hundred dollars for any single employer. In order to be eligible to receive financial assistance under this subsection, the employer must have five hundred or fewer employees and must be engaged in a targeted industry. The authority shall encourage youth who reside in economically distressed areas, youth adjudicated to have committed a delinquent act, and youth transitioning out of foster care to participate in the targeted industries internship program.

7. The economic development authority shall work with the department of workforce development to create a statewide supplier capacity and product database to assist the economic development authority in linking suppliers to Iowa-based companies. The economic development authority may procure technical assistance for the creation of the database from a third party through a request for proposals process.

8. The technology commercialization committee created pursuant to section 15.116 shall review all applications for financial assistance and requests for proposals pursuant to this section and make recommendations to the board.

9. In each fiscal year, the authority may transfer additional moneys that become available to the authority from sources such as loan repayments or recaptures of awards from federal economic stimulus funds to the innovation and commercialization development fund created in section 15.412, provided the authority spends those moneys for the implementation of the recommendations included in the separate consultant reports on bioscience, advanced manufacturing, information technology, and entrepreneurship submitted to the department\* in calendar years 2004, 2005, and 2006.

10. The board shall adopt rules pursuant to chapter 17A necessary for the administration of this section.

2007 Acts, ch 122, §1; 2008 Acts, ch 1122, §17 – 19; 2009 Acts, ch 82, §1; 2010 Acts, ch 1009, §2, 4; 2011 Acts, ch 118, §85, 89

\*Department of economic development\* probably intended; corrective legislation is pending  
Code editor directive applied

#### **15.412 Innovation and commercialization development fund.**

1. a. An innovation and commercialization development fund is created in the state treasury under the control of the authority. The fund shall consist of moneys appropriated

to the authority and any other moneys available to, obtained, or accepted by the authority for placement in the fund.

b. Payments of interest, repayments of moneys loaned pursuant to this section, and recaptures of financial assistance shall be credited to the fund. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.

2. Moneys in the fund are appropriated to the authority and, with the approval of the board, shall be used to facilitate agreements, enhance commercialization in the targeted industries, and increase the availability of skilled workers within the targeted industries.

3. Moneys in the fund, with the approval of the board, may also be used for the following purposes:

- a. For assistance to entities providing student internship opportunities.
- b. For increasing career awareness training.
- c. For recruiting management talent.
- d. For assistance to entities engaged in prototype and concept development activities.
- e. For developing a statewide commercialization network.
- f. For deploying and maintaining an Iowa entrepreneur website.
- g. For funding asset mapping and supply chain initiatives, including for identifying methods of supporting lean manufacturing practices or processes.
- h. For information technology training.
- i. For networking events to facilitate the transfer of technology among researchers and industries.
- j. For funding student competition programs.
- k. For the purchase of advanced equipment and software at Iowa community colleges in order to support training and coursework related to the targeted industries.

2009 Acts, ch 82, §2; 2011 Acts, ch 118, §87, 89

Code editor directive applied

## PART 24

### **15.421 Generation Iowa commission.** Repealed by 2011 Acts, ch 122, § 13, 14.

With respect to proposed amendments to this section by 2011 Acts, ch 118, § 85, 89, see Code editor's note on simple harmonization

## CHAPTER 15A

### USE OF PUBLIC FUNDS TO AID ECONOMIC DEVELOPMENT

Legislative findings; 87 Acts, ch 183, §1; 94 Acts, ch 1008, §1

For provisions regarding transition of department of economic development employees to the economic development authority and limitations on the Iowa innovation corporation's employment of former department employees, see 2011 Acts, ch 118, §19

For provisions regarding continuation of financial assistance by the economic development authority, transfer of funds under the control of the department of economic development to the economic development authority, continuation of licenses, permits, or contracts by the economic development authority, continuation of financial assistance awards under the grow Iowa values financial assistance program, and availability of federal funds to employ certain personnel, see 2011 Acts, ch 118, §20, 89

For provisions regarding continuing validity of department of economic development administrative rules, see 2011 Acts, ch 118, §18

#### **15A.7 Supplemental new jobs credit from withholding.**

In order to promote the creation of additional high-quality new jobs within the state, an agreement under section 260E.3 may include a provision for a supplemental new jobs credit

from withholding from jobs created under the agreement. A provision in an agreement for which a supplemental credit from withholding is included shall provide for the following:

1. That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the employer pursuant to section 422.16 is authorized to fund the program services for the additional project.

2. That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

3. That the employer shall agree to pay wages for the jobs for which the credit is taken of at least the county wage or the regional wage, as calculated by the authority pursuant to section 15G.112, subsection 3, whichever is lower. Eligibility for the supplemental credit shall be based on a one-time determination of starting wages by the community college.

4. To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including, but not limited to, providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this section are in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

96 Acts, ch 1180, §8; 97 Acts, ch 23, §6; 2002 Acts, ch 1050, §3; 2009 Acts, ch 123, §25; 2011 Acts, ch 118, §87, 89

Code editor directive applied

### **15A.9 Quality jobs enterprise zone — state assistance.**

#### *1. Findings — zone designation.*

a. The general assembly finds and declares that the designation of a quality jobs enterprise zone or zones and the provision of economic development assistance within the zone or zones are necessary to diversify the Iowa economy, enhance opportunities for Iowans to obtain quality industrial jobs, and provide significant economic benefits to the state through the expansion of Iowa's economy. Establishment of the quality jobs enterprise zone or zones and the economic development assistance provided by the state or a local community will be for the well-being and benefit of the residents of the state and will be for a public purpose.

b. In order to assist a community or communities located within the state to secure new industrial manufacturing jobs, the state of Iowa makes economic development assistance available within the zone or zones, and the department of economic development shall designate a site or sites, which shall not be larger than two thousand five hundred acres, within thirty days of March 4, 1994, as a quality jobs enterprise zone or zones for the purpose of attracting a primary business and supporting businesses to locate facilities within the state.

The primary business or a supporting business shall not be prohibited from participating in or receiving other economic development programs or services or electing to utilize other tax provisions to the extent authorized elsewhere by law.

#### *2. Definitions. As used in this section:*

a. "*Contractor or subcontractor*" means a person who contracts with the primary business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the zone, of the primary business or a supporting business.

b. "*Primary business*" means a business which pays its full-time production employees at the facility average cash compensation, which shall not include the cost of the business's contribution to retirement or health benefit plans, equating to fifteen dollars per hour worked by the end of the second full year of operation following project completion, and which provides the department of economic development within thirty days of March 4, 1994, with notice of its intent to develop and operate a new manufacturing facility on a specific location within the state, including the legal description of the site which shall not contain more than two thousand five hundred acres, to invest at least two hundred fifty million dollars in the facility, and to commence construction of the facility by December 31,

1994, providing all necessary permits have been issued and zoning changes made in time for construction to begin by that date. The business shall also guarantee that it will create at least three hundred full-time jobs at the facility. The headquarters of the primary business need not be within the zone.

c. “*Project completion*” means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the primary business within the zone is at least fifty percent of the initial design capacity of the facility. The primary business shall inform the department of revenue in writing within two weeks of project completion.

d. “*Supporting business*” means a business under contract with the primary business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the zone and the revenue from fulfilling the contract with the primary business shall constitute at least seventy-five percent of the revenue generated by the business from all activities undertaken from the facility within the zone.

e. “*Zone or zones*” means a quality jobs enterprise zone or zones.

### 3. *New jobs credit.*

a. At the request of the primary business or a supporting business, an agreement authorizing a supplemental new jobs credit from withholding from jobs within the zone may be entered into between the department of revenue, a community college, and the primary business or a supporting business. The agreement shall be for program services for an additional job training project, as defined in chapter 260E. The agreement shall provide for the following:

(1) That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the primary business or a supporting business pursuant to section 422.16 is authorized to fund the program services for the additional project.

(2) That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

(3) That the community college shall not be allowed any expenses for administering the additional project except those expenses which are directly attributable to the additional project and which are in excess of the expenses allowed for the project under chapter 260E.

b. To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including, but not limited to, providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this subsection is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

### 4. *Investment tax credit.*

a. The primary business and a supporting business shall be entitled to a corporate tax credit equal to ten percent of the new investment made within the zone by the primary business or a supporting business prior to project completion. A credit in excess of the tax liability for the tax year may be credited to the tax liability for the following twenty years or until depleted, whichever comes first.

b. For purposes of this section, “*new investment made within the zone*” means the capitalized cost of all real and personal property, including buildings and other improvements to real estate, purchased or otherwise acquired or relocated to the zone for use in the operation of the primary business or a supporting business within the zone. New investment in the zone does not include land, intangible property, or furniture and furnishings. The capitalized cost of property shall for the purposes of this section be determined in accordance with generally accepted accounting principles.

### 5. *Property tax exemption.*

a. All property, as defined in former section 427A.1, subsection 1, paragraphs “e” and “j”, Code 1993, used by the primary business or a supporting business and located within the

zone, shall be exempt from property taxation for a period of twenty years beginning with the year it is first assessed for taxation. In order to be eligible for this exemption, the property shall be acquired or leased by the primary business or a supporting business or relocated by the primary business or a supporting business to the zone from outside the state prior to project completion.

b. Property which is exempt for property tax purposes under this subsection is eligible for the sales and use tax exemption under section 423.3, subsection 47, notwithstanding that subsection or any other provision of the Code to the contrary.

6. *Sales, services, and use tax refund.* Taxes paid pursuant to chapter 423 on the sales price or rental price of property purchased or rented by the primary business or a supporting business for use by the primary business or a supporting business within the zone or on gas, electricity, water, and sewer utility services prior to project completion shall be refunded to the primary business or supporting business if the item was purchased or the service was performed or received prior to project completion. Claims under this section shall be submitted on forms provided by the department of revenue not later than six months after project completion. The refund in this subsection shall not apply to furniture or furnishings, or intangible property.

7. *Sales, services, and use tax refund — contractor or subcontractor.*

a. The primary business or a supporting business shall be entitled to a refund of the sales and use taxes paid under chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the zone of the primary business or a supporting business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

b. To receive the refund, a claim shall be filed by the primary business or a supporting business with the department of revenue as follows:

(1) The contractor or subcontractor shall state under oath, on forms provided by the department, the amount of the sales of goods, wares, or merchandise or services rendered, furnished, or performed including water, sewer, gas, and electric utility services for use in the zone upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the primary business or supporting business before final settlement is made.

(2) The primary business or a supporting business shall, not more than six months after project completion, make application to the department for any refund of the amount of the sales and use taxes paid pursuant to chapter 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services. The application shall be made in the manner and upon forms to be provided by the department, and the department shall audit the claim and, if approved, issue a warrant to the primary business or supporting business in the amount of the sales or use tax which has been paid to the state of Iowa under a contract. A claim filed by the primary business or a supporting business in accordance with this subsection shall not be denied by reason of a limitation provision set forth in chapter 421, 422, or 423.

c. A contractor or subcontractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition is liable for the payment of the tax and any applicable penalty and interest.

8. *Corporate tax research credit.* A corporate tax credit shall be available to the primary business or a supporting business for increasing research activities in this state within the zone.

a. (1) The credit equals the sum of the following:

(a) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(b) Thirteen percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) The state's apportioned share of the qualifying expenditures for increasing research

activities is a percent equal to the ratio of qualified research expenditures in this state within the zone to total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph “a”, subparagraph (1), subparagraph division (a), a business may elect to compute the credit amount for qualified research expenses incurred in this state within the zone in a manner consistent with the alternative simplified credit described in section 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer’s federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph “b”, the credit percentages applicable to qualified research expenses described in section 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are as follows:

(1) In the case of an eligible business whose gross revenues do not exceed twenty million dollars per year, the credit percentages are seven percent and three percent, respectively.

(2) In the case of an eligible business whose gross revenues exceed twenty million dollars per year, the credit percentages are two and one-tenths percent and nine-tenths percent, respectively.

d. Any credit in excess of the tax liability for the tax year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, the primary business or a supporting business may elect to have the overpayment shown on its final return credited to its tax liability for the following tax year.

e. (1) For the purposes of this subsection, “*base amount*”, “*basic research payment*”, and “*qualified research expense*” mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative simplified credit such amounts are for research conducted within this state within the zone.

(2) For purposes of this subsection, “*Internal Revenue Code*” means the Internal Revenue Code in effect on January 1, 2011.

f. The credit authorized in this subsection is in lieu of the credit authorized in section 422.10 and section 422.33, subsection 5.

9. *Exemption from land ownership restrictions for nonresident aliens.*

a. The primary business and a supporting business, to the extent the primary business or the supporting business is not actively engaged in farming within the zone, may acquire, own, and lease land in the zone, notwithstanding the provisions of sections 9H.4, 9H.5, and 9I.3, and shall be exempt from the requirements of section 9I.4. The primary business and supporting business shall comply with the remaining provisions of chapters 9H and 9I to the extent they do not conflict with this subsection.

b. “*Actively engaged in farming*” means any of the following:

(1) Inspecting agricultural production activities within the zone periodically and furnishing at least half of the value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in making management decisions substantially contributing to or affecting the success of the farm operations within the zone.

(3) Performing physical work which significantly contributes to crop or livestock production.

10. *Limitation on assistance.* Economic development assistance under subsections 3 through 9 shall only be available to the primary business or a supporting business. However, if the economic development authority finds that a primary business or a supporting business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the primary business or supporting business shall not qualify for economic development assistance under subsections 3 through 9, unless the economic development authority finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether a

primary business or a supporting business is eligible for economic development assistance under subsections 3 through 9, the economic development authority shall be exempt from chapter 17A.

94 Acts, ch 1008, §17; 95 Acts, ch 152, §1, 7; 96 Acts, ch 1166, §1, 4; 97 Acts, ch 135, §2, 9; 98 Acts, ch 1078, §2, 10, 14; 99 Acts, ch 95, §2, 12, 13; 2000 Acts, ch 1146, §2, 9, 11; 2000 Acts, ch 1194, §2, 21; 2001 Acts, ch 127, §2, 9, 10; 2002 Acts, ch 1050, §4; 2002 Acts, ch 1069, §2, 10, 14; 2003 Acts, ch 35, §26, 49; 2003 Acts, ch 139, §2; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §154, 205; 2004 Acts, ch 1073, §2; 2005 Acts, ch 24, §2, 10, 11; 2006 Acts, ch 1010, §8; 2006 Acts, ch 1140, §2, 10, 11; 2007 Acts, ch 12, §2, 7, 8; 2008 Acts, ch 1011, §2, 9; 2008 Acts, ch 1032, §126, 201; 2009 Acts, ch 41, §263; 2009 Acts, ch 179, §103, 153; 2011 Acts, ch 41, §10, 14, 15; 2011 Acts, ch 118, §85, 89

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

For aggregate limitations on amount of tax credits, see §15.119

2011 amendment to subsection 8 takes effect April 12, 2011, and applies retroactively to July 1, 2010, for tax credits awarded on or after that date; 2011 Acts, ch 41, §14, 15

Code editor directive applied

Subsection 8, paragraphs b, c, and e amended

## CHAPTER 15E

### DEVELOPMENT ACTIVITIES

For provisions regarding transition of department of economic development employees to the economic development authority and limitations on the Iowa innovation corporation's employment of former department employees, see 2011 Acts, ch 118, §19

For provisions regarding continuation of financial assistance by the economic development authority, transfer of funds under the control of the department of economic development to the economic development authority, continuation of licenses, permits, or contracts by the economic development authority, continuation of financial assistance awards under the grow Iowa values financial assistance program, and availability of federal funds to employ certain personnel, see 2011 Acts, ch 118, §20, 89

For provisions regarding continuing validity of department of economic development administrative rules, see 2011 Acts, ch 118, §18

### DIVISION I

#### GENERAL PROVISIONS

#### **15E.1 Definition.**

As used in this chapter, unless the context otherwise requires, “*authority*” means the economic development authority created in section 15.105.

2002 Acts, ch 1119, §6; 2011 Acts, ch 118, §57, 89

Section amended

### DIVISION III

#### REGULATORY INFORMATION AND ASSISTANCE

#### **15E.17 Regulatory information service.**

1. The economic development authority shall provide a regulatory information service. The purpose of the service shall be to provide a center of information where a person interested in establishing a commercial facility or engaging in a commercial activity may be informed of any registration, license, or other approval of a state regulatory agency that is

required for that facility or activity or of the existence of standards, criteria, or requirements which the laws of this state require that facility or activity to meet.

2. Each state agency which requires a permit, license, or other regulatory approval or maintains standards or criteria with which an activity or facility must comply shall inform the economic development authority of the following:

- a. The activity or facility that is subject to regulation.
- b. The existence of any threshold levels which would exempt the activity or facility from regulation.
- c. The nature of the regulatory program.
- d. The amount of any fees.
- e. How to apply for any permits or regulatory approvals.
- f. A brief statement of the purpose of requiring the permit or regulatory approval or requiring compliance with the standards or criteria.

3. Each state agency shall promptly inform the economic development authority of any changes in the information provided under subsection 2 or the establishment of a new regulatory program. The information provided to or disseminated by the authority shall not be binding upon the regulatory program of a state agency; however, a person shall not be subject to the imposition of a penalty for failure to comply with a regulatory program if the person demonstrates that the person relied upon information provided by the authority indicating compliance was not required and either ceases the activity upon notification by the regulatory agency or brings the activity or facility into compliance.

4. Subsections 2 and 3 do not apply to the following:
  - a. The utilities division of the department of commerce insofar as the information relates to public utilities.
  - b. The banking division of the department of commerce.
  - c. The credit union division of the department of commerce.

[82 Acts, ch 1099, §1]

C83, §28.17

C93, §15E.17

2008 Acts, ch 1031, §14; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **15E.18 Site development consultations — certificates of readiness.**

1. a. The authority shall consult with local governments and local economic development officials in regard to site development techniques. For purposes of this section, “*site development techniques*” include environmental evaluations, property and wetland delineation, and historical evaluations.

b. The authority may charge a fee for providing site development consultations. The fee shall not exceed the reasonable cost to the authority of providing the consultations. The amount of any fees collected by the authority shall be deposited in the general fund of the state.

2. a. A local government or local economic development official involved with the development of a site may apply to the authority for a certificate of readiness verifying that the site is ready for development.

b. The authority shall develop criteria for evaluating various types of sites in order to determine whether a particular site is ready for development based on the site’s individual circumstances and the economic development goals of the applicant.

c. The authority shall review applications for certificates of readiness and may issue a certificate of readiness to any site that meets the criteria developed under paragraph “b”.

3. The authority shall adopt rules pursuant to chapter 17A for the implementation of this section.

2003 Acts, ch 158, §1; 2003 Acts, 1st Ex, ch 1, §130, 133

[2003 Acts, 1st Ex, ch 1, §130, 133 amendments to section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2010 Acts, ch 1184, §36; 2011 Acts, ch 118, §87, 89

Code editor directive applied

**15E.19 Regulatory assistance.**

1. The economic development authority shall coordinate all regulatory assistance for the state of Iowa. Each state agency administering regulatory programs for business shall maintain a coordinator within the office of the director or the administrative division of the state agency. Each coordinator shall do all of the following:

- a. Serve as the state agency's primary contact for regulatory affairs with the economic development authority.
- b. Provide information regarding regulatory requirements to businesses and represent the state agency to the private sector.
- c. Monitor permit applications and provide timely permit status information to the economic development authority.
- d. Require regulatory staff participation in negotiations and discussions with businesses.
- e. Notify the economic development authority regarding proposed rulemaking activities that impact a regulatory program and any subsequent changes to a regulatory program.

2. The economic development authority shall, in consultation with the coordinators described in this section, examine, and to the extent permissible, assist in the implementation of methods, including the possible establishment of an electronic database, to streamline the process for issuing permits to business.

2005 Acts, ch 150, §7; 2008 Acts, ch 1122, §12; 2011 Acts, ch 118, §85, 89

Code editor directive applied

**15E.21 Iowa business resource centers.**

The authority shall establish an Iowa business resource center program for purposes of locating Iowa business resource centers in the state. The authority shall partner with another entity wanting to assist with economic growth and establish an Iowa business resource center. Operational duties of a center shall focus on providing information and referrals to entrepreneurs and businesses. Operational duties of a center shall be determined pursuant to a memorandum of agreement between the authority and the other entity.

2005 Acts, ch 150, §8; 2011 Acts, ch 118, §87, 89

Code editor directive applied

## DIVISION V

### INVESTMENTS IN QUALIFYING BUSINESSES AND COMMUNITY-BASED SEED CAPITAL FUNDS — TAX CREDIT

**15E.42 Definitions.**

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

1. “*Affiliate*” means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.
2. “*Authority*” means the economic development authority created in section 15.105.
3. “*Investor*” means a person making a cash investment in a qualifying business or in a community-based seed capital fund. “*Investor*” does not include a person that holds at least a seventy percent ownership interest as an owner, member, or shareholder in a qualifying business.
4. “*Near equity*” means debt that may be converted to equity at the option of the debt holder, and royalty agreements.

5. “*Qualifying business*” means a business meeting the criteria defined in section 15E.44.

2002 Acts, ch 1006, §2, 13; 2002 Acts, ch 1175, §75; 2003 Acts, ch 108, §8; 2003 Acts, ch 179, §95, 159; 2004 Acts, ch 1148, §1, 7; 2011 Acts, ch 130, §37, 46, 47, 71

2011 amendment to subsection 2 applies retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 130, §47

Code editor directive applied

Subsection 2 amended

### 15E.43 Investment tax credits.

1. *a.* For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for a portion of a taxpayer's equity investment, as provided in subsection 2, in a qualifying business or a community-based seed capital fund. An individual may claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

*b.* A tax credit shall be allowed only for an investment made in the form of cash to purchase equity in a qualifying business or in a community-based seed capital fund. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

*c.* In the case of a tax credit allowed against the taxes imposed in chapter 422, division II, where the taxpayer died prior to redeeming the entire tax credit, the remaining credit can be redeemed on the decedent's final income tax return.

2. A tax credit shall equal twenty percent of the taxpayer's equity investment. The maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be fifty thousand dollars. Each year, an investor and all affiliates of the investor shall not claim tax credits under this section for more than five different investments in five different qualifying businesses.

3. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. An investment made prior to January 1, 2002, shall not qualify for a tax credit under this division.

4. The authority shall not issue tax credits under this section in excess of the amount approved by the authority for any one fiscal year pursuant to section 15.119.

5. A tax credit shall not be redeemed during any tax year beginning prior to January 1, 2005. A tax credit shall not be transferable to any other taxpayer.

6. The authority shall develop a system for registration and authorization of tax credits authorized pursuant to this division and shall control distribution of all tax credits distributed to investors pursuant to this division. The authority shall develop rules for the qualification and administration of qualifying businesses and community-based seed capital funds. The department of revenue shall adopt these criteria as administrative rules and any other rules pursuant to chapter 17A necessary for the administration of this division.

7. The authority may cooperate with the small business development centers in an effort to disseminate information regarding the availability of tax credits for investments in qualifying businesses under this division. The authority may also cooperate with the small business development centers to develop a standard seed capital application form that the small business development centers may submit to the authority on behalf of clients seeking seed capital. The authority shall distribute copies of the application forms to all community-based seed capital funds and potential individual investors.

2002 Acts, ch 1006, §3, 13; 2002 Acts, ch 1175, §76; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §96, 97, 159; 2004 Acts, ch 1148, §2, 7; 2005 Acts, ch 157, §1; 2007 Acts, ch 174, §83; 2011 Acts, ch 118, §87, 89; 2011 Acts, ch 130, §38, 46, 47, 71

2011 amendment to subsection 4 applies retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 130, §47

Code editor directives applied

Subsection 4 stricken and rewritten

### 15E.44 Qualifying businesses.

1. In order for an equity investment to qualify for a tax credit, the business in which the equity investment is made shall, within one hundred twenty days of the date of the first investment, notify the authority of the names, addresses, shares issued, consideration paid

for the shares, and the amount of any tax credits, of all shareholders who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The list of shareholders who may qualify for the tax credits shall be amended as new equity investments are sold or as any information on the list shall change.

2. In order to be a qualifying business, a business must meet all of the following criteria:
  - a. The principal business operations of the business are located in this state.
  - b. The business has been in operation for six years or less.
  - c. The business has an owner who has successfully completed one of the following:
    - (1) An entrepreneurial venture development curriculum.
    - (2) Three years of relevant business experience.
    - (3) A four-year college degree in business management, business administration, or a related field.
    - (4) Other training or experience as the authority may specify by rule or order as sufficient to increase the probability of success of the qualifying business.
  - d. The business is not a business engaged primarily in retail sales, real estate, or the provision of health care or other services that require a professional license.
  - e. The business shall not have a net worth that exceeds five million dollars.
  - f. The business shall have secured, within twenty-four months following the first date on which the equity investments qualifying for tax credits have been made, total equity or near equity financing equal to at least two hundred fifty thousand dollars.
3. A qualifying business shall have the burden of proof to demonstrate to the authority its qualifications under this section, and shall have the obligation to notify the authority in a timely manner of any changes in the qualifications of the business or in the eligibility of investors to redeem the investment tax credits in any tax year.
4. After verifying the eligibility of a qualifying business, the authority shall issue a tax credit certificate to be attached to the equity investor's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of credit, the name of the qualifying business, and other information required by the department of revenue. The tax credit certificate, unless rescinded by the authority, shall be accepted by the department of revenue as payment for taxes imposed pursuant to chapter 422, divisions II, III, and V, and in chapter 432, and for the moneys and credits tax imposed in section 533.329, subject to any conditions or restrictions placed by the authority upon the face of the tax credit certificate and subject to the limitations of section 15E.43.

2002 Acts, ch 1006, §4, 13; 2003 Acts, ch 145, §286; 2004 Acts, ch 1148, §3, 7; 2005 Acts, ch 157, §2; 2007 Acts, ch 174, §84; 2007 Acts, ch 186, §1; 2011 Acts, ch 130, §39, 46, 47, 71

2011 amendments to subsection 2, paragraphs d and e apply retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 130, §47

Code editor directive applied

Subsection 2, paragraphs d and e amended

#### **15E.45 Community-based seed capital funds.**

1. An investment in a community-based seed capital fund shall qualify for a tax credit under section 15E.43 provided that all requirements of sections 15E.43, 15E.44, and this section are met.

2. In order to be a community-based seed capital fund qualifying under this section, a community-based seed capital fund must meet all of the following criteria:

- a. The fund is a limited partnership or limited liability company.
- b. The fund has, on or after January 1, 2002, a total of both capital commitments from investors and investments in qualifying businesses of at least one hundred twenty-five thousand dollars, but not more than three million dollars. However, if a fund is either a rural business investment company under the rural business investment program of the federal Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, or an Iowa-based seed capital fund with at least forty percent of its committed capital subscribed by community-based seed capital funds, the fund may qualify notwithstanding having capital in excess of the limits set forth in this paragraph as long as the fund otherwise meets the requirements of this subsection.

c. The fund has no fewer than five investors who are not affiliates, with no single investor

and affiliates of that investor together owning a total of more than twenty-five percent of the ownership interests outstanding in the fund.

3. *a.* In order for an investment in a community-based seed capital fund to qualify for a tax credit, the community-based seed capital fund in which the investment is made shall, within one hundred twenty days of the date of the first investment, notify the authority of all of the following:

(1) The names, addresses, equity interests issued, consideration paid for the interests, and the amount of any tax credits.

(2) All limited partners or members who may initially qualify for the tax credits.

(3) The earliest year in which the tax credits may be redeemed.

*b.* The list of limited partners or members who may qualify for the tax credits shall be amended as new equity interests are sold or as any information on the list shall change.

4. After verifying the eligibility of the community-based seed capital fund, the authority shall issue a tax credit certificate to be attached to the taxpayer's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit, the name of the community-based seed capital fund, and other information required by the department of revenue. The tax credit certificate, unless rescinded by the authority, shall be accepted by the department of revenue or a local taxing district, as applicable, as payment for taxes imposed pursuant to chapter 422, divisions II, III, and V, and chapter 432, and as payment for the moneys and credits tax imposed pursuant to section 533.329, subject to any conditions or restrictions placed by the authority on the face of the tax credit certificate and subject to the limitations of section 15E.43.

5. The manager of the community-based seed capital fund shall have the burden of proof to demonstrate to the authority the community-based seed capital fund's qualifications under this section, and shall have the obligation to notify the authority in a timely manner of any changes in the qualifications of the community-based seed capital fund, in the qualifications of any qualifying business in which the fund has invested, or in the eligibility of limited partners or members to redeem the investment tax credits in any year.

6. In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this section, or in the event that at least thirty-three percent of the invested capital of the community-based seed capital fund has not been invested in one or more separate qualifying businesses, measured at the end of the forty-eighth month after commencing the fund's investing activities, the authority shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue that it has done so, and the tax credit certificates shall be null and void. However, a community-based seed capital fund may apply to the authority for a one-year waiver of the requirements of this subsection.

7. An investor in a community-based seed capital fund shall receive a tax credit pursuant to this division only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments made by the community-based seed capital fund in a qualifying business or in an Iowa-based seed capital fund with at least forty percent of its committed capital subscribed by community-based seed capital funds. However, an investor in a community-based seed capital fund may receive a tax credit under this division with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

8. A community-based seed capital fund shall not invest in the Iowa fund of funds, if organized pursuant to section 15E.65, but may invest up to sixty percent of its committed capital in an Iowa-based seed capital fund with at least forty percent of its committed capital subscribed by community-based seed capital funds.

2002 Acts, ch 1006, §5, 13; 2003 Acts, ch 44, §10; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §98, 159; 2004 Acts, ch 1148, §5 - 7; 2005 Acts, ch 157, §3, 4; 2007 Acts, ch 174, §85; 2007 Acts, ch 186, §2; 2011 Acts, ch 118, §87, 89

Code editor directive applied

**15E.46 Reports.**

The authority shall publish an annual report of the activities conducted pursuant to this division and shall submit the report to the governor and the general assembly. The report shall include a listing of eligible qualifying businesses and the number of tax credit certificates and the amount of tax credits issued by the authority.

2002 Acts, ch 1006, §6, 13; 2011 Acts, ch 118, §87, 89  
Code editor directive applied

## DIVISION VI

VENTURE CAPITAL FUND INVESTMENT TAX CREDIT  
— INNOVATION FUND INVESTMENT TAX CREDIT

**15E.52 Innovation fund investment tax credits.**

1. For purposes of this section, unless the context otherwise requires:
  - a. “Board” means the same as defined in section 15.102.
  - b. “Innovation fund” means one or more early-stage capital funds certified by the board.
  - c. “Innovative business” means a business applying novel or original methods to the manufacture of a product or the delivery of a service. “Innovative business” includes but is not limited to a business engaged in a targeted industry as defined in section 15.411.
2. a. A tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for a portion of a taxpayer’s equity investment in the form of cash in an innovation fund.
  - b. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust.
3. The amount of a tax credit allowed under this section shall equal twenty percent of the taxpayer’s equity investment in an innovation fund.
4. A taxpayer shall not claim a tax credit under this section if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds created in section 15E.65 or an investor that receives a tax credit for the same investment in a qualifying business as described in section 15E.44 or in a community-based seed capital fund as described in section 15E.45.
5. a. The board shall issue certificates under this section which may be redeemed for tax credits. The board shall issue such certificates so that not more than the amount allocated for such tax credits under section 15.119, subsection 2, may be claimed. The certificates shall not be transferable.
  - b. The board shall, in cooperation with the department of revenue, establish criteria and procedures for the allocation and issuance of tax credits by means of certificates issued by the board. The criteria shall include the contingencies that must be met for a certificate to be redeemable in order to receive a tax credit. The procedures established by the board, in cooperation with the department of revenue, shall relate to the procedures for the issuance of the certificates and for the redemption of a certificate and related tax credit.
6. A taxpayer shall not redeem a certificate and related tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer’s liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.
7. An innovation fund shall submit an application for certification to the board. The board shall approve the application and certify the innovation fund if all of the following criteria are met:

a. The fund is organized for the purposes of making investments in promising early-stage companies which have a principal place of business in the state.

b. The fund proposes to make investments in innovative businesses.

c. The fund seeks to secure private funding sources for investment in such businesses.

2011 Acts, ch 118, §23, 36, 89; 2011 Acts, ch 130, §40, 47, 71

Section applies retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 118, §36; 2011 Acts, ch 130, §47

NEW section

## DIVISION VII

### CAPITAL INVESTMENT — IOWA FUND OF FUNDS

#### **15E.61 Findings — purpose.**

1. The general assembly finds the following: Fundamental changes have occurred in national and international financial markets and in the financial markets of this state. A critical shortage of seed and venture capital resources exists in the state, and such shortage is impairing the growth of commerce in the state. A need exists to increase the availability of venture equity capital for emerging, expanding, and restructuring enterprises in Iowa, including, without limitation, enterprises in the life sciences, advanced manufacturing, information technology, alternative and renewable energy including the alternative and renewable energy sectors listed in section 476.42, subsection 1, paragraph “a”, subparagraph (1), and value-added agriculture areas. Such investments will create jobs for Iowans and will help to diversify the state’s economic base.

2. This division is enacted to fulfill the following purposes:

a. To mobilize private investment in a broad variety of venture capital partnerships in diversified industries and locales.

b. To retain the private-sector culture of focusing on rate of return in the investing process.

c. To secure the services of the best managers in the venture capital industry, regardless of location.

d. To facilitate the organization of the Iowa fund of funds in which to seek such private investment and to create interest in such investments by offering state incentives for private persons to make investments in the Iowa fund of funds.

e. To enhance the venture capital culture and infrastructure in the state of Iowa so as to increase venture capital investment within the state and to promote venture capital investing within Iowa.

f. To accomplish these purposes in such a manner as to minimize any appropriations by the state of Iowa.

g. To effectuate specific, measurable results, including all of the following:

(1) The creation of three new venture capital fund offices in Iowa within three years of February 28, 2002.

(2) The investment of resources from the Iowa fund of funds in Iowa businesses within three years of February 28, 2002.

(3) A cumulative rate of return on venture investments of the Iowa fund of funds equal to a minimum of one and one-half percentage points above the ten-year treasury bill rate in effect at the end of five years following February 28, 2002.

2002 Acts, ch 1005, §1; 2002 Acts, ch 1006, §13, 14; 2006 Acts, ch 1142, §16; 2008 Acts, ch 1032, §201; 2011 Acts, ch 25, §127

Subsection 1 amended

#### **15E.64 Iowa capital investment corporation.**

1. An Iowa capital investment corporation may be organized as a private, not-for-profit corporation under chapter 504. The Iowa capital investment corporation is not a public corporation or instrumentality of the state and shall not enjoy any of the privileges and shall not be required to comply with the requirements of a state agency. Except as otherwise

provided in this division, this division does not exempt the corporation from the requirements under state law which apply to other corporations organized under chapter 504. The purposes of an Iowa capital investment corporation shall be to organize the Iowa fund of funds, to select a venture capital investment fund allocation manager to select venture capital fund investments by the Iowa fund of funds, to negotiate the terms of a contract with the venture capital investment fund allocation manager, to execute the contract with the selected venture capital investment fund allocation manager on behalf of the Iowa fund of funds, to receive investment returns from the Iowa fund of funds, and to reinvest the investment returns in additional venture capital investments designed to result in a significant potential to create jobs and to diversify and stabilize the economy of the state. The corporation shall not exercise governmental functions and shall not have members. The obligations of the corporation are not obligations of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds. The corporation shall not and cannot pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except those of the corporation.

2. To facilitate the organization of an Iowa capital investment corporation, both of the following persons shall serve as incorporators as provided in section 504.201:

a. The chairperson of the economic development authority or a designee of the chairperson.

b. The director of the economic development authority or a designee of the director.

3. After incorporation, the initial board of directors shall be elected by the members of an appointment committee. The members of the appointment committee shall be appointed by the economic development authority. The initial board of directors shall consist of five members. The persons elected to the initial board of directors by the appointment committee shall include persons who have an expertise in the areas of the selection and supervision of investment managers or in the fiduciary management of investment funds, and other areas of expertise as deemed appropriate by the appointment committee. After the election of the initial board of directors, vacancies in the board of directors of the corporation shall be elected by the remaining directors of the corporation. Members of the board of directors shall be subject to any restrictions on conflicts of interest specified in the organizational documents and shall have no interest in any venture capital investment fund allocation manager selected by the corporation pursuant to the provisions of this division or in any investments made by the Iowa fund of funds.

4. The members of the appointment committee shall exercise due care to assure that persons elected to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this division, including in areas related to venture capital investment, investment management, and supervision of investment managers and investment funds.

5. Upon the election of the initial board of directors, the terms of the members of the appointment committee shall expire.

6. The economic development authority shall assist the incorporators and the appointment committee in any manner determined necessary and appropriate by the incorporators and appointment committee in order to administer this section.

7. After incorporation, the Iowa capital investment corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Iowa fund of funds in accordance with the requirements of this division. Any proposed investment plan shall address the applicant's level of experience, quality of management, investment philosophy and process, probability of success in fund-raising, prior investment fund results, and plan for achieving the purposes of this division. The selected venture capital investment fund allocation manager shall be a person with substantial, successful experience in the design, implementation, and management of seed and venture capital investment programs and in capital formation. The corporation shall only select a venture capital investment fund allocation manager with demonstrated expertise in the management and fund allocation of investments in venture capital funds. The corporation shall select the venture capital

investment fund allocation manager deemed best qualified to generate the amount of capital required by this division and to invest the capital of the Iowa fund of funds.

8. The Iowa capital investment corporation may charge a management fee on assets under management in the Iowa fund of funds. The fee shall be in addition to any fee charged to the Iowa fund of funds by the venture capital investment fund allocation manager selected by the corporation, but the fee shall be charged only to pay for reasonable and necessary costs of the Iowa capital investment corporation and shall not exceed one-half of one percent per year of the value of assets under management.

9. Directors of the Iowa capital investment corporation shall be compensated for direct expenses and mileage but shall not receive a director's fee or salary for service as directors.

10. The Iowa capital investment corporation shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose. However, the corporation shall not hire staff as employees except to administer the rural and small business loan guarantee program of the Iowa fund of funds.

11. Upon the dissolution of the Iowa fund of funds, the Iowa capital investment corporation shall be liquidated and dissolved, and any assets owned by the corporation shall be distributed to the state of Iowa and deposited in the general fund.

2002 Acts, ch 1005, §4; 2002 Acts, ch 1006, §13, 14; 2002 Acts, ch 1175, §77; 2004 Acts, ch 1049, §181, 191, 192; 2004 Acts, ch 1175, §393; 2011 Acts, ch 118, §58, 59, 84, 85, 89

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 2, paragraph a amended

Subsection 3 amended

## DIVISION XI

### IOWA WINE AND BEER PROMOTION

#### **15E.116 Iowa wine and beer promotion board.**

An Iowa wine and beer promotion board is created. The board consists of three members appointed by the director of the economic development authority. Each member shall serve a term of two years on the board. One member shall represent the authority, one member shall represent the Iowa wine makers, and one member shall represent the Iowa beer makers. The board shall advise the authority on the best means to promote wine and beer made in Iowa.

86 Acts, ch 1246, §719

C87, §28.116

C93, §15E.116

2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **15E.117 Promotion of Iowa wine and beer.**

1. The economic development authority shall consult with the Iowa wine and beer promotion board on the best means to promote wine and beer made in Iowa.

2. The authority has the authority to contract with private persons for the promotion of beer and wine made in Iowa.

3. Moneys appropriated to the authority pursuant to sections 123.143 and 123.183 may be used by the authority for the purposes of this section, including administrative expenses incurred under this section.

86 Acts, ch 1246, §720

C87, §28.117

C93, §15E.117

2002 Acts, ch 1050, §6; 2003 Acts, ch 145, §286; 2010 Acts, ch 1188, §23; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 130, §27, 71

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 3, paragraph b stricken and former paragraph a redesignated as an unnumbered paragraph

DIVISION XII  
LOAN REPAYMENTS

**15E.120 Loan repayments.**

1. Cities which have received loans under the former Iowa community development loan program, sections 7A.41 through 7A.49, Code 1985, are still obligated to repay borrowed funds to the state and to comply with terms and conditions of existing promissory notes.

2. After July 1, 1986, loan repayments made by recipient cities are payable to the Iowa department of economic development in an amount and at the time required by existing promissory notes.

3. Loan agreements with cities receiving loans under the former Iowa community development loan program for projects which have not been completed as of July 1, 1986, shall be amended by substituting "Iowa department of economic development" for "office for planning and programming". The Iowa department of economic development shall assume the state's administrative responsibilities for these uncompleted projects.

4. All loan agreements and promissory notes with cities with completed projects shall, on July 1, 1986, be amended by substituting "Iowa department of economic development" for "office for planning and programming".

5. Loan repayments received by the Iowa department of economic development shall be deposited into a special account to be used at its discretion as matching funds to attract financial assistance from and to participate in programs with national rural development and finance corporations. Funds in this special account shall not revert to the state general fund at the end of any fiscal year. If the programs for which the funds in the special account are to be used are terminated or expire, the funds in the special account and funds that would be repaid, if any, to the special account shall be transferred or repaid to the strategic investment fund established in section 15.313.

6. On July 18, 2011, the economic development authority shall assume responsibility for the administration of this section.

86 Acts, ch 1185, §1

C87, §28.120

90 Acts, ch 1262, §28; 91 Acts, ch 23, §12; 91 Acts, ch 264, §512; 91 Acts, ch 267, §313

C93, §15E.120

95 Acts, ch 67, §5; 2001 Acts, ch 61, §8; 2003 Acts, ch 71, §5; 2009 Acts, ch 123, §26; 2011 Acts, ch 118, §60, 89

Temporary appropriation of all moneys available from deposits made pursuant to subsection 5; 2011 Acts, ch 130, §6, 53, 71  
NEW subsection 6

DIVISION XVIII  
ENTERPRISE ZONES

**15E.192 Enterprise zones.**

1. A county may create an economic development enterprise zone as authorized in this division, subject to certification by the economic development authority, by designating up to one percent of the county area for that purpose. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to chapter 28E regarding the establishment of the enterprise zone. A county may establish more than one enterprise zone.

2. A city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city, as shown by the 2000 certified federal census, may create an economic development enterprise zone as authorized in this division, subject to certification by the economic development authority, by designating one or more

contiguous census tracts, as determined in the most recent federal census, or designating other geographic units approved by the economic development authority for that purpose. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Tit. XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated by the state as an economic development enterprise zone. The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the area limitation pursuant to subsection 4. In creating an enterprise zone, a city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city, as shown by the 2000 certified federal census, may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units meet the criteria and the city agrees to being included. The city may establish more than one enterprise zone. Reference in this division to “city” means a city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city, as shown by the 2000 certified federal census.

3. A city may create an economic development enterprise zone as authorized in this division, subject to certification by the economic development authority, by designating up to four square miles of the city for that purpose. In order for an enterprise zone to be certified pursuant to this subsection, an enterprise zone shall meet the distress criteria provided in section 15E.194, subsection 3. Section 15E.194, subsection 2, shall not apply to an enterprise zone certified pursuant to this subsection. For purposes of this subsection and section 15E.194, subsection 3, “city” means a city that includes at least three census tracts, as determined in the most recent federal census.

4. *a.* An enterprise zone certified by the authority pursuant to subsection 2 shall only be amended if the amendment consists of an area being added to the enterprise zone and the added area meets the criteria of section 15E.194, subsection 2. An enterprise zone certified by the authority pursuant to subsection 1 or 2 may be decertified; however, if a subsequent enterprise zone is designated, the expiration date of the subsequent enterprise zone shall be the same as the expiration date of the decertified enterprise zone. A portion of a certified enterprise zone may be decertified, provided that the remaining portion of the certified enterprise zone meets the distress criteria provided in section 15E.194.

*b.* A county or city may apply to the authority for an area to be certified as an enterprise zone at any time prior to July 1, 2012. However, the total amount of land designated as enterprise zones under subsection 1, and any other enterprise zones certified by the authority, excluding those approved pursuant to subsection 2 and section 15E.194, subsections 3 and 5, shall not exceed in the aggregate one percent of the total county area.

5. An enterprise zone designation shall remain in effect for ten years following the date of certification. Prior to the expiration of an enterprise zone designation, a city or county meeting the distress criteria in section 15E.194 may apply for a one-time ten-year extension of the designation. In applying for a one-time ten-year extension of an enterprise zone designation, a city or county may redefine the boundaries of the enterprise zone provided that the redefined enterprise zone meets the applicable distress criteria provided in section 15E.194. Prior to the expiration of an enterprise zone designation, a city or county that is not eligible to designate an enterprise zone but previously designated the enterprise zone pursuant to section 15E.194, Code Supplement 1997, may apply for a one-time extension of the enterprise zone designation to one year following the complete publication of the 2010 federal census. In applying for a one-time extension of the enterprise zone designation, the city or county may redefine the boundaries of the enterprise zone provided that the redefined enterprise zone meets the distress criteria provided in section 15E.194, Code Supplement 1997. The authority shall designate by rule the specific date of one year following the complete publication of the 2010 federal census. Any state or local incentives or assistance

that may be conferred must be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration.

97 Acts, ch 144, §2; 98 Acts, ch 1175, §6; 2000 Acts, ch 1213, §3, 4, 10; 2002 Acts, ch 1145, §1, 7, 10; 2003 Acts, ch 129, §1, 5 – 7; 2005 Acts, ch 57, §1; 2006 Acts, ch 1133, §1 – 4, 10; 2007 Acts, ch 126, §6; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1136, §1, 2; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **15E.193 Eligible business.**

1. A business which is or will be located, in whole or in part, in an enterprise zone is eligible to receive incentives and assistance under this division if the business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone and if the business meets all of the following requirements:

a. Is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

b. (1) The business shall provide a sufficient package of benefits to each employee holding a created or retained job. For purposes of this paragraph, “*created job*” and “*retained job*” have the same meaning as defined in section 15G.101.

(2) The authority, upon the recommendation of the authority,\* shall adopt rules determining what constitutes a sufficient package of benefits.

c. The business shall pay a wage that is at least ninety percent of the qualifying wage threshold. For purposes of this paragraph, “*qualifying wage threshold*” has the same meaning as defined in section 15G.101.

d. Creates or retains at least ten full-time equivalent positions and maintains them until the maintenance period completion date. For purposes of this paragraph, “*maintenance period completion date*” and “*full-time equivalent position*” have the same meanings as defined in section 15G.101.

e. Makes a capital investment of at least five hundred thousand dollars.

f. If the business is only partially located in an enterprise zone, the business must be located on contiguous parcels of land.

2. In addition to meeting the requirements under subsection 1, an eligible business shall provide the enterprise zone commission with all of the following:

a. The long-term strategic plan for the business which shall include labor and infrastructure needs.

b. Information dealing with the benefits the business will bring to the area.

c. Examples of why the business should be considered or would be considered a good business enterprise.

d. The impact the business will have on other businesses in competition with it. The enterprise zone commission shall make a good-faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The enterprise zone commission shall make a good-faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created or retained as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created or retained.

e. A report describing all violations of environmental law or worker safety law within the last five years. If, upon review of the application, the enterprise zone commission finds that a business has a record of violations of the law, statutes, rules, or regulations that tends to show a consistent pattern, the enterprise zone commission shall not make an award of financial assistance to the business unless the authority finds either that the violations did not seriously affect public health, public safety, or the environment, or, if such violations did seriously affect public health, public safety, or the environment, that mitigating circumstances were present.

3. If a business has received incentives or assistance under section 15E.196 and fails to maintain the requirements of subsection 1 to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The

department of revenue shall have the authority to recover the value of state taxes or incentives provided under section 15E.196. The value of state incentives provided under section 15E.196 includes applicable interest and penalties. The economic development authority and the city and county, as applicable, shall enter into agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of subsection 1. In addition, a business that fails to maintain the requirements of subsection 1 shall not receive incentives or assistance for each year during which the business is not in compliance.

4. If a business that is approved to receive incentives or assistance provided under section 15E.196 experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the authority may reduce or eliminate all or a portion of the incentives and assistance. If a business has received incentives or assistance under section 15E.196 and experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

97 Acts, ch 144, §3; 98 Acts, ch 1175, §7 – 9; 2003 Acts, ch 129, §2; 2003 Acts, ch 145, §286; 2006 Acts, ch 1009, §1 – 3; 2007 Acts, ch 126, §7; 2009 Acts, ch 123, §17; 2011 Acts, ch 118, §85, 87, 89

For aggregate limitations on amount of tax credits, see §15.119

\*The words “upon recommendation of the authority,” probably not intended; corrective legislation is pending

Code editor directives applied

#### **15E.193B Eligible housing business.**

1. A housing business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. An eligible housing business shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to section 15E.194, subsection 3 or 5. Sections 15E.193 and 15E.196 do not apply to an eligible housing business qualifying under this section.

2. An eligible housing business under this section includes a housing developer, housing contractor, or nonprofit organization that builds or rehabilitates a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone.

3. The single-family homes and dwelling units which are rehabilitated or constructed by the eligible housing business shall include the necessary amenities. When completed and made available for occupancy, the single-family homes and dwelling units shall meet the United States department of housing and urban development’s housing quality standards and local safety standards.

4. The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business becoming ineligible and subject to the repayment requirements and penalties enumerated in subsection 7. The authority may extend the prescribed two-year completion period for any current or future project which has not been completed if the authority determines that completion within the two-year period is impossible or impractical as a result of a substantial loss caused by flood, fire, earthquake, storm, or other catastrophe. For purposes of this subsection, “*substantial loss*” means damage or destruction in an amount in excess of thirty percent of the project’s expected eligible basis as set forth in the eligible housing business’s application.

5. An eligible housing business shall provide the enterprise zone commission with all of the following information:

- a. The long-term strategic plan for the housing business which shall include labor and infrastructure needs.
- b. Information dealing with the benefits the housing business will bring to the area.
- c. Examples of why the housing business should be considered or would be considered a good business enterprise.

d. An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

e. Information showing the total costs and sources of project financing that will be utilized for the new investment directly related to housing for which the business is seeking approval for a tax credit provided in subsection 6, paragraph “a”.

f. If the eligible housing business is a partnership, S corporation, or limited liability company using low-income housing tax credits authorized under section 42 of the Internal Revenue Code to assist in the financing of the housing development, the name of any partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company and the amount designated as allowed under subsection 8.

6. An eligible housing business which has been approved to receive incentives and assistance by the economic development authority pursuant to application as provided in section 15E.195 shall receive all of the following incentives and assistance for a period not to exceed ten years:

a. An eligible housing business may claim a tax credit up to a maximum of ten percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone. The new investment that may be used to compute the tax credit shall not exceed the new investment used for the first one hundred forty thousand dollars of value for each single-family home or for each unit of a multiple dwelling unit building containing three or more units. The tax credit may be used to reduce the tax liability imposed under chapter 422, division II, III, or V, or chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, S corporation, limited liability company, or estate or trust except as allowed for under subsection 8 when low-income housing tax credits authorized under section 42 of the Internal Revenue Code are used to assist in the financing of the housing development.

b. Sales, services, and use tax refund for taxes paid by an eligible business including an eligible business acting as a contractor or subcontractor, as provided in section 15.331A.

7. If a business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible housing business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under this section. The value of state incentives provided under this section includes applicable interest and penalties. The economic development authority and the city and county, as applicable, shall enter into agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of this section. In addition, a business that fails to maintain the requirements of this section shall not receive incentives or assistance for each year during which the business is not in compliance.

8. The amount of the tax credits determined pursuant to subsection 6, paragraph “a”, for each project shall be approved by the economic development authority. The authority shall utilize the financial information required to be provided under subsection 5, paragraph “e”, to determine the tax credits allowed for each project. In determining the amount of tax credits to be allowed for a project, the authority shall not include the portion of the project cost financed through federal, state, and local government tax credits, grants, and forgivable loans. Upon approving the amount of the tax credit, the economic development authority shall issue a tax credit certificate to the eligible housing business except when

low-income housing tax credits authorized under section 42 of the Internal Revenue Code are used to assist in the financing of the housing development in which case the tax credit certificate may be issued to a partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company in the amounts designated by the eligible partnership, S corporation, or limited liability company. An eligible housing business or the designated partner if the business is a partnership, designated shareholder if the business is an S corporation, or designated member if the business is a limited liability company, or transferee shall not claim the tax credit unless a tax credit certificate is attached to the taxpayer's return for the tax year for which the tax credit is claimed. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue. The tax credit certificate shall be transferable if the housing development is located in a brownfield site as defined in section 15.291, if the housing development is located in a blighted area as defined in section 403.17, or if low-income housing tax credits authorized under section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. Not more than three million dollars worth of tax credits for housing developments that are located in a brownfield site as defined in section 15.291 or housing developments located in a blighted area as defined in section 403.17 shall be transferred in one calendar year. The three million dollar annual limit does not apply to tax credits awarded to an eligible housing business having low-income housing tax credits authorized under section 42 of the Internal Revenue Code to assist in the financing of the housing development. The authority may approve an application for tax credit certificates for transfer from an eligible housing business located in a brownfield site as defined in section 15.291 or in a blighted area as defined in section 403.17 that would result in the issuance of more than three million dollars of tax credit certificates for transfer, provided the authority, through negotiation with the eligible business, allocates those tax credit certificates for transfer over more than one calendar year. The authority shall not approve more than one million five hundred thousand dollars in tax credit certificates for transfer to any one eligible housing business located in a brownfield site as defined in section 15.291 or in a blighted area as defined in section 403.17 in a calendar year. If three million dollars in tax credit certificates for transfer have not been issued at the end of a calendar year, the remaining tax credit certificates for transfer may be issued in advance to an eligible housing business scheduled to receive a tax credit certificate for transfer in a later calendar year. Any time the authority approves a tax credit certificate for transfer which has not been allocated at the end of a calendar year, the authority may prorate the remaining certificates to more than one eligible applicant. If the entire three million dollars of tax credit certificates for transfer is not issued in a given calendar year, the remaining amount may be carried over to a succeeding calendar year. Tax credit certificates issued under this chapter may be transferred to any person or entity. The economic development authority shall notify the department of revenue of the tax credit certificates which have been approved for transfer. Within ninety days of transfer, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement certificate must contain the information required to receive the original certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the economic development authority shall not be transferable. A tax credit shall not be claimed by a transferee under subsection 6, paragraph "a", until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

The transferee may use the amount of the tax credit transferred against the taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer

of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

9. The economic development authority and the department of revenue shall each adopt rules to jointly administer this section.

98 Acts, ch 1179, §1; 2000 Acts, ch 1213, §5 – 8, 10; 2001 Acts, ch 141, §2 – 4, 8; 2002 Acts, ch 1145, §2, 3; 2003 Acts, ch 129, §3; 2003 Acts, ch 133, §1, 4; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §100, 159; 2003 Acts, 1st Ex, ch 2, §15, 209; 2005 Acts, ch 130, §1, 2; 2005 Acts, ch 179, §53 – 55; 2006 Acts, ch 1133, §5, 10; 2006 Acts, ch 1158, §1; 2011 Acts, ch 118, §85, 89

For aggregate limitations on amount of tax credits, see §15.119  
Code editor directive applied

### **15E.194 Distress criteria.**

1. An enterprise zone may be designated by a county which meets at least two of the following criteria:

a. The county has an average weekly wage that ranks among the bottom twenty-five counties in the state based on the 2000 annual average weekly wage for employees in private business.

b. The county has a family poverty rate that ranks among the top twenty-five counties in the state based on the 2000 census.

c. The county has experienced a percentage population loss that ranks among the top twenty-five counties in the state between 1995 and 2000.

(1) For purposes of this paragraph “c”, prison population shall be excluded in the population loss calculations.

(2) If a county not otherwise qualified to participate in the enterprise zone program qualifies as a result of excluding the county’s prison population, a business engaged in the production of ethanol or biodiesel in the county, notwithstanding its status as an eligible business under section 15E.193, shall not be eligible for assistance under section 15E.196.

d. The county has a percentage of persons sixty-five years of age or older that ranks among the top twenty-five counties in the state based on the 2000 census.

2. An enterprise zone may be designated by a city which meets at least two of the following criteria:

a. The area has a per capita income of twelve thousand six hundred forty-eight dollars or less based on the 2000 census.

b. The area has a family poverty rate of twelve percent or higher based on the 2000 census.

c. Ten percent or more of the housing units are vacant in the area.

d. The valuations of each class of property in the designated area is seventy-five percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

e. The area is a blighted area, as defined in section 403.17.

3. a. A city may designate an area of up to four square miles to be an enterprise zone if the area is a blighted area as defined in section 403.17 and the area includes or is located within four miles of at least three of the following:

(1) A commercial service airport.

(2) A barge terminal or a navigable waterway.

(3) Entry to a rail line.

(4) Entry to an interstate highway.

(5) Entry to a commercial and industrial highway network as identified pursuant to section 313.2A.

b. An eligible housing business under section 15E.193B shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to this subsection.

4. The economic development authority shall certify eligible enterprise zones that meet the requirements of subsection 1 upon request by the county, subsection 2 upon request by the city, or subsection 3 upon request by the city, as applicable.

5. a. A city of any size or any county may designate an enterprise zone at any time

prior to July 1, 2012, when a business closure or permanent layoff occurs. The business closure or permanent layoff must involve the loss of full-time employees, not including retail employees, at one place of business totaling at least one thousand employees or four percent or more of the county's resident labor force based on the most recent annual resident labor force statistics from the department of workforce development, whichever is lower. A permanent layoff does not include a layoff of seasonal employees or a layoff that is seasonal in nature. For purposes of this paragraph, "permanent layoff" means the loss of jobs to an out-of-state location, the cessation of one or more production lines, the removal of manufacturing machinery and equipment, or similar actions determined to be equivalent in nature by the authority. A permanent layoff must occur on or after February 1, 2007. The enterprise zone may be established on the property of the place of business that has closed or imposed a permanent layoff and the enterprise zone may include an area up to an additional three miles adjacent to the property. The area meeting the requirements for enterprise zone eligibility under this subsection shall not be included for the purpose of determining the area limitation pursuant to section 15E.192, subsection 4. The closing business or business creating a permanent layoff shall not be eligible to receive incentives or assistance under this division. An eligible housing business under section 15E.193B shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to this subsection.

b. The area included in an enterprise zone designated under this subsection on or after June 1, 2000, may be amended to change the boundaries of the enterprise zone. Such an amendment must be approved by the authority within three years of the date the enterprise zone was certified.

97 Acts, ch 144, §4; 2000 Acts, ch 1213, §9, 10; 2002 Acts, ch 1145, §6; 2006 Acts, ch 1133, §6, 7, 10; 2007 Acts, ch 183, §1; 2008 Acts, ch 1032, §201; 2008 Acts, ch 1039, §1; 2010 Acts, ch 1136, §3; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **15E.195 Enterprise zone commission.**

1. A county which designates an enterprise zone pursuant to section 15E.194, subsection 1, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone designated pursuant to section 15E.194, subsection 1, to receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall also review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193B. The commission shall consist of nine members. Five of these members shall consist of one representative of the board of supervisors, one member with economic development expertise chosen by the economic development authority, one representative of the county zoning board, one member of the local community college board of directors, and one representative of the local workforce development center. These five members shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Tit. XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that community. A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses located within or requesting to locate within a certified enterprise zone designated pursuant to section 15E.194, subsection 1.

2. A city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city and which designates an enterprise zone pursuant to section 15E.194, subsection 2 or 3, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193B. The commission shall consist of nine

members. Six of these members shall consist of one representative of an international labor organization, one member with economic development expertise chosen by the economic development authority, one representative of the city council, one member of the local community college board of directors, one member of the city planning and zoning commission, and one representative of the local workforce development center. These six members shall select the remaining three members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Tit. XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission. A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. If a city has established an enterprise zone commission prior to July 1, 1998, the city may petition to the economic development authority to change the structure of the existing commission.

3. The commission may adopt more stringent requirements, including requirements related to compensation and benefits, for a business to be eligible for incentives or assistance than provided in sections 15E.193 and 15E.193B. The commission may develop as an additional requirement that preference in hiring be given to individuals who live within the enterprise zone. The commission shall work with the local workforce development center to determine the labor availability in the area. The commission shall examine and evaluate building codes and zoning in the enterprise zone and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

4. If the enterprise zone commission determines that a business qualifies and is eligible to receive incentives or assistance as provided in section 15E.193B or 15E.196, the commission shall submit an application for incentives or assistance to the economic development authority. The authority may approve, defer, or deny the application.

5. *a.* In making its decision, the commission or authority shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives or assistance. The commission or authority shall make a good-faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for incentives or assistance. The commission or authority shall also make a good-faith effort to determine the probability that the proposed incentives or assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

*b.* However, if the commission or authority finds that an eligible business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the eligible business shall not qualify for incentives or assistance under section 15E.193B or 15E.196, unless the commission or authority finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether an eligible business is eligible for incentives or assistance under section 15E.193B or 15E.196, the commission or authority shall be exempt from chapter 17A. If requested by the commission or authority, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and any other information which would assist the commission or authority in assessing the nature of any violation.

6. A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as

applicable, and the economic development authority its compliance with the requirements of section 15E.193 or 15E.193B.

97 Acts, ch 144, §5; 98 Acts, ch 1175, §12; 98 Acts, ch 1223, §17; 2001 Acts, ch 141, §6, 8; 2002 Acts, ch 1119, §120; 2004 Acts, ch 1003, §9, 12; 2006 Acts, ch 1133, §8, 10; 2008 Acts, ch 1032, §201; 2010 Acts, ch 1061, §180; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **15E.196 Incentives — assistance.**

For purposes of determining the incentives or assistance provided in this section, “*eligible business*” means a business which has been approved to receive incentives and assistance by the economic development authority pursuant to application as provided in section 15E.195. The incentives and assistance provided under this division for businesses located in enterprise zones shall be for a period not to exceed ten years and shall include all of the following:

1. New jobs credit from withholding, as provided in section 15E.197.
2. Sales, services, and use tax refund, as provided in section 15.331A.
3. Investment tax credit of up to ten percent, as provided in section 15.333.
4. Research activities credit, as provided in section 15.335.

5. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. The amount of value added for purposes of this subsection shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone. If an exemption provided pursuant to this subsection is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria which further some planning objective established by the city or county enterprise zone commission and approved by the eligible city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations in an enterprise zone.

6. Insurance premium tax credit of up to ten percent, as provided in section 15.333A.

97 Acts, ch 144, §6; 98 Acts, ch 1175, §13; 98 Acts, ch 1179, §3; 99 Acts, ch 172, §2; 2001 Acts, ch 141, §7, 8; 2003 Acts, ch 145, §286; 2004 Acts, ch 1003, §10, 12; 2005 Acts, ch 150, §52, 53, 68, 69; 2009 Acts, ch 179, §104; 2011 Acts, ch 118, §85, 89

For aggregate limitations on amount of tax credits, see §15.119

2005 amendments to this section apply to tax years ending on or after July 1, 2005; continuation of contracts under new jobs and income program; 2005 Acts, ch 150, §68, 69

Code editor directive applied

#### **15E.197 New jobs credit from withholding.**

An eligible business may enter into an agreement with the department of revenue and a community college for a supplemental new jobs credit from withholding from jobs created under the program. The agreement shall be for program services for an additional job training project, as defined in chapter 260E.

1. The agreement shall provide for the following:

a. That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the eligible business pursuant to section 422.16 is authorized to fund the program services for the additional project.

b. That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

2. The auditor of state shall perform an annual audit regarding how the training funds are being used.

3. To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including but not limited to providing the assessment of an annual levy as described in section 260E.6, subsection 4.

The program and credit authorized by this section is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

4. For purposes of this section, “*eligible business*” means a business which has been approved to receive incentives and assistance by the economic development authority pursuant to application as provided in section 15E.195.

2005 Acts, ch 150, §54, 69; 2007 Acts, ch 126, §8; 2011 Acts, ch 118, §85, 89

For aggregate limitations on amount of tax credits, see §15.119

Code editor directive applied

DIVISION XIX  
IOWA AGRICULTURAL INDUSTRY  
FINANCE ACT

**15E.202 Definitions.**

Except as otherwise provided in this division, or unless the context otherwise requires, the words and phrases used in this division shall have the same meaning as the words and phrases used in chapter 490, including but not limited to the words and phrases used in section 490.140. In addition, all of the following shall apply:

1. “*Actively engaged in agriculture*” means to do any of the following:
  - a. Inspect agricultural operations periodically and furnish at least half the direct cost of the operations.
  - b. Regularly and frequently make or take an important part in making management decisions substantially contributing to or affecting the success of the agricultural operation.
  - c. Perform physical work which significantly contributes to agricultural operation.
2. “*Agricultural commodity*” means any unprocessed agricultural product, including livestock as defined in section 717.1, agricultural crops, and forestry products grown, raised, produced, or fed in this state for sale in commercial channels.
3. “*Agricultural operation*” means an operation concerned with the production of agricultural commodities for processing into agricultural processed products.
4. “*Agricultural processed product*” means an agricultural commodity that has been processed for sale in commercial markets.
5. “*Agricultural producer*” means a person who is any of the following:
  - a. An individual actively engaged in agricultural production.
  - b. A person other than an individual, if the person is any of the following:
    - (1) A general partnership in which all the partners are natural persons, and one of the partners is actively engaged in agricultural production.
    - (2) A family farm entity if any of the following individuals is actively engaged in agricultural production:
      - (a) A shareholder and an officer, director, or employee of a family farm corporation.
      - (b) A member or manager of a family farm limited liability company.
      - (c) A general partner of a family farm limited partnership.
      - (d) A beneficiary of a family trust.
    - (3) A networking farmers entity.
6. “*Agricultural product*” means an agricultural commodity or an agricultural processed product.
7. “*Biotechnology enterprise*” means an enterprise organized under the laws of this state using biological techniques for the development of specialized plant or animal characteristics for beneficial nutritional, commercial, or industrial purposes.
8. “*Certified facility*” means a facility used to process agricultural products as certified by a corporation pursuant to section 15E.209.
9. “*Economic development authority*” or “*authority*” means the economic development authority created pursuant to section 15.105.
10. “*Family farm entity*” means a family farm corporation, family farm limited liability company, family farm limited partnership, or family trust as defined in section 9H.1.

11. “Iowa agricultural industry finance corporation” or “corporation” means a corporation formed under this division.

12. “Iowa agricultural industry finance loan” means a loan made to a qualified Iowa agricultural industry finance corporation pursuant to section 15E.208.

13. “Iowa agricultural industry venture” means an enterprise involving any of the following:

a. Agricultural producers investing in a new facility or acquiring or expanding an existing facility in this state which is used to process agricultural commodities produced in this state, if the purpose of the enterprise is to accomplish all of the following:

(1) The creation and retention of wealth in this state derived from processing and marketing agricultural commodities produced in this state.

(2) Increasing production, processing, and marketing of value-added agricultural products in this state.

(3) Providing for a substantial equitable ownership interest in the enterprise by Iowa agricultural producers.

(4) Providing an alternative in this state to corporate vertical integration in the production, processing, and marketing of agricultural products.

b. An agricultural biotechnology enterprise located in this state, if the purpose of research and application of biological techniques conducted by the enterprise is to accomplish all of the following:

(1) The creation and retention of wealth in this state.

(2) Increasing the value of agricultural commodities.

14. “Loan” means providing financing to a person under an agreement requiring that the amount in financing be repaid at a maturity date, with an interest rate, and other conditions as specified in the agreement.

15. “Networking farmers entity” means the same as defined in section 10.1.

16. “Qualified investor” means any of the following:

a. An agricultural producer.

b. A cooperative organized under chapter 501 or 501A.

c. A networking farmers entity.

17. “Qualified Iowa agricultural industry finance corporation” or “qualified corporation” means an Iowa agricultural industry financing corporation which meets the eligibility requirements of and is approved by the authority pursuant to section 15E.208.

98 Acts, ch 1207, §3; 2002 Acts, ch 1050, §7; 2005 Acts, ch 135, §105; 2011 Acts, ch 118, §61, 62, 87, 89

Code editor directive applied

Subsection 9 stricken and subsection 10 amended and renumbered as 9

Subsections 11 – 18 renumbered as 10 – 17

#### **15E.204 Iowa agricultural industry finance corporations — scope of powers and duties.**

1. An Iowa agricultural industry finance corporation formed under this division shall be subject to and have the powers and privileges conferred by provisions of chapter 490, unless otherwise limited by or inconsistent with the provisions of this division.

2. Nothing in this division requires any of the following:

a. That a limited number of Iowa agricultural industry finance corporations are authorized to be formed. However, the authority may strictly interpret and apply the requirements of this division in determining whether a corporation is a qualified corporation under section 15E.208.

b. That a corporation be organized on a cooperative basis, including structured, organized, or operated pursuant to 26 U.S.C. § 1381(a).

c. That a corporation is restricted from holding, acquiring, or transferring financial or security instruments, including but not limited to a security regulated under chapter 502, money, accounts, and chattel paper under chapter 554, security interests under chapter 554, or a mortgage or deed of trust under chapter 654.

3. An Iowa agricultural industry finance corporation is a private business corporation and not a public corporation or instrumentality of the state. Except as provided in this division, nothing in this division exempts an Iowa agricultural industry finance corporation

from the same requirements under state law which apply to other corporations organized under chapter 490, including taxation provisions under chapter 422 or Title X, subtitle 2 of this Code, or security regulations under chapter 502.

98 Acts, ch 1207, §5; 2011 Acts, ch 118, §87, 89

Code editor directive applied

**15E.206 Formation of an Iowa agricultural industry finance corporation.**

1. This section authorizes the formation of Iowa agricultural industry finance corporations in order to perfect the manner in which such corporations are formed and operate. Such a corporation is a private business corporation and not a public corporation or instrumentality of the state. The corporation shall not enjoy any of the privileges nor be required to comply with any of the requirements of a state agency.

2. In facilitating the formation of an Iowa agricultural industry finance corporation, the following persons shall serve as incorporators as provided in section 490.201:

a. A member of the economic development authority chosen by the members of the authority or a designee of the member.

b. The director of the economic development authority, or a designee of the director.

c. The secretary of agriculture or a designee of the secretary.

3. a. After incorporation, such a corporation shall be organized by an initial board of directors as provided in chapter 490, division II. The initial board of directors shall be elected by the members of an appointment committee. The members of the appointment committee shall be appointed by the economic development authority. The initial board of directors shall consist of seven members. The members of the appointment committee shall include persons who have an expertise in areas of banking, agricultural lending, business development, agricultural production and processing, seed and venture capital investment, and other areas of expertise as deemed appropriate by the interim board of directors.

b. The members of the appointment committee shall exercise due care to assure that persons appointed to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this division, including in areas related to agricultural lending, commercial banking, and investment management.

c. Upon the election of the initial board of directors, the terms of the members of the appointment committee shall expire.

d. The authority shall assist the incorporators and the appointment committee in any manner determined necessary and appropriate by the economic development authority and the director of the authority in order to administer this section.

98 Acts, ch 1207, §7; 2011 Acts, ch 118, §63, 64, 84, 85, 89

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 2, paragraph a amended

Subsection 3, paragraphs a and d amended

**15E.208 Qualified corporations — Iowa agricultural industry finance loans.**

1. The authority may award an Iowa agricultural industry finance loan to an Iowa agricultural industry finance corporation if the authority in its discretion determines that the corporation is qualified under this section.

2. The corporation must apply for an Iowa agricultural industry finance loan on forms and according to procedures required by the authority.

3. The authority shall loan all of the amounts available to the authority pursuant to this division to a qualified corporation with provisions and restrictions as determined by the authority and contained in a loan agreement executed between the authority and the qualified corporation.

a. The authority may attach conditions to the granting of the loan as it deems desirable, including any restrictions on the subordination of the moneys loaned. The attorney general shall assist the authority in drafting loan agreements and in collecting on the loan agreement.

b. The Iowa agricultural industry finance loan shall be repayable upon terms and conditions negotiated by the parties.

(1) The repayment period shall begin six years following the date when the Iowa agricultural industry finance loan is awarded and end twenty-five years after the date that the repayment period begins.

(2) At least four percent of the amount of the Iowa agricultural industry finance loan due shall be paid each year to the authority. However, the authority may accept an assignment of a loan made by the corporation providing financing to an eligible person pursuant to section 15E.209. The assigned loan shall grant to the authority the corporation's right to payment under the loan. Any such assignment shall be made by an agreement executed by the authority and the corporation. The assignment agreement shall be subject to all of the following:

(a) The period of assignment may be for any number of years. The authority shall apply to the amounts due under the Iowa agricultural industry finance loan the principal, interest, and fees which the eligible person is obligated to pay under the assigned loan. The total amount of the principal, interest, and fees that the eligible person is obligated to pay to the authority during the period of assignment plus any other repayment of the Iowa agricultural industry finance loan made by the corporation to the authority must equal the amount of the Iowa agricultural industry finance loan that the corporation would otherwise be obligated to repay the authority during that same period. However, the agreement may provide that during any year of the assignment period the eligible person may pay more or less than four percent of the amount of the Iowa agricultural industry finance loan that the corporation would otherwise be obligated to repay during that year.

(b) The assignment agreement shall contain conditions relating to the right of payment assigned to the authority which may include securing the payment obligation in any manner that allows the authority to enforce a debt against the property of the eligible person. The authority shall not have a right of recourse against the corporation for any amount required to be applied from the assigned loan to the Iowa agricultural industry finance loan.

(c) Notwithstanding any provision of this division to the contrary, payments on the principal balance of the loan granted by the corporation to an eligible person and assigned to the department\* pursuant to this subparagraph during calendar year 2003 shall be deferred until October 1, 2007. The eligible person shall make principal payments to the department\* in the amount of one million dollars for each year on October 1, 2007, October 1, 2008, and October 1, 2009. The eligible person shall pay the department\* four hundred eighty-two thousand seven hundred sixty-one dollars in interest, which shall be deemed to be the total amount of interest accruing on the principal amount of the loan. The eligible person shall pay the interest amount on October 1, 2010. Upon the payment of the principal balance of the loan and the accrued interest, the debt shall be retired.

(d) Notwithstanding any provision of this division to the contrary, the corporation shall repay the department of economic development, or its successor entity, the principal balance of the Iowa agricultural industry finance loan beginning on October 1, 2007. The principal balance of the loan equals twenty-one million five hundred seventeen thousand two hundred thirty-nine dollars. The corporation shall repay the department of economic development, or its successor entity, five hundred seventeen thousand two hundred thirty-nine dollars by October 1, 2007, and for each subsequent year the corporation shall repay the department, or its successor entity, at least one million dollars by October 1 until the total principal balance of the loan is repaid. This subparagraph shall not be construed to limit the authority of the department of economic development, or its successor entity, to negotiate the payment of interest accruing on the principal balance which shall be paid as provided by an agreement executed by the department of economic development and the corporation.

(e) Notwithstanding any provision of this division to the contrary, payments of principal and interest of the loan granted by the corporation to an eligible person and assigned to the department\* pursuant to this subparagraph during calendar year 2003 which were deferred pursuant to subparagraph division (c) shall be forgiven and the total debt, including interest, shall be retired.

(3) The corporation shall not be subject to a prepayment penalty.

c. The corporation shall not expend moneys originating from the state, including moneys loaned under this section, on political activity or on any attempt to influence legislation.

4. A corporation shall not provide financing to support a person who is any of the following:

a. An agricultural producer, if any of the following applies:

(1) The agricultural producer is a party to a pending action for a violation of chapter 455B or 459, subchapters II and III, concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) The agricultural producer or a confinement feeding operation in which the agricultural producer holds a controlling interest is classified as a habitual violator under section 459.604.

b. An agricultural products processor, if the processor or a person owning a controlling interest in the processor has demonstrated, within the most recent consecutive three-year period prior to the application for financing, a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Violations of environmental protection statutes, rules, or regulations shall be reported for the most recent five-year period prior to application. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of workforce development pursuant to chapter 84A, or rules enforced by the department of natural resources pursuant to chapter 455B or 459, subchapters II and III.

c. A member of the economic development authority, an employee of the economic development authority, an elected state official, or any director or other officer or an employee of the corporation.

5. In order to be eligible as a qualified Iowa agricultural industry finance corporation, all of the following conditions must be satisfied:

a. The corporation must only provide financing to persons and ventures eligible under section 15E.209.

b. The corporation must demonstrate that it complies with guiding principles for the corporation as provided in section 15E.207.

c. The corporation must adopt policies and procedures which maximize public oversight into the affairs of the corporation, by providing a forum for public comment, an opportunity for public review of the corporation's actions, and methods to ensure accountability for the expenditure of public moneys loaned to the corporation.

d. The corporation's articles of incorporation must comply with requirements established by the authority relating to the capacity and integrity of the corporation to carry out the purposes of this division, including but not limited to all of the following:

(1) The capitalization of the corporation.

(2) The manner in which financing is provided by the corporation, including the manner in which an Iowa agricultural industry finance loan can be used by the corporation.

(3) The composition of the corporation's board of directors. The board must be composed of persons knowledgeable in Iowa agricultural industries including a representative number of individuals experienced and knowledgeable in financing new agricultural industries.

(4) The manner of oversight required by the authority or the auditor of state. The articles must provide that the corporation shall submit a report to the governor, the general assembly, and the authority. The report shall provide a description of the corporation's activities and a summary of its finances, including financial awards. The report shall be submitted not later than January 10 of each year. The articles shall provide that an audit of the corporation must be conducted each year for the preceding year by a certified public accountant licensed pursuant to chapter 542. The auditor of state may audit the books and accounts of the corporation at any time. The results of the annual audit and any audit for the current year conducted by the auditor of state shall be included as part of the report.

(5) The execution of an agreement between the corporation and an eligible recipient as required by the authority as a condition of providing financing, in which the eligible recipient agrees to become a shareholder in the corporation. If the eligible recipient is an agricultural producer as provided in section 15E.209, the agreement shall provide that the agricultural producer becomes a shareholder of voting common stock in the corporation equal to at least

five percent of the financing provided to the agricultural producer pursuant to the agreement. The agreement shall be for a period of not less than ten years. An agreement shall at least provide all of the following:

(a) The establishment of a common stock pricing system. The stock shall be frozen against price appreciation for the first five years of the life of the corporation. The articles shall contain waivers for death and disability.

(b) The maintenance of stock ownership by an eligible recipient until a financial assistance obligation due the corporation is satisfied.

(c) A requirement that the par value of participating common stock be established prior to providing financial assistance to an eligible recipient.

e. To the extent feasible and fiscally prudent, the corporation must maintain a portfolio which is diversified among the various types of agricultural commodities and agribusiness.

f. Not more than seventy-five percent of moneys originating from the state, including moneys loaned to the corporation pursuant to this section, may be used to finance any one Iowa agricultural industry venture.

g. The corporation may only be terminated by the following methods, unless approved by the authority:

(1) Merger or share exchange under chapter 490, division XI.

(2) Dissolution as provided in chapter 490, division XIV, part A.

(3) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

6. The authority shall provide for the default of the loan if the qualified corporation does any of the following:

a. Violates a provision of the articles of incorporation or an amendment to the articles of incorporation that is required by this division which violation is not approved by the authority.

b. Violates the terms of the loan agreement executed between the authority and the corporation, which violation is not approved by the authority.

c. Fails to comply with the requirements of section 15E.205.

d. Completes a transaction, if all of the following apply:

(1) The transaction involves any of the following:

(a) A merger or share exchange under chapter 490, division XI.

(b) The sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(2) The surviving entity of a merger or share exchange, or the entity acquiring the assets of the corporation fails to meet the requirements of section 15E.205.

7. In an action to enforce a judgment against a qualified corporation, the interest of the state shall be subrogated to the interests of holders of bonds issued by the corporation.

8. Moneys repaid or collected by the authority under this section shall be deposited into the road use tax fund created pursuant to section 312.1.

98 Acts, ch 1207, §9; 99 Acts, ch 66, §2; 2000 Acts, ch 1058, §6; 2001 Acts, ch 55, §20, 38; 2002 Acts, ch 1162, §29; 2003 Acts, ch 122, §1, 2; 2004 Acts, ch 1175, §324; 2006 Acts, ch 1185, §55; 2009 Acts, ch 41, §263; 2011 Acts, ch 118, §65, 66, 85, 89

\*\*Department of economic development\* probably intended; corrective legislation is pending

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 3, paragraph b, subparagraph (2), subparagraph division (d) amended

Subsection 4, paragraph c amended

**15E.211 Rules.**

The authority may adopt rules pursuant to chapter 17A necessary to administer this division.

98 Acts, ch 1207, §12; 2011 Acts, ch 118, §87, 89

Code editor directive applied

## DIVISION XXI

### ECONOMIC DEVELOPMENT REGIONS AND ENTERPRISE AREAS

**15E.231 Economic development regions.**

In order for an economic development region to receive moneys under the economic development financial assistance program established in section 15G.112, an economic development region's regional development plan must be approved by the authority. An economic development region shall consist of not less than three counties, unless two contiguous counties have a combined population of at least three hundred thousand based on the most recent federal decennial census. An economic development region shall establish a focused economic development effort that shall include a regional development plan relating to one or more of the following areas:

1. Regional marketing strategies.
2. Development of the information solutions sector.
3. Development of the advanced manufacturing sector.
4. Development of the life sciences and biotechnology sector.
5. Development of the insurance or financial services sector.
6. Physical infrastructure including, but not limited to, horizontal infrastructure, water and sewer infrastructure, and telecommunications infrastructure.
7. Entrepreneurship.
8. Development of the alternative and renewable energy sector.

2005 Acts, ch 150, §9; 2006 Acts, ch 1142, §18; 2009 Acts, ch 123, §27; 2010 Acts, ch 1138, §10, 16; 2011 Acts, ch 118, §86, 87, 89

Allocation of funds for regional financial assistance, see §15G.111(9)

2010 amendment applies retroactively to tax years beginning on or after January 1, 2010; 2010 Acts, ch 1138, §16

Code editor directives applied

**15E.232 Regional economic development — financial assistance.**

1. An economic development region may apply for financial assistance from the economic development fund to assist with the installation of physical infrastructure needs including, but not limited to, horizontal infrastructure, water and sewer infrastructure, and telecommunications infrastructure, related to the development of fully served business and industrial sites by one or more of the region's economic development partners or for the installation of infrastructure related to a new business location or expansion. In order to receive financial assistance pursuant to this subsection, the economic development region must demonstrate all of the following:

- a. The ability to provide matching moneys on a basis of a one dollar contribution of local matching moneys for every two dollars received from the economic development fund.
- b. The commitment of the specific business partner including, but not limited to, a letter of intent defining a capital commitment or a percentage of equity.
- c. That all other funding alternatives have been exhausted.

2. The authority may establish and administer a regional economic development revenue sharing pilot project for one or more regions. The authority shall take into consideration the geographical dispersion of the pilot projects. The authority shall provide technical assistance to the regions participating in a pilot project.

3. An economic development region may apply for financial assistance from the economic development fund to assist an existing business threatened with closure due to a potential consolidation to an out-of-state location. The economic development region may apply for

financial assistance from the economic development fund for the purchase, rehabilitation, or marketing of a building that has become available due to the closing of an existing business due to a consolidation to an out-of-state location. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every three dollars received from the economic development fund.

4. An economic development region may apply for financial assistance from the economic development fund to establish and operate an entrepreneurial initiative. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every two dollars received from the economic development fund.

5. a. An economic development region may apply for financial assistance from the economic development fund to establish and operate a business succession assistance program for the region.

b. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every two dollars received from the economic development fund.

6. An economic development region may apply for financial assistance from the economic development fund to implement economic development initiatives that are either unique to the region or innovative in design and implementation. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a one-to-one basis.

7. Financial assistance under subsections 1, 3, 4, 5, and 6, and section 15E.233 shall be limited to a total of one million dollars each fiscal year for the fiscal period beginning July 1, 2005, and ending June 30, 2015, and shall not be provided to assist in the establishment, operation, or installation of a project, initiative, or activity that may result in the provision, lease, or sale of goods or services by a government body that competes with private enterprise.

2005 Acts, ch 150, §10; 2007 Acts, ch 174, §88; 2010 Acts, ch 1138, §11, 16; 2011 Acts, ch 118, §86, 87, 89

2010 amendments apply retroactively to tax years beginning on or after January 1, 2010; 2010 Acts, ch 1138, §16  
Code editor directives applied

### **15E.233 Economic enterprise areas.**

1. An economic development region may apply to the authority for approval to be designated as an economic enterprise area based on criteria provided in subsection 3. The authority shall approve no more than ten regions as economic enterprise areas.

2. a. An approved economic enterprise area may apply to the authority for financial assistance from the economic development fund for up to seventy-five thousand dollars each fiscal year during the fiscal period beginning July 1, 2005, and ending June 30, 2015, for any of the following purposes:

(1) Economic development-related strategic planning and marketing for the region as a whole.

(2) Economic development of fully-served business sites.

(3) The construction of speculative buildings on a fully served lot.

(4) The rehabilitation of an existing building to marketable standards.

b. In order to receive financial assistance under this subsection, an economic enterprise area must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every three dollars received from the economic development fund.

3. An economic enterprise area shall consist of at least one county containing no city with a population of more than twenty-three thousand five hundred and shall meet at least three of the following criteria:

a. A per capita income of eighty percent or less than the national average.

b. A household median income of eighty percent or less than the national average.

c. Twenty-five percent or more of the population of the economic enterprise area with an income level of one hundred fifty percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

d. A population density in the economic enterprise area of less than ten people per square mile.

e. A loss of population as shown by the 2000 certified federal census when compared with the 1990 certified federal census.

f. An unemployment rate greater than the national rate of unemployment.

g. More than twenty percent of the population of the economic enterprise area consisting of people over the age of sixty-five.

2005 Acts, ch 150, §11; 2011 Acts, ch 118, §86, 87, 89

Code editor directives applied

## DIVISION XXII

### ENDOW IOWA PROGRAM

#### 15E.303 Definitions.

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

1. “*Board*” means the governing board of the lead philanthropic entity identified by the authority pursuant to section 15E.304.

2. “*Business*” means a business operating within the state and includes individuals operating a sole proprietorship or having rental, royalty, or farm income in this state and includes a consortium of businesses.

3. “*Community affiliate organization*” means a group of five or more community leaders or advocates organized for the purpose of increasing philanthropic activity in an identified community or geographic area in this state with the intention of establishing a community affiliate endowment fund.

4. “*Endow Iowa qualified community foundation*” means a community foundation organized or operating in this state that substantially complies with the national standards established by the national council on foundations as determined by the authority in collaboration with the Iowa council of foundations.

5. “*Endowment gift*” means an irrevocable contribution to a permanent endowment held by an endow Iowa qualified community foundation.

6. “*Lead philanthropic entity*” means the entity identified by the authority pursuant to section 15E.304.

2003 Acts, 1st Ex, ch 1, §90, 93

[2003 enactment of section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §3, 4; 2005 Acts, ch 150, §71, 81; 2011 Acts, ch 118, §87, 89

Code editor directive applied

#### 15E.304 Endow Iowa grants.

1. The authority shall identify a lead philanthropic entity for purposes of encouraging the development of qualified community foundations in this state. A lead philanthropic entity shall meet all of the following qualifications:

a. The entity shall be a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code.

b. The entity shall be a statewide organization with membership consisting of organizations, such as community, corporate, and private foundations, whose principal function is the making of grants within the state of Iowa.

c. The entity shall have a minimum of forty members and that membership shall include qualified community foundations.

2. A lead philanthropic entity may receive a grant from the authority. The board shall use the grant moneys to award endow Iowa grants to new and existing qualified community foundations and to community affiliate organizations that do all of the following:

- a. Provide the board with all information required by the board.
  - b. Demonstrate a dollar-for-dollar funding match in a form approved by the board.
  - c. Identify an endow Iowa qualified community foundation to hold all funds. An endow Iowa qualified community foundation shall not be required to meet this requirement.
  - d. Provide a plan to the board demonstrating the method for distributing grant moneys received from the board to organizations within the community or geographic area as defined by the endow Iowa qualified community foundation or the community affiliate organization.
3. Endow Iowa grants awarded to new and existing endow Iowa qualified community foundations and to community affiliate organizations shall not exceed twenty-five thousand dollars per foundation or organization unless a foundation or organization demonstrates a multiple county or regional approach. Endow Iowa grants may be awarded on an annual basis with not more than three grants going to one county in a fiscal year.
4. In ranking applications for grants, the board shall consider a variety of factors including the following:
- a. The demonstrated need for financial assistance.
  - b. The potential for future philanthropic activity in the area represented by or being considered for assistance.
  - c. The proportion of the funding match being provided.
  - d. For community affiliate organizations, the demonstrated need for the creation of a community affiliate endowment fund in the applicant's geographic area.
  - e. The identification of community needs and the manner in which additional funding will address those needs.
  - f. The geographic diversity of awards.
5. Of any moneys received by a lead philanthropic entity from the state, not more than five percent of such moneys shall be used by the entity for administrative purposes.

2003 Acts, 1st Ex, ch 1, §91, 93

[2003 enactment of section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §3, 4; 2005 Acts, ch 150, §72, 73, 81; 2011 Acts, ch 118, §87, 89  
Code editor directive applied

#### **15E.305 Endow Iowa tax credit.**

1. For tax years beginning on or after January 1, 2003, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329 equal to twenty-five percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. A tax credit shall be allowed only for an endowment gift made to an endow Iowa qualified community foundation for a permanent endowment fund established to benefit a charitable cause in this state. The amount of the endowment gift for which the tax credit is claimed shall not be deductible in determining taxable income for state income tax purposes. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.
2. The aggregate amount of tax credits authorized pursuant to this section shall not exceed a total of three million five hundred thousand dollars plus such additional credit amount as provided by this section annually. The maximum amount of tax credits granted to a taxpayer shall not exceed five percent of the aggregate amount of tax credits authorized.
  - a. Ten percent of the aggregate amount of tax credits authorized in a calendar year shall be reserved for those endowment gifts in amounts of thirty thousand dollars or less. If by September 1 of a calendar year the entire ten percent of the reserved tax credits is not distributed, the remaining tax credits shall be available to any other eligible applicants.
  - b. For purposes of this subsection, the additional credit amount shall be an amount for each applicable calendar year determined by the department of revenue equal to the amount

of money credited as provided by section 99F.11, subsection 3, paragraph “d”, subparagraph (3), for the prior fiscal year.

3. A tax credit shall not be transferable to any other taxpayer.

4. The authority shall develop a system for registration and authorization of tax credits under this section and shall control the distribution of all tax credits to taxpayers providing an endowment gift subject to this section. The authority shall adopt administrative rules pursuant to chapter 17A for the qualification and administration of endowment gifts.

2003 Acts, 1st Ex, ch 2, §83, 89; 2005 Acts, ch 150, §74 – 77, 81; 2006 Acts, ch 1151, §1 – 3, 7, 8; 2007 Acts, ch 174, §89; 2008 Acts, ch 1032, §201; 2009 Acts, ch 179, §105, 106, 153; 2010 Acts, ch 1138, §17 – 19; 2011 Acts, ch 107, §1, 2; 2011 Acts, ch 118, §87, 89

2009 amendments to subsections 1 and 2 take effect January 1, 2010, and apply to tax years beginning on or after that date; 2009 Acts, ch 179, §153

2010 amendment to subsection 2, unnumbered paragraph 1 applies retroactively for endow Iowa tax credits authorized on or after January 1, 2010; 2010 Acts, ch 1138, §19

2011 amendment to subsection 2, unnumbered paragraph 1 takes effect May 12, 2011, and applies retroactively to January 1, 2011, for endow Iowa tax credits authorized on or after that date; 2011 Acts, ch 107, §2

Code editor directive applied

Subsection 2, unnumbered paragraph 1 amended

## DIVISION XXIII

### COUNTY ENDOWMENT FUND

#### **15E.311 County endowment fund.**

1. The purpose of this section is to enhance the quality of life for citizens of Iowa by providing moneys to new or existing citizen groups of this state organized to establish county affiliate funds or community foundations that will address countywide needs.

2. A county endowment fund is created in the state treasury under the control of the department of revenue. The fund consists of all moneys appropriated to the fund. Moneys in the fund shall be distributed by the department as provided in this section.

3. *a.* At the end of each fiscal year, moneys in the fund shall be transferred into separate accounts within the fund and designated for use by each county in which no licensee authorized to conduct gambling games under chapter 99F was located during that fiscal year. Moneys transferred to county accounts shall be divided equally among the counties. Moneys transferred into an account for a county shall be transferred by the department to an eligible county recipient for that county. Of the moneys transferred, an eligible county recipient shall distribute seventy-five percent of the moneys as grants to charitable organizations for charitable purposes in that county and shall retain twenty-five percent of the moneys for use in establishing a permanent endowment fund for the benefit of charitable organizations for charitable purposes. Of the amounts distributed, eligible county recipients shall give special consideration to grants for projects that include significant vertical infrastructure components designed to enhance quality of life aspects within local communities. In addition, as a condition of receiving a grant, the governing body of a charitable organization receiving a grant shall approve all expenditures of grant moneys and shall allow a state audit of expenditures of all grant moneys.

*b.* If a county does not have an eligible county recipient, moneys in the account for that county shall remain in that account until an eligible county recipient for that county is established.

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

*a.* “*Charitable organization*” means an organization that is described in section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code or an organization that is established for a charitable purpose.

*b.* “*Charitable purpose*” means a purpose described in section 501(c)(3) of the Internal Revenue Code, or a benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

*c.* “*Eligible county recipient*” means an endow Iowa qualified community foundation

or community affiliate organization, as defined in section 15E.303, that is selected, in accordance with the procedures described in section 15E.304, to receive moneys from an account created in this section for a particular county. To be selected as an eligible county recipient, a community affiliate organization shall establish a county affiliate fund to receive moneys as provided by this section.

5. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the county endowment fund shall be credited to the county endowment fund. Notwithstanding section 8.33, moneys credited to the county endowment fund shall not revert at the close of a fiscal year.

6. Three percent of the moneys deposited in the county endowment fund shall be used by the lead philanthropic organization identified by the authority pursuant to section 15E.304 for purposes of administering and marketing the county endowment fund. Of the amounts available to be used by the lead philanthropic organization pursuant to this subsection, seventy thousand dollars is appropriated to the economic development authority each fiscal year for administrative costs related to the endow Iowa program.

2004 Acts, ch 1136, §1; 2005 Acts, ch 150, §78, 79, 81; 2006 Acts, ch 1151, §4, 5, 8; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### DIVISION XXIV REGIONAL SPORTS AUTHORITY DISTRICTS

##### **15E.321 Regional sports authority districts.**

1. As used in this section, “*district*” means a regional sports authority district certified under this section.

2. A convention and visitors bureau may apply to the authority for certification of a regional sports authority district which may include more than one city and more than one convention and visitors bureau within the district. The authority shall not certify more than ten such districts.

3. Each district shall actively promote youth sports, high school athletic activities, the special olympics, and other nonprofessional sporting events in the local area.

4. Each district shall be governed by a seven-member board consisting of seven members appointed by the convention and visitors bureau filing the application pursuant to subsection 2. At least three members of the board shall consist of city council members of any cities located in the district. Each board shall be responsible for administering programs designed to promote the activities enumerated in subsection 3.

2007 Acts, ch 219, §32; 2011 Acts, ch 118, §87, 89

Code editor directive applied

#### DIVISION XXV BUSINESS ACCELERATORS

##### **15E.351 Business accelerators.**

1. The economic development authority shall establish and administer a business accelerator program to provide financial assistance for the establishment and operation of a business accelerator for technology-based, value-added agricultural, information solutions, alternative and renewable energy including the alternative and renewable energy sectors listed in section 476.42, subsection 1, paragraph “a”, subparagraph (1), or advanced manufacturing start-up businesses or for a satellite of an existing business accelerator. The program shall be designed to foster the accelerated growth of new and existing businesses through the provision of technical assistance. The economic development authority may

provide financial assistance under this section from moneys allocated for regional financial assistance pursuant to section 15G.111, subsection 9.

2. In determining whether a business accelerator qualifies for financial assistance, the authority must find that a business accelerator meets all of the following criteria:

a. The business accelerator must be a not-for-profit organization affiliated with an area chamber of commerce, a community or county organization, or economic development region.

b. The geographic area served by a business accelerator must include more than one county.

c. The business accelerator must possess the ability to provide service to a specific type of business as well as to meet the broad-based needs of other types of start-up entrepreneurs.

d. The business accelerator must possess the ability to market business accelerator services in the region and the state.

e. The business accelerator must possess the ability to communicate with and cooperate with other business accelerators and similar service providers in the state.

f. The business accelerator must possess the ability to engage various funding sources for start-up entrepreneurs.

g. The business accelerator must possess the ability to communicate with and cooperate with various entities for purposes of locating suitable facilities for clients of the business accelerator.

h. The business accelerator must possess the willingness to accept referrals from the economic development authority.

3. In determining whether a business accelerator qualifies for financial assistance, the authority may consider any of the following:

a. The business experience of the business accelerator's professional staff.

b. The business plan review capacity of the business accelerator's professional staff.

c. The business accelerator's professional staff with demonstrated experience in all aspects of business disciplines.

d. The business accelerator's professional staff with access to external service providers including legal, accounting, marketing, and financial services.

4. In order to receive financial assistance under this section, the financial assistance recipient must demonstrate the ability to provide matching moneys on a basis of a two dollar contribution of recipient moneys for every one dollar received in financial assistance.

2005 Acts, ch 150, §12; 2006 Acts, ch 1030, §4; 2006 Acts, ch 1142, §19; 2009 Acts, ch 123, §28; 2011 Acts, ch 25, §128; 2011 Acts, ch 118, §67, 84, 85, 89

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 1 amended

## DIVISION XXVI

### SMALL BUSINESS DISASTER ASSISTANCE PROGRAM

#### **15E.361 Small business disaster recovery financial assistance program.**

1. The authority shall establish and administer a small business disaster recovery financial assistance program. Under the program, the authority shall provide grants to administrative entities for purposes of providing financial assistance to eligible businesses that sustained physical damage or economic loss due to a natural disaster occurring after May 24, 2008, and before August 14, 2008. Moneys shall be allocated to administrative entities on the basis of the percentage of disaster loans awarded by the United States small business administration to businesses located within a city's jurisdiction or a disaster recovery area as defined by the authority.

2. An eligible business is a business that sustained physical damage or economic loss due to a natural disaster occurring after May 24, 2008, and before August 14, 2008, and has executed loan documents for a disaster loan from an eligible lender as defined by the

authority. Financial assistance shall be in the form of forgivable loans and reimbursement for acquisition of energy-efficient equipment. The maximum amount of a forgivable loan is twenty-five percent of the loan amount from the eligible lender up to a maximum of fifty thousand dollars. Up to an additional five thousand dollars of assistance shall be available for the reimbursement of energy-efficient purchases and installation.

3. As determined by the authority, unused or unobligated moneys may be reclaimed and reallocated by the authority to other administrative agencies.

4. For purposes of this section, “*administrative entity*” means cities identified by the authority that administer local disaster recovery programs and councils of government.

2009 Acts, ch 170, §1, 11; 2011 Acts, ch 118, §87, 89

Section is effective March 16, 2009, and applies retroactively to July 1, 2008, for the fiscal year beginning on that date; funding; 2009 Acts, ch 170, §11

Code editor directive applied

## CHAPTER 15F

### COMMUNITY ATTRACTION AND TOURISM DEVELOPMENT

For provisions regarding transition of department of economic development employees to the economic development authority and limitations on the Iowa innovation corporation’s employment of former department employees, see 2011 Acts, ch 118, §19

For provisions regarding continuation of financial assistance by the economic development authority, transfer of funds under the control of the department of economic development to the economic development authority, continuation of licenses, permits, or contracts by the economic development authority, continuation of financial assistance awards under the grow Iowa values financial assistance program, and availability of federal funds to employ certain personnel, see 2011 Acts, ch 118, §20, 89

For provisions regarding continuing validity of department of economic development administrative rules, see 2011 Acts, ch 118, §18

#### SUBCHAPTER I

#### VISION IOWA BOARD

##### 15F.101 Definitions.

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

1. “*Authority*” means the economic development authority created in section 15.105.
2. “*Board*” means the vision Iowa board as created in section 15F.102.

2000 Acts, ch 1174, §1; 2011 Acts, ch 118, §68, 69, 89

NEW subsection 1 and former subsection 1 renumbered as 2

Former subsection 2 stricken

##### 15F.102 Vision Iowa board.

1. The vision Iowa board is established consisting of thirteen members and is located for administrative purposes within the authority. The director of the authority shall provide office space, staff assistance, and necessary supplies and equipment for the board. The director shall budget funds to pay the compensation and expenses of the board. In performing its functions the board is performing a public function on behalf of the state and is a public instrumentality of the state.

2. The membership of the board shall be appointed as follows:

- a. Three members of the general public, one member from each of the three tourism regions.
- b. One mayor of a city with a population of less than twenty thousand.
- c. One county supervisor from a county that has a population ranking in the bottom thirty-three counties according to the 1990 census.

- d. Four members of the general public.
- e. One mayor of a city with a population of twenty thousand or more.
- f. The director of the economic development authority or the director's designee.
- g. The treasurer of state or the treasurer of state's designee.
- h. The auditor of state or the auditor of state's designee.

3. All appointments, except the director of the economic development authority, the treasurer of state, and the auditor of state, shall be made by the governor, shall comply with sections 69.16 and 69.16A, and shall be subject to confirmation by the senate. All appointed members of the board shall have demonstrable experience or expertise in the field of tourism development and promotion, public financing, architecture, engineering, or major facility development or construction.

4. All members of the board, except the director of the economic development authority, the treasurer of state, and the auditor of state, shall be residents of different counties.

5. The chairperson and vice chairperson of the board shall be designated by the governor from the board members listed in subsection 2, paragraphs "a" through "e". In case of the absence or disability of the chairperson and vice chairperson, the members of the board shall elect a temporary chairperson by a majority vote of those members who are present and voting.

6. The members, except the director of the economic development authority, the treasurer of state, and the auditor of state, shall be appointed to three-year staggered terms and the terms shall commence and end as provided by section 69.19. If a vacancy occurs, a successor shall be appointed to serve the unexpired term. A successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term.

7. A majority of the board constitutes a quorum.

2000 Acts, ch 1174, §2; 2008 Acts, ch 1122, §1; 2011 Acts, ch 118, §85, 89

Confirmation, see §2.32

Code editor directive applied

### **15F.103 Board duties.**

The board shall do all of the following:

- 1. Organize.
- 2. Establish the vision Iowa program and the community attraction and tourism program.
- 3. Oversee and provide approval of the administration of the vision Iowa program and the community attraction and tourism program by the authority.
- 4. Request the treasurer of state to issue bonds on behalf of the board for purposes of the vision Iowa program.

2000 Acts, ch 1174, §3; 2011 Acts, ch 118, §87, 89

Code editor directive applied

### **15F.104 Authority duties.**

The authority, subject to approval by the board, shall adopt administrative rules pursuant to chapter 17A necessary to administer the community attraction and tourism program and the vision Iowa program. The authority shall provide the board with assistance in implementing administrative functions, marketing the programs, providing technical assistance and application assistance to applicants under the programs, negotiating contracts, and providing project follow-up. The authority, in cooperation with the treasurer of state, may conduct negotiations on behalf of the board with applicants regarding terms and conditions applicable to awards under the programs.

2000 Acts, ch 1174, §4; 2011 Acts, ch 118, §87, 89

Code editor directive applied

SUBCHAPTER II  
COMMUNITY ATTRACTION AND TOURISM  
PROGRAM AND FUNDS

**15F.202 Community attraction and tourism program.**

1. The board shall establish and the authority, subject to direction and approval by the board, shall administer a community attraction and tourism program to assist communities in the development, creation, and regional marketing of multiple-purpose attraction or tourism facilities. Any moneys appropriated to the river enhancement community attraction and tourism fund created pursuant to section 15F.205 shall be used exclusively for the creation and enhancement of community attractions and tourism opportunities along lakes, rivers, and river corridors in cities across the state, but a recipient of moneys from the river enhancement community attraction and tourism fund shall not be precluded from receiving funds from the community attraction and tourism fund created pursuant to section 15F.204.

2. A city or county in the state or public organization may submit an application to the board for financial assistance for a project under the program. The assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancement and financing instruments. The application shall include, but not be limited to, the following information:

- a. The total capital investment of the project, including but not limited to costs for construction, site acquisition, and infrastructure improvement.
- b. The amount or percentage of local and private matching moneys which will be or have been provided for the project.
- c. The total number of jobs to be created or retained by the project.
- d. The need of the community for the project and for the financial assistance.
- e. The long-term tax-generating impact of the project.

3. A school district, in cooperation with a city or county, may submit a joint application for financial assistance for a project under the program. The assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancement and financing instruments. In addition to the information required in subsection 2, the application shall include a demonstration that the intended future use of the project shall be by both joint applicants.

2000 Acts, ch 1174, §8; 2001 Acts, ch 185, §37, 38, 49; 2003 Acts, ch 160, §1; 2008 Acts, ch 1178, §5; 2011 Acts, ch 118, §87, 89

Code editor directive applied

**15F.203 Community attraction and tourism program application review.**

1. Applications for assistance under the program shall be submitted to the authority. For those applications that meet the eligibility criteria, the authority shall provide a staff review analysis and evaluation to the community attraction and tourism program review committee referred to in subsection 2 and the board.

2. A review committee composed of five members of the board shall review community attraction and tourism program applications submitted to the board and make recommendations regarding the applications to the board. The review committee shall consist of members of the board listed in section 15F.102, subsection 2, paragraphs "a" through "c".

3. When reviewing the applications, the review committee and the authority shall consider, at a minimum, all of the following:

- a. Whether the wages, benefits, including health benefits, safety, and other attributes of the project would improve the quality of life or the quality of attraction or tourism employment in the community.
- b. The extent to which such a project would generate additional recreational and cultural attractions or tourism opportunities.
- c. The ability of the project to produce a long-term, tax-generating economic impact.
- d. The location of the projects and geographic diversity of the applications.

e. The project is primarily a vertical infrastructure project with demonstrated substantial regional or statewide economic impact. For purposes of the program, “*vertical infrastructure*” means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails and water trails. “*Vertical infrastructure*” does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

f. Whether the applicant has received financial assistance under the program for the same project.

g. The extent to which the project has taken the following planning principles into consideration:

(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

(2) Provision for a variety of transportation choices, including pedestrian traffic.

(3) Maintenance of a unique sense of place by respecting local cultural and natural environmental features.

(4) Conservation of open space and farmland and preservation of critical environmental areas.

(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

4. Upon review of the recommendations of the review committee, the board shall approve, defer, or deny the applications.

5. Upon approval of an application for financial assistance under the program, the board shall notify the treasurer of state regarding the amount of moneys needed to satisfy the award of financial assistance and the terms of the award. The treasurer of state shall notify the authority any time moneys are disbursed to a recipient of financial assistance under the program.

2000 Acts, ch 1174, §9; 2007 Acts, ch 215, §58; 2011 Acts, ch 118, §87, 89

Code editor directive applied

#### **15F.204 Community attraction and tourism fund.**

1. A community attraction and tourism fund is created as a separate fund in the state treasury under the control of the board, consisting of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the board for placement in the fund.

2. Payments of interest, repayments of moneys loaned pursuant to this subchapter, and recaptures of grants or loans shall be deposited in the fund.

3. The fund shall be used to provide assistance only from funds, rights, and assets legally available to the board in the form of grants, loans, forgivable loans, and credit enhancements and financing instruments under the community attraction and tourism program established in section 15F.202. A project with a total cost exceeding twenty million dollars may receive financial assistance under the program. An applicant under the community attraction and tourism program shall not receive financial assistance from the fund in an amount exceeding fifty percent of the total cost of the project.

4. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

5. At the beginning of each fiscal year, the board shall allocate one hundred thousand dollars for purposes of marketing those projects that are receiving moneys from the fund. After the marketing allocation, the board shall allocate all remaining moneys in the fund in the following manner:

a. One-third of the moneys shall be allocated to provide assistance to cities and counties which meet the following criteria:

(1) A city which has a population of ten thousand or less according to the most recently published census.

(2) A county which has a population that ranks in the bottom thirty-three counties according to the most recently published census.

b. Two-thirds of the moneys shall be allocated to provide assistance to any city and county in the state, which may include a city or county included under paragraph “a”.

6. If two or more cities or counties submit a joint project application for financial assistance under the program, all joint applicants must meet the criteria of subsection 5, paragraph “a”, in order to receive any moneys allocated under that paragraph.

7. If any portion of the allocated moneys under subsection 5, paragraph “a”, has not been awarded by April 1 of the fiscal year for which the allocation is made, the portion which has not been awarded may be utilized by the board to provide financial assistance under the program to any city or county in the state.

8. There is appropriated from the rebuild Iowa infrastructure fund to the community attraction and tourism fund, the following amounts:

a. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, the sum of twelve million dollars.

b. For the fiscal year beginning July 1, 2005, and ending June 30, 2006, the sum of five million dollars.

c. For the fiscal year beginning July 1, 2006, and ending June 30, 2007, the sum of five million dollars.

d. For the fiscal year beginning July 1, 2007, and ending June 30, 2008, the sum of five million dollars.

e. For the fiscal year beginning July 1, 2008, and ending June 30, 2009, the sum of twelve million dollars. Notwithstanding any provision to the contrary, of the amount appropriated in this subparagraph, one million nine hundred thousand dollars is transferred to the housing assistance fund to be used for the jumpstart housing assistance program established pursuant to section 16.201.

f. For the fiscal year beginning July 1, 2011, and ending June 30, 2012, the sum of three million three hundred thousand dollars.

g. For the fiscal year beginning July 1, 2012, and ending June 30, 2013, the sum of five million dollars.

9. Notwithstanding the allocation requirements in subsection 5, the board may make a multiyear commitment to an applicant of up to four million dollars in any one fiscal year.

2000 Acts, ch 1174, §10; 2001 Acts, ch 185, §39, 49; 2004 Acts, ch 1175, §401, 402; 2008 Acts, ch 1032, §127; 2008 Acts, ch 1178, §6; 2008 Acts, ch 1179, §50, 51; 2008 Acts, ch 1191, §31; 2009 Acts, ch 170, §2, 11; 2009 Acts, ch 173, §27, 36; 2010 Acts, ch 1184, §82, 83; 2011 Acts, ch 133, §26, 27, 50

Partial item veto applied

Subsection 8, paragraph a, unnumbered paragraph 1 and subparagraphs (1) - (7) redesignated as unnumbered paragraph 1 and paragraphs a - g of subsection 8 respectively

Subsection 8, paragraph f amended

Subsection 8, former paragraph b stricken

**15F.205 River enhancement community attraction and tourism fund.**

1. For purposes of this section, “lake” means a lake of which the state or a political subdivision owns the lake bed up to the ordinary high water line and which is open to the use of the general public.

2. A river enhancement community attraction and tourism fund is created as a separate fund in the state treasury under the control of the board, consisting of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the board for placement in the fund.

3. Payments of interest, repayments of moneys loaned pursuant to this subchapter, and recaptures of grants or loans shall be deposited in the fund.

4. The fund shall be used to provide assistance only from funds, rights, and assets legally available to the board, and the assistance shall be in the form of grants, loans, forgivable loans, and credit enhancements and financing instruments as described in the community attraction and tourism program established in section 15F.202.

5. An applicant for financial assistance from moneys in the river enhancement community

attraction and tourism fund for a river or lake enhancement project under the community attraction and tourism program shall receive financial assistance from the fund in an amount not to exceed one third of the total cost of the project.

6. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

7. At the beginning of each fiscal year, the board shall allocate moneys in the fund for financial assistance to projects that promote and enhance recreational opportunities and community attractions on and near rivers or lakes within cities across the state. Such recreational opportunities and community attractions shall be closely connected to a river or lake and may include but is not limited to pedestrian trails and walkways, amphitheaters, bike trails, water trails or whitewater courses for watercraft, and any modifications necessary for the safe mitigation of dams.

8. The board may make a multiyear commitment to an applicant or may award assistance for multiple projects to the same applicant provided the fund contains sufficient moneys. Any moneys remaining in the fund at the end of a fiscal year may be carried over to a subsequent fiscal year, or may be obligated in advance for a subsequent fiscal year.

9. The board is not required to award financial assistance pursuant to this section unless moneys are appropriated to and available from the fund.

2008 Acts, ch 1178, §7

Section not amended; footnote deleted

#### **15F.206 River enhancement community attraction and tourism projects — application review.**

1. Applications for assistance for river enhancement community attraction and tourism projects shall be submitted to the authority. For those applications that meet the eligibility criteria, the authority shall provide a staff review analysis and evaluation to the vision Iowa program review committee referred to in section 15F.304, subsection 2, and the board.

2. When reviewing the applications, the vision Iowa program review committee and the authority shall consider, at a minimum, all of the following:

a. Whether the wages, benefits, including health benefits, safety, and other attributes of the project would improve the quality of life or the quality of attraction or tourism employment in the community.

b. The extent to which such a project would generate additional recreational and cultural attractions or tourism opportunities.

c. The ability of the project to produce a long-term, tax-generating economic impact.

d. The location of the projects and geographic diversity of the applications.

e. The project is primarily a vertical infrastructure project with demonstrated substantial regional or statewide economic impact. For purposes of the program, “*vertical infrastructure*” means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails and water trails. “*Vertical infrastructure*” does not include routine, recurring maintenance, or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

f. Whether the applicant has received financial assistance under the program for the same project.

g. The extent to which the project has taken the following planning principles into consideration:

(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

(2) Provision for a variety of transportation choices, including pedestrian traffic.

(3) Maintenance of a unique sense of place by respecting local cultural and natural environmental features.

(4) Conservation of open space and farmland and preservation of critical environmental areas.

(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

3. Upon review of the recommendations of the review committee, the board shall approve, defer, or deny the applications.

4. Upon approval of an application for financial assistance under the program, the board shall notify the treasurer of state regarding the amount of moneys needed to satisfy the award of financial assistance and the terms of the award. The treasurer of state shall notify the authority anytime moneys are disbursed to a recipient of financial assistance under the program.

2009 Acts, ch 184, §34; 2011 Acts, ch 118, §87, 89  
Code editor directive applied

### SUBCHAPTER III VISION IOWA PROGRAM

#### **15F.302 Vision Iowa program.**

1. The board shall establish and the authority, subject to direction and approval by the board, shall administer a vision Iowa program to assist communities in the development of major tourism facilities.

2. A city or county or a public organization in the state may submit an application to the board for financial assistance for a project under the program. For purposes of this subsection, “*public organization*” means a nonprofit economic development organization or other nonprofit organization that sponsors or supports community or tourism attractions and activities. The financial assistance from the fund shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, pledges, and credit enhancements and financing instruments. The application shall include, but not be limited to, the following information:

- a. The total capital investment of the project, including but not limited to costs for construction, site acquisition, and infrastructure improvement.
- b. A description of the proposed financing including the amount or percentage of local and private matching moneys to be provided for the project.
- c. The total number of jobs to be created or retained by the project.
- d. The need of the community for the project and for financial assistance.
- e. The long-term, tax-generating impact of the project.
- f. A discussion of how the project meets other criteria established in this subchapter.
- g. The projected long-term economic viability of the project, including projected revenues and expenses.

3. A school district, in cooperation with a city or county, may submit a joint application for financial assistance for a project under the program. The financial assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancements and financing instruments. In addition to the information required in subsection 2, the application shall include a demonstration that the intended future use of the project shall be by both joint applicants.

2000 Acts, ch 1174, §12; 2001 Acts, ch 185, §40, 41, 49; 2011 Acts, ch 118, §87, 89  
Code editor directive applied

#### **15F.304 Vision Iowa program application review.**

1. Applications for assistance under the program shall be submitted to the authority. For those applications that meet the eligibility criteria, the authority shall provide a staff review and evaluation to the vision Iowa program review committee referred to in subsection 2 and the board.

2. A review committee composed of eight members of the board shall review vision Iowa program applications and river enhancement community attraction and tourism project applications submitted to the board and make recommendations regarding the applications

to the board. The review committee shall consist of members of the board listed in section 15F.102, subsection 2, paragraphs “d” through “h”.

3. When reviewing the applications, the review committee and the authority shall consider, in addition to other criteria established in this subchapter, all of the following:

a. Whether wages, benefits, including health benefits, safety, and other attributes of the project would improve the quality of other existing regional or statewide cultural, recreational, entertainment, and educational activities or employment in the community.

b. The extent to which the project would generate additional attraction and tourism opportunities.

c. The ability of the project to produce a long-term, tax-generating economic impact in excess of the proposed financial assistance from the vision Iowa fund.

d. The geographic diversity of the project in combination with other proposed projects.

e. The investment of the city, county, or region in the overall project.

f. Other funding mechanisms.

g. The long-term economic viability of the project.

h. The extent to which the project has taken the following planning principles into consideration:

(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

(2) Provision for a variety of transportation choices, including pedestrian traffic.

(3) Maintenance of a unique sense of place by respecting local cultural and natural environmental features.

(4) Conservation of open space and farmland and preservation of critical environmental areas.

(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

4. Upon review of the recommendations of the review committee, the board shall approve, defer, or deny the applications. If an application is approved, the board may enter into an agreement with the applicant to provide financial assistance authorized under section 15F.302.

5. The review committee shall consider, review, and make recommendations regarding applications for assistance for river enhancement community attractions and tourism projects as provided in section 15F.206.

2000 Acts, ch 1174, §14; 2000 Acts, ch 1232, §44; 2001 Acts, ch 185, §43, 49; 2009 Acts, ch 184, §35, 36; 2011 Acts, ch 118, §87, 89

Code editor directive applied

## CHAPTER 15G

### ECONOMIC GROWTH AND EXPANSION ACTIVITIES

For provisions regarding transition of department of economic development employees to the economic development authority and limitations on the Iowa innovation corporation's employment of former department employees, see 2011 Acts, ch 118, §19

For provisions regarding continuation of financial assistance by the economic development authority, transfer of funds under the control of the department of economic development to the economic development authority, continuation of licenses, permits, or contracts by the economic development authority, continuation of financial assistance awards under the grow Iowa values financial assistance program, and availability of federal funds to employ certain personnel, see 2011 Acts, ch 118, §20, 89

For provisions regarding continuing validity of department of economic development administrative rules, see 2011 Acts, ch 118, §18

#### SUBCHAPTER I

### ECONOMIC DEVELOPMENT FUND AND FINANCIAL ASSISTANCE PROGRAM

For future repeal of this subchapter effective June 30, 2012, see §15G.107

#### **15G.101 Definitions.**

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

1. "*Authority*" means the economic development authority created in section 15.105.
2. "*Base employment level*" means the number of full-time equivalent positions at a business, as established by the authority and a business using the business's payroll records, as of the date a business applies for financial assistance under the program.
3. "*Benefit*" means nonwage compensation provided to an employee. Benefits typically include medical and dental insurance plans, pension, retirement, and profit-sharing plans, child care services, life insurance coverage, vision insurance coverage, disability insurance coverage, and any other nonwage compensation as determined by the authority.
4. "*County wage*" means the county wage calculation performed by the authority pursuant to section 15G.112, subsection 3.
5. "*Created job*" means a new, permanent, full-time equivalent position added to a business's payroll in excess of the business's base employment level.
6. "*Financial assistance*" means assistance provided only from the funds, rights, and assets legally available to the authority pursuant to this chapter and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty payments.
7. "*Fiscal impact ratio*" means a ratio calculated by estimating the amount of taxes to be received from a business by the state and dividing the estimate by the estimated cost to the state of providing certain financial incentives to the business, reflecting a ten-year period of taxation and incentives and expressed in terms of current dollars. For purposes of the economic development financial assistance program, "*fiscal impact ratio*" does not include taxes received by political subdivisions.
8. "*Full-time equivalent position*" means a non-part-time position for the number of hours or days per week considered to be full-time work for the kind of service or work performed for an employer. Typically, a full-time equivalent position requires two thousand eighty hours of work in a calendar year, including all paid holidays, vacations, sick time, and other paid leave.
9. "*Fund*" means the economic development fund created in section 15G.111.
10. "*Maintenance period*" means the period of time between the project completion date and maintenance period completion date.
11. "*Maintenance period completion date*" means the date on which the maintenance period ends.

12. “*Project completion date*” means the date by which a recipient of financial assistance has agreed to meet all the terms and obligations contained in an agreement with the authority as described in section 15G.112, subsection 1, paragraph “d”.

13. “*Project completion period*” means the period of time between the date financial assistance is awarded and the project completion date.

14. “*Qualifying wage threshold*” means the county wage or the regional wage, as calculated by the authority pursuant to section 15G.112, subsection 3, whichever is lower.

15. “*Regional wage*” means the regional wage calculation performed by the authority pursuant to section 15G.112, subsection 3.

16. “*Retained job*” means a full-time equivalent position, in existence at the time an employer applies for financial assistance which remains continuously filled or authorized to be filled as soon as possible and which is at risk of elimination if the project for which the employer is seeking assistance does not proceed.

2009 Acts, ch 123, §1; 2011 Acts, ch 118, §24, 70 – 72, 84, 85, 87, 89

See Code editor’s note on simple harmonization

Code editor directives applied

NEW subsection 1 and former subsections 1 and 2 renumbered as 2 and 3

Former subsection 3 stricken

Subsection 6 stricken and former subsections 7 – 9 renumbered as 6 – 8

Subsection 10 amended and renumbered as 9

Subsections 11 – 17 renumbered as 10 – 16

#### **15G.107 Subchapter repealed — new program proposal.**

1. This subchapter of this chapter is repealed on June 30, 2012.

2. On or before November 30, 2011, the economic development authority shall propose to the general assembly a new business development financial assistance program.

3. On or before November 30, 2011, the economic development authority shall propose to the general assembly any changes in law necessary to implement the repeal of this subchapter.

2011 Acts, ch 118, §87, 89; 2011 Acts, ch 133, §14, 50

Code editor directive applied

NEW section

#### **15G.109 Marketing strategies.**

1. The economic development authority shall accept proposals for marketing strategies for purposes of selecting a strategy for the authority to administer. The marketing strategies shall be designed to market Iowa as a lifestyle, increase the population of the state, increase the wealth of Iowans, and expand and stimulate the state economy. The authority shall select and approve a proposal that meets the requirements of this section.

2. The authority shall implement and administer the approved marketing strategy.

2003 Acts, 1st Ex, ch 1, §85, 133

[2003 enactment of this section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §33 – 36; 2011 Acts, ch 118, §85, 89

Code editor directive applied

Unnumbered paragraphs 1 and 2 editorially renumbered as subsections 1 and 2

#### **15G.110 Appropriation.**

For the fiscal year beginning July 1, 2011, and ending June 30, 2012, there is appropriated to the economic development authority fifteen million dollars from the rebuild Iowa infrastructure fund for deposit in the economic development fund, notwithstanding section 8.57, subsection 6, paragraph “c”.

2005 Acts, ch 170, §18; 2008 Acts, ch 1179, §52; 2010 Acts, ch 1184, §30; 2011 Acts, ch 118, §85 – 87, 89; 2011 Acts, ch 133, §15, 50

See Code editor’s note on simple harmonization

Code editor directives applied

Section stricken and rewritten

#### **15G.111 Economic development fund — appropriation — allocation of fund moneys.**

1. *Fund created.* An economic development fund is created in the state treasury under the control of the economic development authority consisting of the following:

a. The moneys appropriated to the authority pursuant to section 15G.110.

b. Payments of interest, repayments of moneys loaned, and recaptures of grants and loans made pursuant to this chapter.

c. All moneys accruing to the authority, including payments of interest, repayments of moneys loaned, royalty payments received, and recaptures of grants, loans, or other forms of financial assistance provided to recipients, from the authority's administration of the following preexisting programs:

(1) The community economic betterment program established pursuant to section 15.317, Code 2009.

(2) The entrepreneurial ventures assistance program established pursuant to section 15.339, Code 2009.

(3) The value-added agricultural products and processes financial assistance program established pursuant to section 15E.111, Code 2009.

(4) The physical infrastructure assistance program established pursuant to section 15E.175, Code 2009.

(5) The loan and credit guarantee program established pursuant to section 15E.224, Code 2009.

2. *Fund administration.*

a. The authority shall administer the fund consistent with the provisions of this chapter and with other pertinent Acts of the general assembly, including providing financial assistance awards pursuant to section 15G.112.

b. Moneys credited to the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund. Interest or earnings on moneys in the fund are appropriated to the authority. Of the moneys appropriated to the authority pursuant to this paragraph, the authority shall make the following allocations:

(1) For each fiscal year of the fiscal period beginning July 1, 2010, and ending June 30, 2013, the authority shall allocate not more than one hundred seventy-five thousand dollars for purposes of providing financial assistance to Iowa's councils of governments.

(2) For each fiscal year of the fiscal period beginning July 1, 2010, and ending June 30, 2013, the authority shall allocate not more than two hundred thousand dollars for purposes of providing support and administrative assistance to the vision Iowa board, the community attraction and tourism program, and river enhancement community attraction and tourism projects.

(3) For each fiscal year of the fiscal period beginning July 1, 2010, and ending June 30, 2013, the authority shall allocate the remaining amount of interest or earnings on moneys in the fund for purposes of providing financial assistance under the disaster recovery component of the economic development financial assistance program. All moneys allocated pursuant to this subparagraph that remain unexpended or unobligated at the end of the fiscal year beginning July 1, 2012, shall revert and be credited to the fund.

c. Of the moneys accruing to the fund pursuant to subsection 1, paragraph "c", the authority, with the approval of the authority\*, may allocate an amount necessary to fund administrative and operations costs. An allocation pursuant to this paragraph may be made in addition to any allocations made pursuant to subsection 4, paragraph "a".

d. Of the moneys transferred to the fund pursuant to 2009 Iowa Acts, chapter 123, section 9, the authority, with the approval of the authority\*, may allocate an amount necessary to fund administrative and operations costs. An allocation pursuant to this paragraph may be made in addition to any allocations made pursuant to subsection 4, paragraph "a".

3. *Appropriation.* For each fiscal year of the fiscal period beginning July 1, 2009, and ending June 30, 2015, there is appropriated from the fund to the economic development authority for purposes of making expenditures pursuant to this chapter fifty million dollars.

4. *Authority purposes.* Of the moneys appropriated to the authority pursuant to subsection 3, the authority shall allocate twenty-eight million five hundred thousand dollars each fiscal year as follows:

a. For administrative costs, an amount not more than six hundred thousand dollars of the moneys subject to allocation under this subsection.

b. For awards of financial assistance pursuant to section 15G.112, an amount approved by the authority.

c. For marketing proposals pursuant to section 15G.109, an amount approved by the authority.

d. For a statewide labor shed study conducted in coordination with the department of workforce development, an amount approved by the authority.

e. For responding to opportunities and threats, as described in section 15G.113, an amount approved by the authority.

f. For procuring technical assistance from either the public or private sector and for information technology purposes, an amount approved by the authority.

g. For covering existing guarantees made under the loan and credit guarantee program established pursuant to section 15E.224, Code 2009, an amount approved by the authority.

5. *Board of regents institutions.* Of the moneys appropriated to the authority pursuant to subsection 3, the authority shall allocate five million dollars each fiscal year for financial assistance to institutions of higher learning under the control of the state board of regents.

a. The financial assistance allocated pursuant to this subsection is for capacity building infrastructure in areas related to technology commercialization, for marketing and business development efforts in areas related to technology commercialization, entrepreneurship, and business growth, and for infrastructure projects and programs needed to assist in the implementation of activities under chapter 262B.

b. In allocating moneys to institutions under the control of the state board of regents, the authority shall require the institutions to provide a one-to-one match of additional moneys for the activities funded with moneys appropriated under this subsection.

c. The state board of regents shall annually prepare a report for submission to the governor, the general assembly, the authority, and the legislative services agency regarding the activities, projects, and programs funded with moneys allocated under this subsection. The report shall be provided in an electronic format and shall include a list of metrics and criteria mutually agreed to in advance by the board of regents and the authority. The metrics and criteria shall allow the governor's office, the general assembly, and the authority to quantify and evaluate the progress of the board of regents institutions with regard to their activities, projects, and programs in the areas of technology commercialization, entrepreneurship, regional development, and market research.

d. The state board of regents may disburse any moneys allocated under this subsection and received from the authority for financial assistance to a single biosciences development organization determined by the authority to possess expertise in promoting the area of bioscience entrepreneurship. The organization must be composed of representatives of both the public and the private sector and shall be composed of subunits or subcommittees in the areas of existing identified biosciences platforms, education and workforce development, commercialization, communication, policy and governance, and finance. Such financial assistance shall be used for purposes of activities related to biosciences and bioeconomy development under chapter 262B, and to accredited private universities in this state.

6. *State parks.* Of the moneys appropriated to the authority pursuant to subsection 3, the authority shall allocate one million dollars each fiscal year for purposes of providing financial assistance for projects in targeted state parks, state banner parks, and destination parks.

a. The department of natural resources shall submit a plan to the authority for the proposed expenditure of moneys received from the authority pursuant to this subsection. The plan shall focus on improving state parks, state banner parks, and destination parks for economic development purposes. The authority shall approve, deny, modify, or defer proposed expenditures under the plan. Based on the plan submitted and the action of the authority in regard to the plan, the economic development authority shall provide financial assistance to the department of natural resources for support of state parks, state banner parks, and destination parks.

b. For purposes of this subsection, "state banner park" means a park with multiple uses and which focuses on the economic development benefits of a community or area of the state.

7. *Cultural trust fund.* Of the moneys appropriated to the authority pursuant to subsection 3, the authority shall allocate one million dollars each fiscal year for deposit in the Iowa cultural trust fund created in section 303A.4. The board of trustees of the Iowa cultural trust shall annually prepare a report for submission to the governor, the general

assembly, the authority, and the legislative services agency regarding the activities, projects, and programs funded with moneys allocated under this subsection.

8. *Community colleges.* Of the moneys appropriated to the authority pursuant to subsection 3, the authority shall allocate seven million dollars each fiscal year for deposit into the workforce training and economic development funds of the community colleges created pursuant to section 260C.18A.

9. *Regional financial assistance.* Of the moneys appropriated to the authority pursuant to subsection 3, the authority shall allocate one million dollars each fiscal year for providing economic development region financial assistance under section 15E.232, subsections 1, 3, 4, 5, and 6, and under section 15E.233, and for providing financial assistance for business accelerators pursuant to section 15E.351.

a. Of the moneys allocated in this subsection, the authority shall transfer three hundred fifty thousand dollars each fiscal year for the fiscal period beginning July 1, 2009, and ending June 30, 2015, to Iowa state university of science and technology, for purposes of providing financial assistance to establish small business development centers in areas of the state previously served by a small business development center, to develop business succession plans, and to maintain existing small business development centers. Of the three hundred fifty thousand dollars transferred each fiscal year pursuant to this paragraph, not more than one hundred thousand dollars shall be used for business succession activities. Financial assistance for a small business development center shall not exceed fifty thousand dollars per fiscal year and shall not be awarded unless the city or county where the center is located or scheduled to be located demonstrates the ability to obtain local matching moneys on a dollar-for-dollar basis for at least twenty-five percent of the cost of the center.

b. Of the moneys allocated under this subsection, the authority may use up to fifty thousand dollars each fiscal year during the fiscal period beginning July 1, 2009, and ending June 30, 2015, for purposes of providing training, materials, and assistance to Iowa business resource centers.

10. *Innovation and commercialization services.* Of the moneys appropriated to the authority pursuant to subsection 3, the authority shall allocate five million five hundred thousand dollars for deposit in the innovation and commercialization development fund created in section 15.412.

11. *Targeted small businesses.* Of the moneys appropriated to the authority pursuant to subsection 3, the authority shall allocate one million dollars for deposit in the targeted small business financial assistance program account established pursuant to section 15.247 within the strategic investment fund created in section 15.313.

2005 Acts, ch 150, §2; 2005 Acts, ch 170, §19; 2006 Acts, ch 1010, §9, 10; 2006 Acts, ch 1175, §1, 2, 23; 2006 Acts, ch 1176, §20, 29; 2007 Acts, ch 122, §2 – 4; 2008 Acts, ch 1031, §15; 2008 Acts, ch 1102, §2, 3, 5; 2008 Acts, ch 1179, §53; 2009 Acts, ch 123, §2, 33; 2009 Acts, ch 170, §3, 11; 2009 Acts, ch 184, §37; 2010 Acts, ch 1009, §3, 4; 2010 Acts, ch 1061, §89, 181; 2010 Acts, ch 1069, §5; 2010 Acts, ch 1184, §31 – 34; 2011 Acts, ch 118, §25, 85 – 87, 89; 2011 Acts, ch 133, §16, 50

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions

\* The phrase "with the approval of the authority" may not be intended; corrective legislation is pending

See Code editor's note on simple harmonization

Code editor directives applied

Subsection 1, unnumbered paragraph 1 amended

Subsection 2, NEW paragraph d

### **15G.112 Economic development financial assistance program.**

#### **1. Program established.**

a. The authority shall establish and administer an economic development financial assistance program for purposes of providing financial assistance from the fund to applicants. The financial assistance shall be provided from moneys credited to the economic development fund and not otherwise obligated or allocated pursuant to section 15G.111.

b. The program shall consist of the components described in subsections 4 through 9. Each fiscal year, the authority, with the approval of the authority\*, shall allocate an amount of financial assistance from the fund that may be awarded under each component of the program to qualifying applicants.

c. In making awards of financial assistance pursuant to subsections 4 and 5, the authority shall calculate the fiscal impact ratio, and in reviewing each application to determine the amount of financial assistance to award, the authority shall consider the appropriateness of the award to the fiscal impact ratio of the project and to other factors deemed relevant by the authority.

d. For each award of financial assistance under the program, the authority and the recipient of the financial assistance shall enter into an agreement describing the terms and obligations under which the financial assistance is being provided. The authority may negotiate, subject to approval by the authority\*, the terms and obligations of the agreement. An agreement shall contain but need not be limited to all of the following terms and obligations:

(1) A project completion date.

(2) A maintenance period completion date.

(3) The number of jobs to be created or retained.

(4) The amount of financial assistance to be provided under the program.

(5) An amount of matching funds from a city or county. The authority shall adopt by rule a formula for determining the amount of matching funds required.

e. The authority may enforce the terms and obligations of agreements described in paragraph "d".

f. A recipient of financial assistance shall meet all terms and obligations in an agreement by the project completion date, but the authority may for good cause extend the project completion date.

g. During the maintenance period, a recipient of financial assistance shall continue to comply with the terms and obligations of an agreement entered into pursuant to paragraph "d".

h. If a business that is approved to receive financial assistance experiences a layoff within this state or closes any of its facilities within this state, the authority has the discretion to reduce or eliminate some or all of the amount of financial assistance to be received. If a business has received financial assistance under this section and experiences a layoff within this state or closes any of its facilities within this state, the business may be subject to repayment of all or a portion of the incentives that the business may receive.

2. *Standard program requirements.* In addition to the eligibility requirements of the individual program components applicable to the financial assistance sought, a business shall be subject to all of the following requirements:

a. The business shall submit to the authority with its application for financial assistance a report describing all violations of environmental law or worker safety law within the last five years. If, upon review of the application, the authority finds that a business has a record of violations of the law, statutes, rules, or regulations that tends to show a consistent pattern, the authority shall not make an award of financial assistance to the business unless the authority finds either that the violations did not seriously affect public health, public safety, or the environment, or, if such violations did seriously affect public health, public safety, or the environment, that mitigating circumstances were present.

b. The business shall not have closed, or substantially reduced, operations in one area of this state and relocated substantially the same operations in a community in another area of this state. However, this paragraph shall not be construed to prohibit a business from expanding its operation in a community if existing operations of a similar nature in this state are not closed or substantially reduced.

c. The proposed project shall not negatively impact other businesses in competition with the business being considered for assistance. The authority shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for financial assistance. The authority shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for financial assistance, jobs created or retained as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created or retained.

d. The business shall only employ individuals legally authorized to work in this state. In

addition to any and all other applicable penalties provided by current law, all or a portion of the assistance received by a business which has received financial assistance under the program and is found to knowingly employ individuals not legally authorized to work in this state is subject to recapture by the authority.

3. *County and regional wage calculations.*

a. In administering the financial assistance program, the authority shall annually calculate a county wage and a regional wage for each county for purposes of determining the eligibility of applicants for financial assistance under the program.

(1) The county wage and the regional wage shall be an hourly wage rate based on data from the most recent four quarters of wage and employment information from the quarterly covered wage and employment data report issued by the department of workforce development.

(2) The authority shall not include the value of benefits when calculating the county wage or the regional wage.

b. The county wage shall be the average of the wages paid for jobs performed in the county by employers in all employment categories except the employment categories of government, agriculture, and mining.

c. The regional wage shall be calculated as follows:

(1) Multiplying by four the county wage of a county.

(2) Adding together the county wage of each of the counties adjacent to the county.

(3) Adding the result obtained in subparagraph (1) to the result obtained in subparagraph (2).

(4) Dividing the result obtained in subparagraph (3) by the sum of the number of counties adjacent to the county plus four.

4. *One hundred thirty percent wage component.*

a. In order to qualify for financial assistance under this component of the program, a business shall meet all of the following requirements:

(1) The business shall create or retain jobs as part of a project, and the jobs created or retained shall meet one of the following requirements:

(a) If the business is creating jobs, the business shall demonstrate that the jobs will pay at least one hundred percent of the qualifying wage threshold at the start of the project completion period, at least one hundred thirty percent of the qualifying wage threshold by the project completion date, and at least one hundred thirty percent of the qualifying wage threshold until the maintenance period completion date.

(b) If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least one hundred thirty percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

(2) The business shall provide a sufficient package of benefits to each employee holding a created or retained job. The authority, at the recommendation of the authority\*, shall adopt rules determining what constitutes a sufficient package of benefits.

(3) The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the authority after calculating the fiscal impact ratio of the project.

(4) The business shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.

b. A business providing a sufficient package of benefits to each employee holding a created or retained job shall qualify for a credit against any of the one hundred thirty percent qualifying wage threshold requirements described in paragraph "a", subparagraph (1). The credit shall be calculated and applied as follows:

(1) By multiplying the qualifying wage threshold of the county in which the business is located by one and three-tenths.

(2) By multiplying the result of subparagraph (1) by one-tenth.

(3) The amount of the result of subparagraph (2) shall be credited against the amount of the one hundred thirty percent qualifying wage threshold requirement that the business is required to meet under paragraph "a", subparagraph (1).

(4) The credit shall not be applied against the one hundred percent of qualifying wage threshold requirement described in paragraph “a”, subparagraph (1).

c. Notwithstanding the qualifying wage threshold requirements described in paragraph “a”, subparagraph (1), if a business is also the recipient of financial assistance under another program administered by the authority, and the other program requires the payment of higher wages than the wages required under this subsection, the business shall be required to pay the higher wages.

d. An applicant may apply to the authority for a waiver of the qualifying wage threshold requirements of this subsection.

5. *One hundred percent wage component.* In order to qualify for financial assistance under this component of the program, a business shall meet all of the following requirements:

a. The business shall create or retain jobs as part of a project, and the jobs created or retained shall meet one of the following qualifying wage thresholds:

(1) If the business is creating jobs, the business shall demonstrate that the jobs pay at least one hundred percent of the qualifying wage threshold at the start of the project completion period, by the project completion date, and until the maintenance period completion date.

(2) If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least one hundred percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

b. The business shall provide a sufficient package of benefits to each employee holding a created or retained job. The authority, at the recommendation of the authority\*, shall adopt rules determining what constitutes a sufficient package of benefits.

c. The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the authority after calculating the fiscal impact ratio of the project.

d. The business shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.

6. *Entrepreneurial component.*

a. In order to qualify for financial assistance under the entrepreneurial component of the program, a business shall meet all of the following requirements:

(1) The business shall be an early-stage business. For purposes of this subparagraph, “*early-stage business*” means a business that has been competing in a particular industry for three years or less.

(2) The business shall have consulted with and obtained a letter of endorsement from either a business accelerator approved by the authority or from an entrepreneurial development organization recognized by the authority.

b. Notwithstanding subsection 1, paragraph “d”, subparagraph (5), a business applying for financial assistance under the entrepreneurial component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

c. In awarding financial assistance under the entrepreneurial component of the program, the authority shall give priority to businesses in those sectors of the Iowa economy with the greatest potential for growth and expansion. Sectors having such potential include but are not limited to biotechnology, recyclable materials, software development, computer-related products, advanced materials, advanced manufacturing, and medical and surgical instruments.

7. *Infrastructure component.* In order to qualify for financial assistance under the infrastructure component of the program, a business or community shall be engaged in a physical infrastructure project. For purposes of this subsection, “*physical infrastructure project*” means a project that creates necessary infrastructure for economic success throughout Iowa, provides the foundation for the creation of jobs, and that involves the investment of a substantial amount of capital. Physical infrastructure projects include but are not limited to projects involving any mode of transportation; public works and utilities such as sewer, water, power, or telecommunications; physical improvements that mitigate, prevent, or eliminate environmental contamination; and other similar projects deemed to be physical infrastructure by the authority.

8. *Value-added agriculture component.*

a. In order to qualify for financial assistance under the value-added agriculture component of the program, a business shall be a production facility engaged in the process of adding value to agricultural products. Projects considered eligible under this subsection include but are not limited to innovative agricultural products and processes, innovative and new renewable fuels, agricultural biotechnology, biomass and alternative energy production, and organic products and emerging markets. Financial assistance is available for project development as well as project creation.

b. The authority shall not award financial assistance under the value-added agriculture component in an amount exceeding fifty percent of the total capital investment in a project.

c. Notwithstanding subsection 1, paragraph “d”, subparagraph (5), a business applying for financial assistance under the value-added agriculture component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

9. *Disaster recovery component.* In order to qualify for financial assistance under the disaster recovery component of the program, a business shall meet all of the following conditions:

a. The business is located in an area declared a disaster area by a federal official.

b. The business has sustained substantial physical damage and has closed as the result of a natural disaster.

c. The business has a plan for reopening that includes employing a sufficient number of the employees the business employed before the natural disaster occurred. The authority shall adopt rules governing the number of employees that is sufficient under this paragraph.

d. The business will pay wages at the same level after reopening as the business paid before the natural disaster occurred.

2005 Acts, ch 150, §3; 2008 Acts, ch 1102, §4, 5; 2008 Acts, ch 1191, §162; 2009 Acts, ch 123, §3; 2010 Acts, ch 1069, §6; 2011 Acts, ch 118, §26, 87, 89

Additional requirements for applicants which are economic development regions, see §15E.231

\*The words “with the approval of the authority” may not be intended; corrective legislation is pending

\*The words “subject to approval by the authority” may not be intended; corrective legislation is pending

\*The words “at the recommendation of the authority” may not be intended; corrective legislation is pending

Code editor directive applied

Subsection 1, paragraph a amended

**15G.113 Opportunities and threats.**

1. The authority, with the approval of the authority,\* may award financial assistance from the fund to a business, an individual, a development corporation, a nonprofit organization, an organization established in section 28H.1, or a political subdivision of this state if, in the opinion of the authority, a project presents a unique opportunity for economic development in this state, or if the project addresses a situation constituting a threat to the continued economic prosperity of this state.

2. The authority shall adopt rules governing the eligibility of projects for financial assistance pursuant to this section.

2009 Acts, ch 123, §4; 2011 Acts, ch 118, §87, 89

\*The words “, with the approval of the authority,” probably not intended; corrective legislation is pending

Code editor directive applied

**15G.114 Rules.**

1. The authority, upon the recommendation of the authority,\* shall adopt rules for the administration of this chapter in accordance with chapter 17A.

2. To the extent necessary, the rules shall provide for the inclusion of uniform terms and obligations in agreements between the authority and the recipients of financial assistance under the economic development financial assistance program, the high quality jobs program, and the enterprise zone program. For purposes of this section, “*terms and obligations*” includes but is not limited to the created or retained jobs, qualifying wage thresholds, project completion dates, project completion periods, maintenance periods, and maintenance period completion dates that are applicable to the economic development

financial assistance program, the high quality job creation program, and the enterprise zone program.

2009 Acts, ch 123, §5; 2011 Acts, ch 118, §86, 87, 89

\*The words “, upon the recommendation of the authority,” probably not intended; corrective legislation is pending  
Code editor directives applied

**15G.115 Applications — advisory body recommendations — final authority actions.**

1. The authority shall accept and process applications for financial assistance under the economic development financial assistance program. After processing the applications, the authority shall prepare them for review by advisory committees and for final action by the authority as described in this section.

2. Each application for financial assistance from funds allocated by the authority for deposit in the innovation and commercialization development fund pursuant to section 15G.111, subsection 10, shall be reviewed by the technology commercialization committee established in section 15.116, which shall make a recommendation on each application to the authority.

3. In overseeing the administration of the economic development fund and economic development financial assistance program pursuant to this chapter, the authority shall do all of the following:

a. At the first scheduled meeting of the authority after the start of a new fiscal year, take final action on all of the following:

(1) The authority’s recommendations for the annual fiscal year allocation of moneys in the fund, as provided in section 15G.111, subsection 4. The authority may adjust the allocation of moneys during the fiscal year as necessary.

(2) The authority’s recommendations for the allocation of moneys among the program components referred to in section 15G.112, subsection 1, paragraph “b”. The authority may adjust the allocation of moneys during the fiscal year as necessary.

b. Consider the recommendation of the due diligence committee and the technology commercialization committee on each application for financial assistance, as described in subsection 2, and take final action on each application.

c. Take final action on the required plans for proposed expenditures submitted by the entities receiving moneys allocated under section 15G.111, subsections 5 through 8.

d. Take final action on any rules recommended by the authority for the implementation of the provisions of this chapter.

2009 Acts, ch 123, §6, 33; 2010 Acts, ch 1031, §262; 2010 Acts, ch 1069, §7; 2011 Acts, ch 118, §73, 86, 87, 89

Code editor directives applied

Subsection 2, paragraph a stricken and paragraph b redesignated as unnumbered paragraph 1

## SUBCHAPTER II

### RENEWABLE FUEL INFRASTRUCTURE

**15G.201 through 15G.205** Transferred to chapter 159A, subchapter III; 2011 Acts, ch 113, §55, 56.

With respect to proposed amendments to former §15G.201 by 2011 Acts, ch 118, §74, 75, see Code editor’s note

## CHAPTER 15H

### IOWA COMMISSION ON VOLUNTEER SERVICE

**15H.1A Definitions.**

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

1. “Authority” means the economic development authority created in section 15.105.

2. “*Director*” means the director of the authority.

2011 Acts, ch 118, §27, 89

NEW section

### **15H.2 Iowa commission on volunteer service established.**

1. The Iowa commission on volunteer service is created within the authority. The governor shall appoint the commission’s members. The director may employ personnel as necessary to carry out the duties and responsibilities of the commission.

2. The mission of the commission is to advise and assist in the development and implementation of a comprehensive, statewide plan for promoting volunteer involvement and citizen participation in Iowa, as well as to serve as the state’s liaison to national and state organizations which support the commission’s mission. The commission shall also carry out any duties and responsibilities described in the National Community Service Trust Act of 1993 or any related state or federal legislation.

3. The commission shall do all of the following:

a. Prepare a three-year national service plan as called for under the federal National and Community Service Trust Act of 1993.

b. Fulfill federal program administration requirements, including provision of health care and child care for program participants.

c. Submit annual state applications for federal funding of commission-selected AmeriCorps programs.

d. Integrate AmeriCorps programs, the corporation for national and community service program, and the older American volunteer program into the state strategic service plan.

e. Conduct local outreach to develop a comprehensive and inclusive state service plan and coordinate with existing programs in order to prevent unnecessary competition for private sources of funding.

f. Provide technical assistance to service programs, including the development of training methods and curriculum materials.

g. Develop a statewide recruitment and placement system for individuals interested in community service opportunities.

h. Prepare quarterly reports on progress for submission to the governor and the general assembly.

i. Administer the retired senior volunteer program.

2005 Acts, ch 42, §2; 2006 Acts, ch 1010, §11; 2011 Acts, ch 118, §28, 89

Subsections 1 and 2 amended

### **15H.3 Volunteer service commission membership.**

1. The Iowa commission on volunteer service shall consist of the following members:

a. An individual with expertise in the educational training and developmental needs of youth.

b. An individual with experience in promoting the involvement of older adults in service and volunteerism.

c. A representative of community-based agencies within the state.

d. The director of the department of education, or the director’s designee.

e. The executive director of the state board of regents, or the executive director’s designee.

f. A representative of local government.

g. A representative of a local labor organization.

h. A representative of a for-profit business.

i. An individual between the ages of sixteen and twenty-five who is or has been a participant or supervisor in a volunteer or service program.

j. A representative of the corporation for national and community service who shall serve as a nonvoting, ex officio member.

k. Additional ex officio members selected by the commission to the extent that they are not in conflict with the provisions of the National Community Service Trust Act of 1993 or any related state or federal legislation.

2. No more than twenty-five percent of the commission members shall be employees of the

state, though additional state agency representatives may sit on the commission as nonvoting, ex officio members.

3. A commission member shall not vote on issues affecting organizations for which the member has served as a staff person or as a volunteer at any time during the preceding twelve-month period.

4. The membership of the commission shall comply with sections 69.16 and 69.16A. The membership of the commission shall also reflect the diversity of the state's population.

5. Members shall serve staggered terms of three years beginning July 1. Members of the commission shall serve no more than two three-year terms. Any vacancy shall be filled in the same manner as the original appointment.

6. The chairperson of the commission shall be selected by the members of the commission. 2005 Acts, ch 42, §3; 2005 Acts, ch 175, §54, 129; 2006 Acts, ch 1051, §1; 2011 Acts, ch 118, §29, 30, 89

Subsection 1, NEW paragraph k  
Subsection 6 amended

#### **15H.4 Administration — funding.**

1. The authority shall serve as the lead agency for administration of the commission. The authority may consult with the department of education, the state board of regents, and the department of workforce development for any additional administrative support as necessary to fulfill the duties of the commission. All other state agencies, at the request of the authority, shall provide assistance to the commission to ensure a fully coordinated state effort for promoting national and community service.

2. The commission may accept funds and in-kind services from other state, federal, and private entities.

2005 Acts, ch 42, §4; 2011 Acts, ch 118, §31, 89

Subsection 1 amended

#### **15H.5 Iowa summer youth corps.**

1. For the purposes of this section, “*service-learning*” means a teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich the learning experience, teach civic responsibility, and strengthen communities.

2. The Iowa summer youth corps program is established to provide meaningful summer enrichment programming to Iowa youth. The program shall be administered by the Iowa commission on volunteer service using a competitive grant process to implement projects in accordance with program requirements. The commission shall adopt administrative rules for the program, including but not limited to incentives, grant criteria, and grantee selection processes. A percentage of the grants shall be designated by the commission to address the needs of city enterprise zones that meet the distress criteria outlined in section 15E.194.

3. The program shall provide grants for projects that utilize a service-learning approach during the summer months to enhance student achievement and summer learning retention, teach meaningful job skills to Iowa youth, engage Iowa youth in their communities, provide positive youth development experiences, and address the needs of youth from families with low income. The service-learning approach shall be integrated into the program using science, technology, engineering, mathematics, social studies, civic literacy, or other appropriate curricula identified by the department of education.

4. The program shall involve the youth participating in the program in service-learning activities with one or more of the following focuses:

a. Energy conservation in the youth's community, including conducting educational outreach on energy conservation and working to improve energy efficiency in low-income housing and public spaces.

b. Emergency and disaster preparedness.

c. Improving access to and obtaining the benefits from providing computers and other emerging technologies in underserved and other appropriate areas of counties and cities, including but not limited to low-income communities, senior centers and communities, schools, libraries, and other public settings.

d. Mentoring of middle school youth while involving all participants in service-learning

to address unmet human, educational, environmental, public safety, or emergency disaster preparedness needs in the participants' community.

e. Establishing or implementing summer of service projects during the summer months. Budgeting for a summer of service project shall include the cost of recruitment, training, and placement of service-learning coordinators. A summer of service project shall comply with all of the following requirements:

(1) Youth participating in a project will be enrolled in grades six through twelve in the school year which begins immediately following the end of a project.

(2) The focus of each project shall be community-based, service-learning activities that address unmet human, educational, environmental, emergency and disaster preparedness, and public service needs. Environmental needs addressed may include energy conservation, water quality, and land stewardship.

(3) The activities for each project shall be intensive, structured, supervised, and designed to produce identifiable improvements to the community. The activities may include the extension of school year service-learning programs into the summer months.

f. Performing community improvement projects, which may include but are not limited to a green corps program activity under section 15H.6 or other youth training program.

5. a. Funding for the Iowa summer youth corps program and the Iowa green corps program established pursuant to section 15H.6 shall be obtained from private sector, and local, state, and federal government sources, or from other available funds credited to the community programs account, which shall be created within the economic development authority under the authority of the commission. Moneys available in the account for a fiscal year are appropriated to the commission to be used for the programs.

b. The commission shall manage the program in a manner to maximize the leveraging of federal, local, and private funding opportunities that increase or amplify program impact and service-learning opportunities. The commission shall also encourage collaboration with, and utilization of, other national, local, and nonprofit programs engaged in community service or addressing the needs of youth from families with low income.

c. The commission shall give priority consideration to approving those projects that target communities that have disproportionately high rates of juvenile crime or low rates of high school graduation or that have been designated as city enterprise zones that meet the distress criteria outlined in section 15E.194.

d. The commission shall include progress information concerning implementation of the program in the quarterly reports made to the governor and the general assembly in accordance with section 15H.2.

6. a. Notwithstanding any contrary provision of chapter 8A, subchapter IV, or chapter 96, a person participating in the Iowa summer youth corps program shall be exempt from merit system requirements and shall not be eligible to receive unemployment compensation benefits.

b. If a stipend is provided to a youth participating in the program, the youth shall be age fourteen through eighteen.

c. A youth participating in a summer of service project that either has an education award or no compensation shall comply with the grade level requirements specified for summer of service project participation.

d. A project that uses funding for an AmeriCorps young adult component within the project design shall limit participation in the component to young persons who are age sixteen through twenty-four at the time of enrollment in the project.

2009 Acts, ch 161, §1, 4; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **15H.6 Iowa green corps program.**

1. The Iowa commission on volunteer service, in collaboration with the department of natural resources, the department of workforce development, and the utilities board of the department of commerce, shall establish an Iowa green corps program. The commission shall work with the collaborating agencies and nonprofit agencies in developing a strategy for attracting additional financial resources for the program from other sources which may

include but are not limited to utilities, private sector, and local, state, and federal government funding sources. The financial resources received shall be credited to the community programs account created pursuant to section 15H.5.

2. The program shall utilize AmeriCorps or Iowa summer youth corps program volunteers to provide capacity building activities, training, and implementation of major transformative projects in communities. The project selection shall emphasize energy efficiency, historic preservation, neighborhood development, and storm water reduction and management.

3. The capacity building activities shall be targeted in communities that are already working with existing community improvement programs, including but not limited to the Iowa great places program established under section 303.3C, the green streets and main street Iowa programs administered by the economic development authority, and disaster remediation activities by communities located within an area declared to be a disaster area in a declaration issued by the president of the United States or the governor.

2009 Acts, ch 161, §2, 4; 2011 Acts, ch 118, §38, 85, 89

Code editor directive applied  
Subsection 1 amended

## CHAPTER 16

### IOWA FINANCE AUTHORITY

Duties with respect to Iowa advance funding authority, see §257C.7

This chapter not enacted as a part of this title; transferred from  
chapter 220 in Code 1993

See §218.95 for provisions pertaining to construction of synonymous terms

#### 16.1 Definitions.

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

a. When used in the context of an assumption of a loan, “*assume*” or “*assumed*” means any type of transaction involving the sale or transfer of an ownership interest in real estate financed by the authority, whether the conveyance involves a transfer by deed or real estate contract or some other device.

b. “*Authority*” means the Iowa finance authority established in section 16.2.

c. “*Bond*” means a bond issued by the authority pursuant to sections 16.26 to 16.30, and includes a note or other instrument evidencing a debt authorized or referred to in this chapter.

d. “*Child foster care facilities*” means the same as defined in section 237.1.

e. “*Cost*” as applied to economic development loan program projects means the cost of acquisition, construction, or both including the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for acquisition, construction, or both. It also means the cost of demolishing or removing structures on acquired land, the cost of access roads to private property, including the cost of land or easements, and the cost of all machinery, furnishings, and equipment, financing charges, and interest prior to and during construction and for no more than the greater of eighteen months or the period authorized to be capitalized under applicable provisions of the Internal Revenue Code after completion of construction. Cost also means the cost of engineering, legal expenses, plans, specifications, surveys, estimates of cost and revenues, as well as other expenses incidental to determining the feasibility or practicability of acquiring or constructing a project. It also means other expenses incidental to the acquisition or construction of the project, the financing of the acquisition or construction, including the amount to be paid into any special funds from the proceeds of bonds issued for the project, and the financing of the placing of a project in operation. It also means all grants, payments, and amounts necessary to pay or refund outstanding bonds and all costs for which federally tax-exempt bonds may be issued under the Internal Revenue Code.

f. “*Dilapidated*” means decayed, deteriorated, or fallen into partial disuse through neglect or misuse.

g. “Displaced” means displaced by governmental action, or by having one’s dwelling extensively damaged or destroyed as a result of a disaster.

h. “Division” means the title guaranty division.

i. “Elderly families” means families of low or moderate income where the head of the household or the head’s spouse is at least sixty-two years of age or older, or the surviving member of any such tenant family.

j. (1) “Families” includes but is not limited to families consisting of a single adult person who is primarily responsible for the person’s own support, is at least sixty-two years of age, is a person with a disability, is displaced, or is the remaining member of a tenant family.

(2) “Families” includes but is not limited to two or more persons living together who are at least sixty-two years of age, are persons with disabilities, or one or more such individuals living with another person who is essential to such individual’s care or well-being.

k. “Goals” means legislative goals and policies as articulated in this chapter.

l. “Guiding principles” means the principles provided in section 16.4 which shall be considered for amplification and interpretation of the goals of the authority.

m. “Health care facilities” means those facilities referred to in section 135C.1, subsection 6, which contain fifteen beds or less.

n. (1) “Housing” means single family and multifamily dwellings, and facilities incidental or appurtenant to the dwellings, and includes group homes of fifteen beds or less licensed as health care facilities or child foster care facilities and modular or mobile homes which are permanently affixed to a foundation and are assessed as realty.

(2) “Adequate housing” means housing which meets minimum structural, heating, lighting, ventilation, sanitary, occupancy, and maintenance standards compatible with applicable building and housing codes, as determined under rules of the authority.

o. “Housing program” means any work or undertaking of new construction or rehabilitation of one or more housing units, or the acquisition of existing residential structures, for the provision of housing, which is financed pursuant to the provisions of this chapter for the primary purpose of providing housing for low or moderate income families. A housing program may include housing for other economic groups as part of an overall plan to develop new or rehabilitated communities or neighborhoods, where housing low or moderate income families is a primary goal. A housing program may include any buildings, land, equipment, facilities, or other real or personal property which is necessary or convenient in connection with the provision of housing, including, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities, such as administrative, community, health, recreational, educational, and commercial facilities, as the authority determines to be necessary or convenient in relation to the purposes of this chapter.

p. “Housing sponsor” means any individual, joint venture, partnership, limited partnership, trust, corporation, housing cooperative, local public entity, governmental unit, or other legal entity, or any combination thereof, approved by the authority or pursuant to standards adopted by the authority as qualified to either own, construct, acquire, rehabilitate, operate, manage, or maintain a housing program, whether for profit, nonprofit or limited profit, subject to the regulatory powers of the authority and other terms and conditions set forth in this chapter.

q. “Income” means income from all sources of each member of the household, with appropriate exceptions and exemptions reasonably related to an equitable determination of the family’s available income, as established by rule of the authority.

r. “Internal Revenue Code” means the Internal Revenue Code of the United States as it may exist at the time of its applicability to the provisions of this chapter.

s. “Legislative findings” or “findings” means the findings established by the general assembly with respect to the authority as provided in this chapter.

t. “Lower income families” means families whose incomes do not exceed eighty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area, and includes, but is not limited to, very low income families.

u. “*Low income housing credit*” means the low income housing credit as defined in Internal Revenue Code § 42(a).

v. “*Low or moderate income families*” means families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use, and also includes, but is not limited to, (1) elderly families, families in which one or more persons are persons with disabilities, lower income families and very low income families, and (2) families purchasing or renting qualified residential housing.

w. “*Mortgage*” means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions acceptable to the authority, on a fee interest in real property which includes completed housing located within this state, or on a leasehold on such a fee interest which has a remaining term at the time of computation that exceeds by not less than ten years the maturity date of the mortgage loan.

x. “*Mortgage-backed security*” means a security issued by the authority which is secured by residential mortgage loans owned by the authority.

y. “*Mortgage lender*” means any bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any governmental agency, or any other financial institution authorized to make mortgage loans in this state and includes a financial institution as defined in section 496B.2, subsection 4, which lends moneys for industrial or business purposes.

z. “*Mortgage loan*” means a financial obligation secured by a mortgage.

aa. “*Note*” means a bond anticipation note or a housing development fund note issued by the authority pursuant to this chapter. “*Note*” also includes bonds.

ab. “*Person with a disability*” means a person who is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment, or a person having a physical or mental impairment which is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions.

ac. “*Powers*” means all of the general and specific powers of the authority as provided in this chapter which shall be broadly and liberally interpreted to authorize the authority to act in accordance with the goals of the authority and in a manner consistent with the legislative findings and guiding principles.

ad. “*Programs*” means any program administered by the authority or any program in which the authority is directed or authorized to participate pursuant to any statute, executive order, or interagency agreement, or any other program participation or administration of which the authority finds useful and convenient to further the goals and purposes of the authority. “*Program*” shall include but not be limited to all of the following:

- (1) The housing assistance payments program.
- (2) The rent supplements program.
- (3) The emergency housing fund program.
- (4) The special housing assistance program.
- (5) The single-family housing program.
- (6) The multifamily housing program.
- (7) The title guaranty program.
- (8) The housing improvement fund program.
- (9) The economic development loan program.
- (10) The Iowa economic development bond bank program.
- (11) The sewage treatment and drinking facilities financing program.
- (12) The Iowa tank assistance bond program.
- (13) The residential treatment facilities program.
- (14) The E-911 program.
- (15) The community college dormitory program.
- (16) The prison infrastructure program.
- (17) The wastewater treatment financial assistance program.
- (18) Any other program established by the authority which the authority finds useful and convenient to further goals of the authority and which is consistent with the legislative

findings. Such additional programs shall be administered in accordance with the guiding principles of the authority after such notice and hearing as is determined to be reasonable by the authority under the circumstances. Such additional programs shall be administered in accordance with rules, if any, which the authority determines useful and convenient to adopt pursuant to chapter 17A.

*ae.* “*Project*” means any of the following:

(1) Real or personal property connected with a facility to be acquired, constructed, financed, refinanced, improved, or equipped pursuant to one or more of the programs.

(2) Refunds, loans, refinancings, grants, or other assistance or programs which the authority finds useful and convenient to carry out and further the goals of the authority and the Iowa economic development bond program. In furtherance thereof and not in limitation, “*project*” shall include projects for which bonds or notes may be issued by a city or a county pursuant to any power so long as the authority finds it is consistent with the goals and legislative findings of the authority and the Iowa economic development bond program.

(3) Any project for which tax exempt financing is authorized by the Internal Revenue Code, together with any taxable financing necessary or desirable in connection with such project, which the authority finds furthers the goals of the authority and is consistent with the legislative findings.

*af.* “*Property improvement loan*” means a financial obligation secured by collateral acceptable to the authority, the proceeds of which shall be used for improvement or rehabilitation of housing which is deemed by the authority to be substandard in its protective coatings or its structural, plumbing, heating, cooling, or electrical systems; and regardless of the condition of the property the term “*property improvement loan*” may include loans to increase the energy efficiency of housing or to finance solar or other renewable energy systems for use in that housing.

*ag.* “*Qualified residential housing*” means any of the following:

(1) Owner-occupied residences purchased in a manner which satisfies the requirements contained in section 103A of the Internal Revenue Code in order to be financed with tax exempt mortgage subsidy bonds.

(2) Residential property qualifying pursuant to section 103(b)(4) of the Internal Revenue Code to be financed with tax exempt residential rental property bonds.

(3) Housing for low or moderate income families, elderly families, and families which include one or more persons with disabilities.

*ah.* “*State agency*” means any board, commission, department, public officer, or other agency of the state of Iowa.

*ai.* “*State housing credit ceiling*” means the state housing credit ceiling as defined in Internal Revenue Code § 42(h)(3)(C).

*aj.* “*Title guaranty*” means a guaranty against loss or damage caused by defective title to real property.

*ak.* “*Very low income families*” means families whose incomes do not exceed fifty percent of the median income for the area, with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

2. The authority may establish by rule further definitions applicable to this chapter, and clarification of the definitions in this section, as it deems convenient and necessary including any rules necessary to assure eligibility for funds available under federal housing laws, or to assure compliance with federal tax laws relating to the issuance of tax exempt bonds pursuant to the Internal Revenue Code or relating to the allowance of low income credits under Internal Revenue Code § 42.

[C77, 79, 81, §220.1; 81 Acts, ch 76, §1; 82 Acts, ch 1173, §1, 2, ch 1187, §1 – 3]

83 Acts, ch 124, §1, 2; 84 Acts, ch 1281, §1 – 5; 85 Acts, ch 225, §1; 85 Acts, ch 252, §24, 25; 86 Acts, ch 1212, §1; 86 Acts, ch 1245, §840; 87 Acts, ch 125, §1, 2; 87 Acts, ch 141, §1

C93, §16.1

96 Acts, ch 1129, §5 – 8; 2007 Acts, ch 54, §2 – 10; 2009 Acts, ch 43, §1; 2009 Acts, ch 133, §8

Section not amended; internal reference corrected

**16.41 Shelter assistance fund.**

1. A shelter assistance fund is created as a revolving fund in the state treasury under the control of the authority consisting of any moneys appropriated by the general assembly and received under section 428A.8 for purposes of the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters, evaluation of services for the homeless, and match moneys for federal funds for the homeless management information system. Each fiscal year, moneys in the fund, in an amount equal to not more than two percent of the total moneys distributed as grants from the fund during the fiscal year, may be used for purposes of administering the fund.

2. Of the moneys in the fund, not less than five hundred forty-six thousand dollars shall be spent annually on homeless shelter projects.

3. Notwithstanding section 8.33, all moneys in the shelter assistance fund which remain unexpended or unobligated at the close of the fiscal year shall not revert to the general fund of the state but shall remain available for expenditure for subsequent fiscal years.

2010 Acts, ch 1031, §265; 2011 Acts, ch 130, §28, 71

Subsection 1 amended

**16.100 Housing improvement fund program.**

1. A housing improvement fund is created within the authority. The moneys in the housing improvement fund are annually appropriated to the authority which shall allocate the available funds among and within the programs authorized by this section. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining in the fund on June 30 of any fiscal year shall not revert to any other fund but shall be available for expenditure for subsequent fiscal years. Notwithstanding section 12C.7, interest or earnings on moneys in the fund or appropriated to the fund shall be credited to the fund. The authority may expend up to four percent of the moneys appropriated for the programs in this section for administrative costs of the authority for those programs. The authority may provide financial assistance to a housing sponsor or an individual in the form of loans, guarantees, grants, interest subsidies, or by other means for the programs authorized by this section.

2. By rule, the authority shall establish the following financial assistance programs and provide the requirements for their proper administration:

a. A home maintenance and repair program providing repair services to families which include persons who are elderly or persons with disabilities and which qualify as lower income or very low income families.

b. A rental rehabilitation program for the construction or rehabilitation of single or multifamily rental properties leased to lower income or very low income families.

c. (1) A home ownership incentive program to help lower income and very low income families achieve single family home ownership. Funds provided under this program shall not be restricted to first-time home buyers but shall be limited to mortgages under fifty-five thousand dollars, except in those areas of the state where the median price of homes exceeds the state average. The assistance provided shall include at least one of the following kinds of assistance:

(a) Closing costs assistance.

(b) Down payment assistance.

(c) Home maintenance and repair assistance.

(d) Loan processing assistance through a loan endorser review contractor who acts on behalf of the authority in assisting lenders in processing loans that will qualify for government insurance or guarantee or for financing under the authority's mortgage revenue bond program.

(e) Mortgage insurance program.

(2) Five percent of the moneys expended under this program shall be used to finance the purchase or acquisition, in communities with a population of less than ten thousand, of manufactured homes as defined in 42 U.S.C. § 5403. Moneys available for this purpose which are unencumbered or unobligated at the end of the fiscal year shall revert to the housing improvement fund for reallocation for the next fiscal year.

(3) Not more than fifty percent of the assistance provided under this program shall be

provided under subparagraph (1), subparagraph divisions (d) and (e). So long as at least one of the kinds of assistance described in subparagraph (1), subparagraph divisions (a) through (e) is provided, additional assistance not described in subparagraph (1), subparagraph divisions (a) through (e) may also be provided.

3. The authority shall coordinate the programs authorized by this section with the other programs under the jurisdiction of the authority.

4. Each application for financial assistance shall be rated based on local, housing sponsor, and recipient financial commitment, proposals for leveraging other financial assistance, experience with the recipient group involved, consideration for the housing project in the context of overall community needs, including vacancy rate of rental property and ratio of subsidized rental housing to nonsubsidized housing, ability to provide a counseling support system to the recipients, and a demonstrated capability by the housing sponsor to provide follow-up monitoring of recipients to determine if identifiable results have been achieved.

5. For the purposes of this section, “housing sponsor” is a for-profit entity, nonprofit corporation, local government, or a joint venture involving a for-profit entity, nonprofit corporation or local government.

6. None of the funds provided to a housing sponsor under this section shall be used for the costs of administration.

7. During each regular session of the general assembly, the authority shall present, to the appropriate appropriations subcommittee, a report concerning the total estimated resources to be available for expenditure under this section for the next fiscal year and the amount the authority proposes to allocate to each program under this section.

8. A homelessness advisory committee is created consisting of the executive director or the executive director’s designee, the directors or their designees from the departments of human services and human rights, the economic development authority, the director of the department on aging or the director’s designee, and at least three individuals from the private sector to be selected by the executive director. The advisory committee shall advise the authority in coordinating programs that provide for the homeless.

9. Notwithstanding any provision to the contrary, all assets held in the housing improvement fund shall be transferred to the housing trust fund created in section 16.181. On and after July 1, 2006, any moneys or assets received for deposit in the housing improvement fund shall be transferred to the housing trust fund.

87 Acts, ch 220, §1

CS87, §220.100

88 Acts, ch 1217, §19; 90 Acts, ch 1262, §38, 39; 91 Acts, ch 267, §316

C93, §16.100

96 Acts, ch 1129, §11; 97 Acts, ch 201, §19; 2001 Acts, ch 61, §11; 2006 Acts, ch 1185, §45; 2008 Acts, ch 1032, §133; 2009 Acts, ch 23, §3; 2009 Acts, ch 41, §263; 2011 Acts, ch 118, §87, 89

Additional housing programs funding, see §16.40

Code editor directive applied

#### **16.100A Council on homelessness.**

1. A council on homelessness is established consisting of thirty-eight voting members. At least one voting member at all times shall be a member of a minority group.

2. Members of the council shall consist of all of the following:

a. Twenty-six members of the general public appointed to two-year staggered terms by the governor in consultation with the nominating committee under subsection 4, paragraph “a”.

(1) Voting members from the general public may include but are not limited to the following types of individuals and representatives of the following programs: homeless or formerly homeless individuals and their family members, youth shelters, faith-based organizations, local homeless service providers, emergency shelters, transitional housing providers, family and domestic violence shelters, private business, local government, and community-based organizations.

(2) Five of the twenty-six voting members selected from the general public shall be

individuals who are homeless, formerly homeless, or family members of homeless or formerly homeless individuals.

(3) One of the twenty-six members selected from the general public shall be a representative of the Iowa state association of counties.

(4) One of the twenty-six members selected from the general public shall be a representative of the Iowa league of cities.

*b.* Twelve agency director members consisting of all of the following:

(1) The director of the department of education or the director's designee.

(2) The director of the economic development authority or the director's designee.

(3) The director of human services or the director's designee.

(4) The attorney general or the attorney general's designee.

(5) The director of the department of human rights or the director's designee.

(6) The director of public health or the director's designee.

(7) The director of the department on aging or the director's designee.

(8) The director of the department of corrections or the director's designee.

(9) The director of the department of workforce development or the director's designee.

(10) The director of the department of public safety or the director's designee.

(11) The director of the department of veterans affairs or the director's designee.

(12) The executive director of the Iowa finance authority or the executive director's designee.

3. An agency director's designee may vote on council matters in the absence of the director.

4. *a.* A nominating committee initially comprised of all twelve agency director members shall nominate persons to the governor to fill the general public member positions. Following appointment of all twenty-six general public members, the composition of the nominating committee may be modified by rule.

*b.* The council may establish other committees and subcommittees comprised of members of the council.

5. A vacancy on the council shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the remainder of the unexpired term.

6. *a.* A majority of the members of the council constitutes a quorum. Any action taken by the council must be adopted by the affirmative vote of a majority of its membership.

*b.* The council shall elect a chairperson and vice chairperson from the membership of the council. The chairperson and vice chairperson shall each serve two-year terms. The positions of chairperson and vice chairperson shall not be held by members who are both either general public members or agency directors. The position of chairperson shall rotate between agency director members and general public members.

*c.* The council shall meet at least six times per year. Meetings of the council may be called by the chairperson or by a majority of the members.

*d.* General public members shall be reimbursed by the Iowa finance authority for actual and necessary expenses incurred while engaged in their official duties.

7. The Iowa finance authority shall provide staff assistance and administrative support to the council.

8. The duties of the council shall include but are not limited to the following:

*a.* Develop a process for evaluating state policies, programs, statutes, and rules to determine whether any state policies, programs, statutes, or rules should be revised to help prevent and alleviate homelessness.

*b.* Evaluate whether state agency resources could be more efficiently coordinated with other state agencies to prevent and alleviate homelessness.

*c.* Work to develop a coordinated and seamless service delivery system to prevent and alleviate homelessness.

*d.* Use existing resources to identify and prioritize efforts to prevent persons from becoming homeless and to eliminate factors that keep people homeless.

*e.* Identify and use federal and other funding opportunities to address and reduce homelessness within the state.

f. Work to identify causes and effects of homelessness and increase awareness among policymakers and the general public.

g. Advise the governor's office, the Iowa finance authority, state agencies, and private organizations on strategies to prevent and eliminate homelessness.

9. a. The council shall make annual recommendations to the governor regarding matters which impact homelessness on or before September 15.

b. The council shall prepare and file with the governor and the general assembly on or before the first day of December in each odd-numbered year, a report on homelessness in Iowa.

c. The council shall assist in the completion of the state's continuum of care application to the United States department of housing and urban development.

10. a. The Iowa finance authority, in consultation with the council, shall adopt rules pursuant to chapter 17A for carrying out the duties of the council pursuant to this section.

b. The council shall establish internal rules of procedure consistent with the provisions of this section.

c. Rules adopted or internal rules of procedure established pursuant to paragraph "a" or "b" shall be consistent with the requirements of the federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301 et seq.

11. The council shall comply with the requirements of chapters 21 and 22. The Iowa finance authority shall be the official repository of council records.

2008 Acts, ch 1117, §1; 2009 Acts, ch 23, §4; 2009 Acts, ch 41, §20; 2009 Acts, ch 43, §4; 2010 Acts, ch 1193, §103; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **16.131A Definitions.**

As used in section 16.131, this section, and sections 16.132 through 16.135, unless the context otherwise requires:

1. "*Clean Water Act*" means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as amended by the Water Quality Act of 1987, Pub. L. No. 100-4, as published in 33 U.S.C. § 1251 – 1376, as amended.

2. "*Commission*" means the environmental protection commission created under section 455A.6.

3. "*Cost*" means all costs, charges, expenses, or other indebtedness incurred by a loan recipient and determined by the department as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.

4. "*Department*" means the department of natural resources created in section 455A.2.

5. "*Eligible entity*" means a person eligible under the provisions of the Clean Water Act, the Safe Drinking Water Act, and the commission rules to receive loans for projects from any of the revolving loan funds.

6. "*Loan recipient*" means an eligible entity that has received a loan under the program.

7. "*Municipality*" means a city, county, sanitary district, state agency, or other governmental body or corporation empowered to provide sewage collection and treatment services or drinking water, or any combination of two or more of the governmental bodies or corporations acting jointly, in connection with a project.

8. "*Program*" means the Iowa water pollution control works and drinking water facilities financing program created pursuant to section 455B.294.

9. "*Project*" means one of the following:

a. In the context of water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in section 212 of the Clean Water Act, or the implementation and development of management programs established under sections 319 and 320 of the Clean Water Act, including construction and undertaking of nonpoint source water pollution control projects and related development activities authorized under those sections.

b. In the context of drinking water facilities, the acquisition, construction, reconstruction,

extending, remodeling, improving, repairing, or equipping of waterworks, water mains, extensions, or treatment facilities useful for providing potable water to residents served by a water system, including the acquisition of real property needed for any of the foregoing purposes, and such other purposes and programs as may be authorized under the Safe Drinking Water Act.

10. “*Revolving loan funds*” means the funds of the program established under sections 16.133A and 455B.295.

11. “*Safe Drinking Water Act*” means Tit. XIV of the federal Public Health Service Act, commonly known as the “Safe Drinking Water Act”, 42 U.S.C. § 300f et seq., as amended by the Safe Drinking Water Amendments of 1996, Pub. L. No. 104-182, as amended.

12. “*Water system*” means any community water system or nonprofit noncommunity water system, each as defined in the Safe Drinking Water Act, that is eligible under the rules of the department to receive a loan under the program for the purposes of undertaking a project.

2009 Acts, ch 30, §5; 2011 Acts, ch 34, §7

Unnumbered paragraph 1 amended

### **16.135 Wastewater viability assessment.**

1. The authority, in cooperation with the department of natural resources and the economic development authority, shall require the use of a wastewater viability assessment for any wastewater treatment facility seeking a grant under the wastewater treatment financial assistance program. A wastewater viability assessment shall determine the long-term operational and financial capacity of the facility and its ratepayers. The authority shall develop minimum criteria for eligibility based on the viability assessment.

2. The authority, in cooperation with the department of natural resources, shall develop a wastewater viability assessment. The assessment shall include as part of the assessment all of the following factors:

a. The ability of the applicant to provide proper oversight and management through a certified operator.

b. The financial ability of the users to support the existing wastewater treatment system, improvements to the wastewater treatment system, and the long-term maintenance of the wastewater treatment system.

2009 Acts, ch 72, §2; 2011 Acts, ch 34, §8; 2011 Acts, ch 118, §85, 89

Code editor directive applied

Subsection 2, paragraph b amended

### **16.162 Authority to issue community college dormitory bonds and notes.**

The authority shall assist a community college or the state board of education as provided in chapter 260C, and the authority shall have all of the powers delegated to it in a chapter 28E agreement by a community college board of directors, the state board of education, or a private developer contracting with a community college to develop a housing facility, such as a dormitory, for the community college, with respect to the issuance or securing of bonds or notes as provided in sections 260C.71 and 260C.72.

90 Acts, ch 1253, §75; 90 Acts, ch 1254, §5

C91, §220.162

C93, §16.162

2011 Acts, ch 20, §2

Section amended

## COMMUNITY HOUSING AND SERVICES FOR PERSONS WITH DISABILITIES REVOLVING LOAN PROGRAM FUND

### **16.185 Community housing and services for persons with disabilities revolving loan program fund.**

1. A community housing and services for persons with disabilities revolving loan program fund is created within the authority to further the availability of affordable housing

and supportive services for Medicaid waiver-eligible individuals with behaviors that provide significant barriers to accessing traditional rental and supportive services opportunities. The moneys in the fund are annually appropriated to the authority to be used for the development and operation of a revolving loan program to provide financing to construct affordable permanent supportive housing or develop infrastructure in which to provide supportive services, including through new construction, acquisition and rehabilitation of existing housing or infrastructure, or conversion or adaptive reuse.

2. Moneys transferred by the authority for deposit in the community housing and services for persons with disabilities revolving loan program fund, moneys appropriated to the community housing and services for persons with disabilities revolving loan program, and any other moneys available to and obtained or accepted by the authority for placement in the fund shall be credited to the fund. Additionally, payment of interest, recaptures of awards, and other repayments to the community housing and services for persons with disabilities revolving loan program fund shall be credited to the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund. Notwithstanding section 8.33, moneys credited to the fund from any other fund that remain unencumbered or unobligated at the close of the fiscal year shall not revert to the other fund.

3. *a.* The authority shall annually allocate moneys available in the fund for the development of permanent supportive housing for Medicaid waiver-eligible individuals. The authority shall develop a joint application process for the allocation of United States housing and urban development HOME investment partnerships program funding and the funds available under this section. Moneys allocated to such projects may be in the form of loans, forgivable loans, or a combination of loans and forgivable loans.

*b.* The authority shall annually allocate moneys available in the fund for the development of infrastructure in which to provide supportive services for Medicaid waiver-eligible individuals who meet the psychiatric medical institution for children level of care. Moneys allocated to such projects may be in the form of loans, forgivable loans, or a combination of loans and forgivable loans.

4. *a.* A project shall demonstrate written approval of the project by the department of human services to the authority prior to application for funding under this section.

*b.* In order to be approved by the department of human services for application for funding for development of permanent supportive housing under this section, a project shall include all of the following components:

(1) Provision of services to any of the following Medicaid waiver-eligible individuals:

(a) Individuals who are currently underserved in community placements, including individuals who are physically aggressive or have behaviors that are difficult to manage or individuals who meet the psychiatric medical institution for children level of care.

(b) Individuals who are currently residing in out-of-state facilities.

(c) Individuals who are currently receiving care in a licensed health care facility.

(2) A plan to provide each individual with crisis stabilization services to ensure that the individual's behavioral issues are appropriately addressed by the provider.

(3) Policies and procedures that prohibit discharge of the individual from the waiver services provided by the project provider unless an alternative placement that is acceptable to the client or the client's guardian is identified.

*c.* In order to be approved by the department of human services for application for funding for development of infrastructure in which to provide supportive services under this section, a project shall include all of the following components:

(1) Provision of services to Medicaid waiver-eligible individuals who meet the psychiatric medical institution for children level of care.

(2) Policies and procedures that prohibit discharge of the individual from the waiver services provided by the project provider unless an alternative placement that is acceptable to the client or the client's guardian is identified.

*d.* Housing provided through a project under this section is exempt from the requirements of chapter 135O.

5. The authority, in collaboration with the department of human services, shall adopt rules pursuant to chapter 17A to administer this section.

2011 Acts, ch 129, §50, 74

NEW section

#### **16.191 Iowa jobs board.**

1. An Iowa jobs board is established consisting of eleven members and is located for administrative purposes within the Iowa finance authority. The executive director of the Iowa finance authority shall provide staff assistance and necessary supplies and equipment for the board. The executive director shall budget funds received pursuant to section 16.193 to operate the program including but not limited to paying the per diem expenses of the board members. In performing its functions, the board is performing a public function on behalf of the state and is a public instrumentality of the state.

2. The membership of the board shall be as follows:

a. Six members of the general public appointed by the governor.

b. The director of the economic development authority or the director's designee.

c. The executive director of the Iowa finance authority or the director's designee.

d. The director of the department of workforce development or the director's designee.

e. The administrator of the homeland security and emergency management division of the department of public defense or the administrator's designee.

f. The treasurer of state or the treasurer of state's designee.

3. a. All public member appointments made pursuant to subsection 2, paragraph "a", shall comply with sections 69.16, 69.16A, and 69.16C, and shall be subject to confirmation by the senate.

b. Three of the public members appointed pursuant to subsection 2, paragraph "a", shall have demonstrable experience or expertise in the field of public financing, architecture, engineering, or major facility development or construction and one of the public members appointed pursuant to subsection 2, paragraph "a", shall be an employee of a not-for-profit organization.

c. All public members shall be from geographically diverse areas of this state.

d. All public members shall be appointed to three-year staggered terms and the terms shall commence and end as provided by section 69.19. If a vacancy occurs, a successor shall be appointed to serve the unexpired term. A successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term.

4. The chairperson and vice chairperson of the board shall be designated by the governor from the public members appointed pursuant to subsection 2, paragraph "a". In case of the absence or disability of the chairperson and vice chairperson, the members of the board shall elect a temporary chairperson by a majority vote of those members who are present and voting.

5. A majority of the board constitutes a quorum.

2009 Acts, ch 173, §5, 36; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 122, §28

Confirmation, see §2.32

Code editor directive applied

Subsection 2, paragraph e amended

#### **16.192 Board duties and powers.**

The Iowa jobs board has any and all powers necessary to carry out its purposes and duties, and to exercise its specific powers, including but not limited to doing all of the following:

1. Organize.

2. Establish the Iowa jobs program pursuant to section 16.194 and the Iowa jobs II program pursuant to section 16.194A.

3. Oversee and provide approval of the administration of the Iowa jobs program.

4. Award financial assistance, including financial assistance in the form of grants under the Iowa jobs program and Iowa jobs II program pursuant to sections 16.194, 16.194A, and 16.195.

5. Enter into and enforce grant agreements as necessary or convenient to implement the Iowa jobs program and Iowa jobs II program.

2009 Acts, ch 173, §6, 36; 2010 Acts, ch 1184, §85; 2011 Acts, ch 34, §9  
Subsections 4 and 5 amended

**16.193 Iowa finance authority duties — appropriation.**

1. The Iowa finance authority, subject to approval by the Iowa jobs board, shall adopt administrative rules pursuant to chapter 17A necessary to administer the Iowa jobs program and Iowa jobs II program. The authority shall provide the board with assistance in implementing administrative functions, providing technical assistance and application assistance to applicants under the programs, negotiating contracts, and providing project follow up. The authority, in cooperation with the board, may conduct negotiations on behalf of the board with applicants regarding terms and conditions applicable to awards under the program.

2. For the period beginning July 1, 2009, and ending June 30, 2011, two hundred thousand dollars of the moneys deposited in the rebuild Iowa infrastructure fund shall be allocated each fiscal year to the Iowa finance authority for purposes of administering the Iowa jobs program and Iowa jobs II program, notwithstanding section 8.57, subsection 6, paragraph “c”.

3. a. During the term of the Iowa jobs program and Iowa jobs II program, the Iowa finance authority shall collect data on all of the projects approved for the programs. The department of management and the state agencies associated with the projects shall assist the authority with the data collection and in developing the report required by this subsection. The authority shall report quarterly to the governor and the general assembly concerning the data.

b. The report shall include but is not limited to all of the following:

- (1) The nature of each project and its purpose.
- (2) The status of each project and the amount and percentage of program funds expended for the project.
- (3) The outside funding that is matched or leveraged by the program funds.
- (4) The number of jobs created or retained by each project.
- (5) For each project, the names of the project contractors, state of residence of the project contractors, and the state of residence of the contractors’ employees.

c. The authority shall maintain an internet site that allows citizens to track project data on a county-by-county basis.

2009 Acts, ch 173, §7, 36; 2010 Acts, ch 1184, §86, 87, 96; 2011 Acts, ch 34, §10, 11; 2011 Acts, ch 131, §52, 158; 2011 Acts, ch 133, §28, 50

Subsection 3 applies to projects approved on, before, and after April 26, 2010; 2010 Acts, ch 1184, § 96

See Code editor’s note on simple harmonization

Subsections 1 and 2 amended

Subsection 3, paragraph a amended

**16.195 Iowa jobs program application review.**

1. Applications for assistance under the Iowa jobs program and Iowa jobs II program shall be submitted to the Iowa finance authority. The authority shall provide a staff review and evaluation of applications to the Iowa jobs program review committee referred to in subsection 2 and to the Iowa jobs board.

2. A review committee composed of members of the board as determined by the board shall review Iowa jobs program applications submitted to the board and make recommendations regarding the applications to the board. When reviewing the applications, the review committee and the authority shall consider the project criteria specified in sections 16.194 and 16.194A. The board shall develop the appropriate level of transparency regarding project fund allocations.

3. Upon approval of an application for financial assistance under the program, the board shall notify the treasurer of state regarding the amount of moneys needed to satisfy the award of financial assistance and the terms of the award. The treasurer of state shall notify the Iowa

finance authority any time moneys are disbursed to a recipient of financial assistance under the program.

2009 Acts, ch 173, §9, 36; 2010 Acts, ch 1184, §89; 2011 Acts, ch 34, §12  
Subsection 1 amended

## CHAPTER 19B

### EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

#### **19B.7 State contracts and services — state-assisted programs — responsibilities of department of management — regents.**

1. Except as otherwise provided in subsection 2, the department of management is responsible for the administration and promotion of equal opportunity in all state contracts and services and the prohibition of discriminatory and unfair practices within any program receiving or benefiting from state financial assistance in whole or in part. In carrying out these responsibilities the department of management shall:

a. Establish for all state agencies a contract compliance policy, applicable to state contracts and services and to programs receiving or benefiting from state financial assistance, to assure:

(1) The equitable provision of services within state programs.

(2) The utilization of minority, women's, and disadvantaged business enterprises as sources of supplies, equipment, construction, and services.

(3) Nondiscrimination in employment by state contractors and subcontractors.

b. Adopt administrative rules in accordance with chapter 17A to implement the contract compliance policy.

c. Monitor the actions of state agencies to ensure compliance.

d. Report results under the contract compliance policy to the governor and the general assembly on an annual basis. Any information reported by the department of administrative services to the economic development authority pursuant to section 15.108 shall not be required to be part of the report under this paragraph. The report shall detail specific efforts to promote equal opportunity through state contracts and services and efforts to promote, develop, and stimulate the utilization of minority, women's, and disadvantaged business enterprises in programs receiving or benefiting from state financial assistance.

e. Do other acts necessary to carry out the contract compliance policy described in this section.

2. The state board of regents is responsible for administering the provisions of this section for the institutions under its jurisdiction.

86 Acts, ch 1245, §226; 2007 Acts, ch 207, §9, 18; 2011 Acts, ch 118, §85, 89  
Code editor directive applied

## CHAPTER 21

### OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS)

#### **21.4 Public notice.**

1. Except as provided in subsection 3, a governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin

board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. *a.* Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to persons with disabilities.

*b.* When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

3. Subsection 1 does not apply to any of the following:

*a.* A meeting reconvened within four hours of the start of its recess, where an announcement of the time, date, and place of the reconvened meeting is made at the original meeting in open session and recorded in the minutes of the meeting and there is no change in the agenda.

*b.* A meeting held by a formally constituted subunit of a parent governmental body during a lawful meeting of the parent governmental body or during a recess in that meeting of up to four hours, or a meeting of that subunit immediately following the meeting of the parent governmental body, if the meeting of that subunit is publicly announced in open session at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

[C71, 73, 75, 77, 79, 81, §28A.4]

C85, §21.4

96 Acts, ch 1129, §113; 2008 Acts, ch 1032, §201; 2011 Acts, ch 106, §4, 17

Subsections 1 and 3 amended

### **21.5 Closed session.**

1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

*a.* To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.

*b.* To discuss application for letters patent.

*c.* To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

*d.* To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.

*e.* To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.

*f.* To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.

*g.* To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.

h. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution, or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

i. To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

j. To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the audio recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.

k. To discuss information contained in records in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50.

l. To discuss patient care quality and process improvement initiatives in a meeting of a public hospital or to discuss marketing and pricing strategies or similar proprietary information in a meeting of a public hospital, where public disclosure of such information would harm such a hospital's competitive position when no public purpose would be served by public disclosure. The minutes and the audio recording of a closed session under this paragraph shall be available for public inspection when the public disclosure would no longer harm the hospital's competitive position. For purposes of this paragraph, "public hospital" means the same as defined in section 249J.3. This paragraph does not apply to the information required to be disclosed pursuant to section 347.13, subsection 11, or to any discussions relating to terms or conditions of employment, including but not limited to compensation of an officer or employee or group of officers or employees.

2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

3. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.

4. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also audio record all of the closed session. The detailed minutes and audio recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and audio recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and audio recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and audio recording of any closed session for a period of at least one year from the date of that meeting, except as otherwise required by law.

5. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.

[C71, 73, 75, 77, §28A.3; C79, 81, §28A.5]

C85, §21.5

2002 Acts, ch 1076, §1; 2007 Acts, ch 63, §1, 2; 2008 Acts, ch 1191, §33, 99; 2009 Acts, ch 110, §1; 2011 Acts, ch 106, §5, 6, 17

Subsection 1, paragraph "l" does not apply to litigation before any court that was filed prior to July 1, 2008; 2008 Acts, ch 1191, §99

Subsection 1, paragraph j amended  
Subsection 4 amended

### **21.6 Enforcement.**

1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a member of a governmental body knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:

(1) Voted against the closed session.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.

(3) Reasonably relied upon a decision of a court, a formal opinion of the attorney general, or the attorney for the governmental body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the attorney general or the attorney for the governmental body, given in writing.

b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a". If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in a prior violation of this chapter for which damages were assessed against the member during the member's term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's

principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

[C71, 73, 75, 77, §28A.7, 28A.8; C79, 81, §28A.6]

C85, §21.6

99 Acts, ch 9, §1; 2005 Acts, ch 99, §1; 2011 Acts, ch 106, §7, 17

Subsection 3, paragraph a amended

## CHAPTER 22

### EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS)

#### **22.3A Access to data processing software.**

1. As used in this section:

a. “Access” means the instruction of, communication with, storage of data in, or retrieval of data from a computer.

b. “Computer” means an electronic device which performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer including a computer network. As used in this paragraph, “computer” includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. “Computer network” means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities.

d. “Data” means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer. Data may be stored in any form, including but not limited to a printout, magnetic storage media, disk, compact disc, punched card, or as memory of a computer.

e. “Data processing software” means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in this paragraph “data processing software” includes but is not limited to an operating system, compiler, assembler, utility, library resource, maintenance routine, application, computer networking program, or the associated documentation.

2. A government body may provide, restrict, or prohibit access to data processing software developed by the government body, regardless of whether the data processing software is separated or combined with a public record. A government body shall establish policies and procedures to provide access to public records which are combined with its data processing software. A public record shall not be withheld from the public because it is combined with data processing software. A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body’s ability to permit the examination of a public record and the copying of a public record in either written or electronic form. If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the government body shall bear the cost of separation of the public record from the data processing software. The electronic public record shall be made available in a format useable with commonly available data processing or database management software. The cost chargeable to a person receiving a public record separated from data processing software under this subsection shall not be in excess

of the charge under this chapter unless the person receiving the public record requests that the public record be specially processed. A government body may establish payment rates and procedures required to provide access to data processing software, regardless of whether the data processing software is separated from or combined with a public record. Proceeds from payments may be considered repayment receipts, as defined in section 8.2. The payment amount shall be calculated as follows:

a. The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person accesses a public record stored in an electronic format that does not require formatting, editing, or compiling to access the public record, the charge for providing the accessed public record shall not exceed the reasonable cost of accessing that public record. The government body shall, if requested, provide documentation which explains and justifies the amount charged. This paragraph shall not apply to any publication for which a price has been established pursuant to another section, including section 2A.5.

b. If access to the data processing software is provided to a person for a purpose other than provided in paragraph “a”, the amount may be established according to the discretion of the government body, and may be based upon competitive market considerations as determined by the government body.

3. A government body is granted and may apply for and receive any legal protection necessary to secure a right to or an interest in data processing software developed by the government body, including but not limited to federal copyright, patent, and trademark protections, and any trade secret protection available under chapter 550. The government body may enter into agreements for the sale or distribution of its data processing software, including marketing and licensing agreements. The government body may impose conditions upon the use of the data processing software that is otherwise consistent with state and federal law.

96 Acts, ch 1099, §15; 98 Acts, ch 1224, §18; 99 Acts, ch 207, §12; 2003 Acts, ch 35, §38, 49; 2011 Acts, ch 127, §45, 89

Subsection 1, paragraph e amended

**22.6 Penalty.** Repealed by 2011 Acts, ch 106, § 16, 17.

### **22.7 Confidential records.**

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

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records. This subsection shall not be construed to prohibit a postsecondary education institution from disclosing to a parent or guardian information regarding a violation of a federal, state, or local law, or institutional rule or policy governing the use or possession of alcohol or a controlled substance if the child is under the age of twenty-one years and the institution determines that the student committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the student’s education records. This subsection shall not be construed to prohibit a school corporation or educational institution from transferring student records electronically to the department of education, an accredited nonpublic school, an attendance center, a school district, or an accredited postsecondary institution in accordance with section 256.9, subsection 48.

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime

victim and the victim's counselor are not subject to disclosure except as provided in section 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual's confidentiality.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers' investigative reports, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the sale or purchase of real or personal property for public purposes, prior to the execution of any contract for such sale or the submission of the appraisal to the property owner or other interest holders as provided in section 6B.45.

8. Economic development authority information on an industrial prospect with which the authority is currently negotiating.

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

10. Reserved.

11. *a.* Personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of the government bodies. However, the following information relating to such individuals contained in personnel records shall be public records:

(1) The name and compensation of the individual including any written agreement establishing compensation or any other terms of employment excluding any information otherwise excludable from public information pursuant to this section or any other applicable provision of law. For purposes of this paragraph, "*compensation*" means payment of, or agreement to pay, any money, thing of value, or financial benefit conferred in return for labor or services rendered by an official, officer, or employee plus the value of benefits conferred including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacation, holiday, and sick leave, severance payments, retirement benefits, and deferred compensation.

(2) The dates the individual was employed by the government body.

(3) The positions the individual holds or has held with the government body.

(4) The educational institutions attended by the individual, including any diplomas and degrees earned, and the names of the individual's previous employers, positions previously held, and dates of previous employment.

(5) The fact that the individual was discharged as the result of a final disciplinary action upon the exhaustion of all applicable contractual, legal, and statutory remedies.

*b.* Personal information in confidential personnel records of government bodies relating to student employees shall only be released pursuant to 20 U.S.C. § 1232g.

12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 203 or chapter 203C, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.

13. The records of a library which, by themselves or when examined with other public

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

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

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

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

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

18. Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, "*persons outside of government*" does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:

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

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

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

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

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

21. Information concerning the nature and location of any ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in

unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the director of the department of natural resources and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records.

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

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

24. Reserved.

25. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

26. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25.

27. Marketing and advertising budget and strategy of a nonprofit corporation which is subject to this chapter. However, this exemption does not apply to salaries or benefits of employees who are employed by the nonprofit corporation to handle the marketing and advertising responsibilities.

28. The information contained in records of the centralized employee registry created in chapter 252G, except to the extent that disclosure is authorized pursuant to chapter 252G.

29. Records and information obtained or held by independent special counsel during the course of an investigation conducted pursuant to section 68B.31A. Information that is disclosed to a legislative ethics committee subsequent to a determination of probable cause by independent special counsel and made pursuant to section 68B.31 is not a confidential record unless otherwise provided by law.

30. Information contained in a declaration of paternity completed and filed with the state registrar of vital statistics pursuant to section 144.12A, except to the extent that the information may be provided to persons in accordance with section 144.12A.

31. Memoranda, work products, and case files of a mediator and all other confidential communications in the possession of a mediator, as provided in chapters 86 and 216. Information in these confidential communications is subject to disclosure only as provided in sections 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter.

32. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 556.2C, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained by the department of administrative services for the purpose of documenting and tracking outdated warrants pursuant to section 556.2C.

33. Data processing software, as defined in section 22.3A, which is developed by a government body.

34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.

35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.

36. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver's license under section 321.189A.

37. Mediation communications as defined in section 679C.102, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation communications resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

38. a. Records containing information that would disclose, or might lead to the disclosure

of, private keys used in an electronic signature or other similar technologies as provided in chapter 554D.

b. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D.

39. Information revealing the identity of a packer or a person who sells livestock to a packer as reported to the department of agriculture and land stewardship pursuant to section 202A.2.

40. The portion of a record request that contains an internet protocol number which identifies the computer from which a person requests a record, whether the person using such computer makes the request through the IowaAccess network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record.

41. Medical examiner records and reports, including preliminary reports, investigative reports, and autopsy reports. However, medical examiner records and reports shall be released to a law enforcement agency that is investigating the death, upon the request of the law enforcement agency, and autopsy reports shall be released to the decedent's immediate next of kin upon the request of the decedent's immediate next of kin unless disclosure to the decedent's immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual. Information regarding the cause and manner of death shall not be kept confidential under this subsection unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 523C.23.

43. Information obtained by the commissioner of insurance pursuant to section 502.607.

44. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 7; or section 815.10, subsection 5.

45. The critical asset protection plan or any part of the plan prepared pursuant to section 29C.8 and any information held by the homeland security and emergency management division that was supplied to the division by a public or private agency or organization and used in the development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the administrator shall make the list of assets available for examination by any person. A person wishing to examine the list of assets shall make a written request to the administrator on a form approved by the administrator. The list of assets may be viewed at the division's offices during normal working hours. The list of assets shall not be copied in any manner. Communications and asset information not required by law, rule, or procedure that are provided to the administrator by persons outside of government and for which the administrator has signed a nondisclosure agreement are exempt from public disclosures. The homeland security and emergency management division may provide all or part of the critical asset plan to federal, state, or local governmental agencies which have emergency planning or response functions if the administrator is satisfied that the need to know and intended use are reasonable. An agency receiving critical asset protection plan information from the division shall not disseminate the information without prior approval of the administrator.

46. Military personnel records recorded by the county recorder pursuant to section 331.608.

47. A report regarding interest held in agricultural land required to be filed pursuant to chapter 10B.

48. Sex offender registry records under chapter 692A, except as provided in section 692A.121.

49. Confidential information, as defined in section 86.45, subsection 1, filed with the workers' compensation commissioner.

50. Information concerning security procedures or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody, or under the control of the government body, or property under the jurisdiction of the government body,

if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property.

a. Such information includes but is not limited to information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack.

b. This subsection shall only apply to information held by a government body that has adopted a rule or policy identifying the specific records or class of records to which this subsection applies and which is contained in such a record.

51. The information contained in the information program established in section 124.551, except to the extent that disclosure is authorized pursuant to section 124.553.

52. a. The following records relating to a charitable donation made to a foundation acting solely for the support of an institution governed by the state board of regents, to the board of the Iowa state fair foundation when the record relates to a gift for deposit in or expenditure from the Iowa state fairgrounds trust fund as provided in section 173.22A, to a foundation acting solely for the support of an institution governed by chapter 260C, to a private foundation as defined in section 509 of the Internal Revenue Code organized for the support of a government body, or to an endow Iowa qualified community foundation, as defined in section 15E.303, organized for the support of a government body:

(1) Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning, or gift planning matters.

(2) Records received from a donor or prospective donor regarding such donor's prospective gift or pledge.

(3) Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge.

(4) Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor.

(5) Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This subparagraph does not apply to a gift or pledge from a publicly held business corporation.

b. The confidential records described in paragraph "a", subparagraphs (1) through (5), shall not be construed to make confidential those portions of records disclosing any of the following:

(1) The amount and date of the donation.

(2) Any donor-designated use or purpose of the donation.

(3) Any other donor-imposed restrictions on the use of the donation.

(4) When a pledge or donation is made expressly conditioned on receipt by the donor, or any person related to the donor by blood or marriage within the third degree of consanguinity, of any privilege, benefit, employment, program admission, or other special consideration from the government body, a description of any and all such consideration offered or given in exchange for the pledge or donation.

c. Except as provided in paragraphs "a" and "b", portions of records relating to the receipt, holding, and disbursement of gifts made for the benefit of regents institutions and made through foundations established for support of regents institutions, including but not limited to written fund-raising policies and documents evidencing fund-raising practices, shall be subject to this chapter.

d. This subsection does not apply to a report filed with the ethics and campaign disclosure board pursuant to section 8.7.

53. Information obtained and prepared by the commissioner of insurance pursuant to section 507.14.

54. Information obtained and prepared by the commissioner of insurance pursuant to section 507E.5.

55. An intelligence assessment and intelligence data under chapter 692, except as provided in section 692.8A.

56. Individually identifiable client information contained in the records of the state database created as a homeless management information system pursuant to standards developed by the United States department of housing and urban development and utilized by the economic development authority.

57. The following information contained in the records of any governmental body relating to any form of housing assistance:

a. An applicant's social security number.

b. An applicant's personal financial history.

c. An applicant's personal medical history or records.

d. An applicant's current residential address when the applicant has been granted or has made application for a civil or criminal restraining order for the personal protection of the applicant or a member of the applicant's household.

58. Information filed with the commissioner of insurance pursuant to sections 523A.204 and 523A.502A.

59. The information provided in any report, record, claim, or other document submitted to the treasurer of state pursuant to chapter 556 concerning unclaimed or abandoned property, except the name and last known address of each person appearing to be entitled to unclaimed or abandoned property paid or delivered to the treasurer of state pursuant to that chapter.

60. Information in a record that would permit a governmental body subject to chapter 21 to hold a closed session pursuant to section 21.5 in order to avoid public disclosure of that information, until such time as final action is taken on the subject matter of that information. Any portion of such a record not subject to this subsection, or not otherwise confidential, shall be made available to the public. After the governmental body has taken final action on the subject matter pertaining to the information in that record, this subsection shall no longer apply. This subsection shall not apply more than ninety days after a record is known to exist by the governmental body, unless it is not possible for the governmental body to take final action within ninety days. The burden shall be on the governmental body to prove that final action was not possible within the ninety-day period.

61. Records of the department on aging pertaining to clients served by the office of substitute decision maker.

62. Records of the department on aging pertaining to clients served by the elder abuse prevention initiative.

63. Information obtained by the superintendent of credit unions in connection with a complaint response process as provided in section 533.501, subsection 3.

64. Information obtained by the commissioner of insurance in the course of an examination of a cemetery as provided in section 523I.213A, subsection 7.

[C71, 73, 75, 77, 79, 81, §68A.7; 81 Acts, ch 36, §1, ch 37, §1, ch 38, §1, ch 62, §4]

83 Acts, ch 90, §9; 84 Acts, ch 1014, §1; 84 Acts, ch 1185, §5, 6

C85, §22.7

85 Acts, ch 134, §16; 85 Acts, ch 175, §1; 85 Acts, ch 208, §1; 86 Acts, ch 1184, §1; 86 Acts, ch 1228, §1; 87 Acts, ch 223, §20; 88 Acts, ch 1010, §1; 88 Acts, ch 1256, §1; 89 Acts, ch 194, §1; 89 Acts, ch 304, §102; 89 Acts, ch 311, §22; 90 Acts, ch 1017, §1; 90 Acts, ch 1271, §703; 92 Acts, ch 1212, §3; 93 Acts, ch 79, §2; 93 Acts, ch 163, §27; 94 Acts, ch 1023, §76; 94 Acts, ch 1064, §1; 94 Acts, ch 1092, §1; 94 Acts, ch 1174, §1; 95 Acts, ch 100, §1; 95 Acts, ch 129, §1; 95 Acts, ch 191, §1; 96 Acts, ch 1037, §1; 96 Acts, ch 1099, §16; 96 Acts, ch 1133, §38; 96 Acts, ch 1150, §1; 96 Acts, ch 1212, §10; 97 Acts, ch 92, §1; 97 Acts, ch 159, §1; 98 Acts, ch 1062, §8, 9; 98 Acts, ch 1073, §9; 98 Acts, ch 1090, §59, 84; 99 Acts, ch 88, §1, 11, 13; 99 Acts, ch 146, §43; 2000 Acts, ch 1014, §1; 2000 Acts, ch 1140, §1; 2000 Acts, ch 1147, §27; 2000 Acts, ch 1161, §1; 2000 Acts, ch 1189, §25; 2001 Acts, ch 24, §17; 2001 Acts, ch 108, §1; 2002 Acts, ch 1038, §1; 2002 Acts, ch 1067, §13; 2002 Acts, ch 1076, §2; 2002 Acts, ch 1098, §1; 2002 Acts, ch 1117, §53, 56; 2003 Acts, ch 114, §1; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §157; 2004 Acts, ch 1091, §3; 2004 Acts, ch 1104, §4; 2004 Acts, ch 1147, §6; 2004 Acts, ch 1161, §65, 68;

2004 Acts, ch 1175, §462, 468; 2005 Acts, ch 19, §16; 2005 Acts, ch 68, §2; 2005 Acts, ch 168, §8, 23; 2006 Acts, ch 1054, §1, 2; 2006 Acts, ch 1117, §2; 2006 Acts, ch 1122, §1; 2006 Acts, ch 1127, §1; 2006 Acts, ch 1147, §1, 11; 2006 Acts, ch 1148, §1; 2006 Acts, ch 1185, §57, 58, 92; 2007 Acts, ch 37, §1; 2007 Acts, ch 62, §1; 2007 Acts, ch 126, §11; 2007 Acts, ch 175, §1; 2008 Acts, ch 1032, §201; 2008 Acts, ch 1144, §2, 12, 13; 2008 Acts, ch 1191, §34, 99; 2009 Acts, ch 23, §6; 2009 Acts, ch 48, §1; 2009 Acts, ch 119, §33; 2010 Acts, ch 1121, §1; 2011 Acts, ch 20, §3; 2011 Acts, ch 30, §1; 2011 Acts, ch 79, §2; 2011 Acts, ch 106, §8 – 10, 17; 2011 Acts, ch 118, §39, 85, 89

Future repeal of subsection 39 if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; 99 Acts, ch 88, §11

Subsection 60 does not apply to litigation before any court that was filed prior to July 1, 2008; 2008 Acts, ch 1191, §99

Code editor directive applied

Subsections 1, 7, and 11 amended

Subsections 10 and 24 stricken

Subsection 52, paragraph a, unnumbered paragraph 1 amended

Subsection 60 stricken and former subsections 61 – 65 renumbered as 60 – 64

## 22.10 Civil enforcement.

1. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

a. Shall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of this chapter in the case before it and, if appropriate, may order the lawful custodian and other appropriate persons to refrain for one year from any future violations of this chapter.

b. Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a person knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars. These damages shall be paid by the court imposing them to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person did any of the following:

(1) Voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of this chapter.

(3) Reasonably relied upon a decision of a court, a formal opinion of the attorney general, or the attorney for the government body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the attorney general or the attorney for the government body, given in writing.

c. Shall order the payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph “b” of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages,

the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.

d. Shall issue an order removing a person from office if that person has engaged in a prior violation of this chapter for which damages were assessed against the person during the person's term.

4. Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding brought under this section. A lawful custodian or its designee in doubt about the legality of allowing the examination or copying or refusing to allow the examination or copying of a government record is authorized to bring suit at the expense of that government body in the district court of the county of the lawful custodian's principal place of business, or to seek an opinion of the attorney general or the attorney for the lawful custodian, to ascertain the legality of any such action.

84 Acts, ch 1185, §9; 2005 Acts, ch 99, §2; 2011 Acts, ch 106, §11, 12, 17

Subsection 3, paragraph b amended

Subsection 5 stricken

### **22.13 Settlements — government bodies.**

When a government body reaches a final, binding, written settlement agreement that resolves a legal dispute claiming monetary damages, equitable relief, or a violation of a rule or statute, the government body shall, upon request and to the extent allowed under applicable law, prepare a brief summary of the resolution of the dispute indicating the identity of the parties involved, the nature of the dispute, and the terms of the settlement, including any payments made by or on behalf of the government body and any actions to be taken by the government body. A government body is not required to prepare a summary if the settlement agreement includes the information required to be included in the summary. The settlement agreement and any required summary shall be a public record.

91 Acts, ch 96, §1; 2011 Acts, ch 106, §13, 17

Section stricken and rewritten

### **22.14 Public funds investment records in custody of third parties.**

1. The records of investment transactions made by or on behalf of a public body are public records and are the property of the public body whether in the custody of the public body or in the custody of a fiduciary or other third party.

2. If such records of public investment transactions are in the custody of a fiduciary or other third party, the public body shall obtain from the fiduciary or other third party records requested pursuant to section 22.2.

3. If a fiduciary or other third party with custody of public investment transactions records fails to produce public records within a reasonable period of time as requested by the public body, the public body shall make no new investments with or through the fiduciary or other third party and shall not renew existing investments upon their maturity with or through the fiduciary or other third party. The fiduciary or other third party shall be liable for the penalties imposed under statute, common law, or contract due to the acts or omissions of the fiduciary or other third party.

92 Acts, ch 1156, §8; 2011 Acts, ch 106, §14, 17

Subsection 3 amended

## **CHAPTER 24**

### **LOCAL BUDGETS**

#### **24.6 Emergency fund — levy.**

1. A municipality may include in the estimate required, an estimate for an emergency fund. A municipality may assess and levy a tax for the emergency fund at a rate not to exceed twenty-seven cents per thousand dollars of assessed value of taxable property of the

municipality. However, an emergency tax levy shall not be made until the municipality has first petitioned the state board and received its approval.

2. *a.* Transfers of moneys may be made from the emergency fund to any other fund of the municipality for the purpose of meeting deficiencies in a fund arising from any cause. However, a transfer shall not be made except upon the written approval of the state board, and then only when that approval is requested by a two-thirds vote of the governing body of the municipality.

*b.* Notwithstanding the requirements of paragraph “*a*”, if the municipality is a school corporation, the school corporation may transfer money from the emergency fund to any other fund of the school corporation for the purpose of meeting deficiencies in a fund arising within two years of a disaster as defined in section 29C.2, subsection 2. However, a transfer under this paragraph “*b*” shall not be made without the written approval of the school budget review committee.

[C24, 27, 31, 35, 39, §373; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.6]

83 Acts, ch 123, §31, 209; 2009 Acts, ch 65, §1

Section not amended; internal reference change applied

## CHAPTER 28E

### JOINT EXERCISE OF GOVERNMENTAL POWERS

#### **28E.41 Joint county, city, fire district, and school district buildings.**

1. A county, city, fire district, or school district, which has areas within its boundaries which overlap areas within the boundaries of another county, city, fire district, or school district, or whose boundaries are contiguous with another county, city, fire district, or school district, may execute an agreement pursuant to this section for the joint construction or acquisition, furnishing, operation, and maintenance of a public building or buildings for their common use. Noncontiguous cities located within the same county, or cities located in contiguous counties, may also execute an agreement for the joint construction or acquisition, furnishing, operation, and maintenance of a joint public building or buildings for their common use. Such an agreement regarding a joint public building may allow for, but is not limited to, any of the following:

- a.* Acquisition of a construction site and construction of a public building for common use.
- b.* Purchase of an existing building for joint public use, or conversion of a building previously owned and maintained by a county, city, fire district, or school district for joint public use.
- c.* Equipping or furnishing a new or existing building for joint public use.
- d.* Operation, maintenance, or improvement of a joint public building.
- e.* Any other aspect of joint public building construction, acquisition, furnishing, operation, or maintenance mutually agreed upon by the county, city, fire district, or school district and not otherwise prohibited by law.

2. An agreement pursuant to subsection 1 shall be approved by resolution of the governing bodies of each of the participating counties, cities, fire districts, or school districts and shall specify the purposes for which the joint public building shall be used, the estimated cost thereof, the estimated amount of the cost to be allocated to each of the participating counties, cities, fire districts, or school districts, the proportion and method of allocating the expenses of the operation and maintenance of the building or improvement, and the disposition to be made of any revenues to be derived therefrom, in addition to the provisions of sections 28E.5 and 28E.6, and any other applicable provision of this chapter.

3. *a.* A county, city, fire district, or school district may expend funds or issue general obligation bonds for the payment of its share of the cost of constructing, acquiring, furnishing, operating, or maintaining a joint public building pursuant to subsection 1. Section 28E.16 shall apply regarding a single election to be authorized by the board of

supervisors, city council, governing body of a fire district, and board of directors of a school district, in the event that a single bond issue throughout the overlapping or contiguous areas, or noncontiguous cities located in the same county or cities located in contiguous counties, is contemplated. If separate bond issues are authorized by the governing body of a county, city, fire district, or school district for its respective share of the cost of the joint public building, the applicable bonding provisions of chapters 74, 75, 296, 298, 331, 357B, 359, and 384 shall apply. With regard to any issuance of bonds pursuant to this section, a proposition to authorize an issuance of bonds by a county, city, fire district, or school district shall be deemed carried or adopted if the vote in favor of the proposition is equal to at least sixty percent of the vote cast for and against the proposition in each participating county, city, fire district, or school district.

b. Bonds shall not be issued by a county, city, fire district, or school district until provision has been made by each of the other participating counties, cities, fire districts, or school districts to the agreement for the payment of their shares of the cost of the joint public building. In the event that the cost of the construction or acquisition, furnishing, operation, and maintenance of the joint public building exceeds that which was originally estimated and agreed to, the governing body of a county, city, fire district, or school district shall have the authority, jointly or individually, as appropriate, to expend additional moneys or issue additional bonds to pay their respective portions of the increased costs.

c. The governing body of a county, city, fire district, or school district is authorized to enter into an agreement under this section to construct, acquire, furnish, operate, or maintain the public building which is the subject of the agreement for its own purposes to the same extent and in the same manner as if the public building were wholly owned by and devoted to the uses of the county, city, fire district, or school district.

d. The authority granted to a county, city, fire district, or school district pursuant to this section shall be in addition to, and not in derogation of, any other powers conferred by law upon a county, city, fire district, or school district to make agreements, appropriate and expend moneys, and to issue bonds for the same or similar purposes.

4. For purposes of this section, “*fire district*” means any governmental entity which provides fire protection services.

99 Acts, ch 145, §1

School district-to-community college program and facilities sharing pilot program; participating consortiums to report by January 1, 2014; 2011 Acts, ch 91, §1

Section not amended; footnote added

## CHAPTER 28H

### COUNCILS OF GOVERNMENTS

#### **28H.1 Councils of governments established.**

For purposes of this chapter, a council of governments includes the following areas established by executive order number 11, 1968 or a chapter 28E agreement:

1. Upper explorerland regional planning commission serving Allamakee, Clayton, Fayette, Howard, and Winneshiek counties.

2. North Iowa area council of governments serving Cerro Gordo, Floyd, Franklin, Hancock, Kossuth, Mitchell, Winnebago, and Worth counties.

3. Northwest Iowa planning and development commission serving Buena Vista, Clay, Dickinson, Emmet, Lyon, O'Brien, Osceola, Palo Alto, and Sioux counties.

4. Siouland interstate metropolitan planning council serving Ida, Monona, Plymouth, Woodbury, and Cherokee counties.

5. MIDAS council of governments serving Calhoun, Hamilton, Humboldt, Pocahontas, Webster, and Wright counties.

6. Region six planning commission serving Hardin, Poweshiek, Tama, and Marshall counties.

7. Iowa northland regional council of governments serving Black Hawk, Bremer, Buchanan, Butler, Chickasaw, and Grundy counties.
8. East central intergovernmental association serving Cedar, Clinton, Delaware, Dubuque, and Jackson counties.
9. Bi-state metropolitan planning commission serving Scott and Muscatine counties.
10. East central Iowa council of governments serving Benton, Iowa, Johnson, Jones, Linn, and Washington counties.
11. Region twelve council of governments serving Audubon, Carroll, Crawford, Greene, Guthrie, and Sac counties.
12. Southwest Iowa planning council serving Cass, Fremont, Harrison, Montgomery, Page, and Shelby counties.
13. Southern Iowa council of governments serving Adair, Adams, Clarke, Decatur, Madison, Ringgold, Taylor, and Union counties.
14. Area fifteen regional planning commission serving Davis, Jefferson, Keokuk, Mahaska, Van Buren, and Wapello counties.
15. Southeast Iowa regional planning commission serving Des Moines, Henry, Lee, and Louisa counties.
16. Metropolitan area planning agency serving Mills and Pottawattamie counties.
17. Chariton valley council of governments serving Appanoose, Lucas, Monroe, and Wayne counties.

90 Acts, ch 1157, §1; 90 Acts, ch 1262, §40; 2007 Acts, ch 76, §1, 2; 2011 Acts, ch 34, §13  
 Boone, Dallas, Jasper, Marion, Polk, Story, and Warren counties, or combinations of these, may form councils of governments or associate with any existing councils of governments; 90 Acts, ch 1157, §6; 90 Acts, ch 1262, §41  
 Unnumbered paragraph 1 amended

## CHAPTER 28I

### METROPOLITAN OR REGIONAL PLANNING COMMISSIONS

#### **28I.8 Contracts for planning.**

A metropolitan planning commission may contract with professional consultants, the economic development authority or the federal government, for local planning assistance.

[C62, 66, 71, 73, §373.21; C75, 77, 79, 81, §473A.8]

C91, §28I.8

2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 28J

### PORT AUTHORITIES

#### **28J.28 Final actions to be recorded — annual report — confidentiality of information.**

1. All final actions of the port authority shall be recorded and the records of the port authority shall be open to public examination and copying pursuant to chapter 22. Not later than the first day of April every year, a port authority shall submit a report to the director of the economic development authority detailing the projects and activities of the port authority during the previous calendar year. The report shall include, but not be limited to, all aspects of those projects and activities, including the progress and status of the projects and their costs, and any other information the director determines should be included in the report.

2. Financial and proprietary information, including trade secrets, submitted to a port authority or the agents of a port authority in connection with the relocation, location, expansion, improvement, or preservation of a business or nonprofit corporation is not

a public record subject to chapter 22. Any other information submitted under those circumstances is not a public record subject to chapter 22 until there is a commitment in writing to proceed with the relocation, location, expansion, improvement, or preservation.

3. Notwithstanding chapter 21, the board of directors of a port authority, when considering information that is not a public record under this section, may close a meeting during the consideration of that information pursuant to a vote of the majority of the directors present on a motion stating that such information is to be considered. Other matters shall not be considered during the closed session.

2005 Acts, ch 150, §116; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 28L

### STATE INTERAGENCY MISSOURI RIVER AUTHORITY

#### **28L.1 State interagency Missouri river authority created — duties.**

1. A state interagency Missouri river authority is created. The members of the authority shall include the governor or the governor's designee, the secretary of agriculture or the secretary's designee, the chairperson of the utilities board or the chairperson's designee, and the directors of the department of natural resources, the state department of transportation, and the economic development authority or the directors' designees. The governor shall serve as chairperson. The director of the department of natural resources or the director's designee shall serve as the coordinator of the authority's activities and shall serve as chairperson in the absence of the governor.

2. The authority shall be responsible for representing the interests of this state with regard to its membership in the Missouri river association of states and tribes and to promote the management of the Missouri river in a manner that does not negatively impact landowners along the river or negatively impact the state's economy, and in a manner that positively impacts this state's many interests along, in, and on the river. The Missouri river association of states and tribes is an interstate association of government representatives formed to seek consensus solutions to issues impacting the Missouri river basin.

3. The director of the department of natural resources or the director's designee shall coordinate regular meetings of the state interagency Missouri river authority to determine the state's position before any meeting of the Missouri river association of states and tribes or before a substantive proposal or action is voted upon at such meeting. The members of the state interagency Missouri river authority shall attempt to achieve consensus on the state's position regarding any substantive proposal or action being considered by the Missouri river association of states and tribes. Regardless of whether a consensus can be achieved, a vote of the members shall be taken. The state interagency Missouri river authority shall not vote to approve or disapprove a substantive proposal or action being considered by the Missouri river association of states and tribes without the approval of a majority of the members of the authority. The director of the department of natural resources or the director's designee shall cast the votes for the state interagency Missouri river authority that are reflective of the position of the authority.

4. The state interagency Missouri river authority shall seek input from stakeholder groups in this state with regard to issues impacting the Missouri river basin.

2002 Acts, ch 1009, §1; 2008 Acts, ch 1150, §1; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 28N

### MISSISSIPPI RIVER PARTNERSHIP COUNCIL

Implementation of chapter subject to availability of funding  
or in-kind services for start-up and  
first-year administration expenses;  
2009 Acts, ch 146, §14

#### **28N.2 Mississippi river partnership council — establishment and procedures.**

1. A Mississippi river partnership council is established. The purpose of the council is to be a forum for city, county, state, agriculture, business, conservation, and environmental representatives and other stakeholders to discuss matters relevant to the health, management, and use of the Mississippi river. In furthering its purpose, the council may work with local communities to develop local and regional strategies, and make recommendations to appropriate state and federal agencies.

2. The Mississippi river partnership council may consist of all of the following:

a. One nonvoting person appointed by the governor who shall serve as the chairperson of the council.

b. Six voting members appointed by the governor, each of whom shall reside in one of the ten Iowa counties bordering the Mississippi river, including all of the following:

(1) One member representing soil and water conservation districts.

(2) One person representing business.

(3) One person representing recreational interests.

(4) One person representing conservation interests.

(5) One person representing environmental interests.

(6) One person representing agricultural interests who is actively engaged in farming.

c. Ten voting members appointed by county boards of supervisors, one by each of the ten Iowa counties bordering the Mississippi river.

d. Ten voting members appointed by city councils, one each by the council of the largest Iowa city adjacent to the Mississippi river in each county bordering the river.

e. Four voting members, each appointed by the heads of the following departments:

(1) The department of agriculture and land stewardship.

(2) The department of natural resources.

(3) The economic development authority.

(4) The department of transportation.

f. Two members of the senate and two members of the house of representatives, serving as ex officio, nonvoting members. The members may be appointed, one each by the majority leader of the senate, after consultation with the president of the senate, and by the minority leader of the senate, and by the speaker of the house of representatives, after consultation with the majority leader of the house of representatives, and by the minority leader of the house of representatives. Members shall receive compensation pursuant to section 2.12.

g. The council may, at its discretion, appoint individuals representing federal agencies or other state agencies or commissions to serve as ex officio, nonvoting members.

3. Members of the Mississippi river partnership council, other than members of the general assembly, shall be appointed to serve for three-year terms. However, among the initial appointments, the persons making the appointments of voting members shall coordinate appointments of members to serve terms for less than three years to ensure staggered terms. The persons making the appointments of voting members shall also coordinate appointments to meet the requirements of sections 69.16 and 69.16A.

4. The Mississippi river partnership council shall meet at least quarterly in one or more Iowa counties bordering the Mississippi river during its first three years of existence and shall meet at least twice a year in one or more Iowa counties bordering the Mississippi river after that time. The council shall meet at any time on the call of the chairperson.

5. A majority of the voting members of the Mississippi river partnership council constitutes a quorum. Any action taken by the council must be adopted by the affirmative vote of a majority of its voting membership.

6. Until the Mississippi river partnership council provides for its permanent staffing and

support, the east central intergovernmental association, in cooperation with councils of governments and county boards of supervisors in counties adjacent to the Mississippi river, shall be responsible for providing the council with administrative support.

7. The Mississippi river partnership council may adopt bylaws and rules of operation consistent with this section.

8. The Mississippi river partnership council, including any of its committees, is a governmental body for purposes of chapter 21 and a government body for purposes of chapter 22.

2009 Acts, ch 146, §2, 14; 2011 Acts, ch 118, §85, 89

Implementation of chapter subject to availability of funding or in-kind services for start-up and first-year administration expenses; 2009 Acts, ch 146, §14

Code editor directive applied

### **28N.3 Mississippi river partnership council — powers and duties.**

1. The Mississippi river partnership council may collaborate with the water resources coordinating council established pursuant to section 466B.3.

2. *a.* The Mississippi river partnership council's duties shall include all of the following:

(1) Reviewing activities and programs administered by state and federal agencies that directly impact the Mississippi river.

(2) Working with local communities, organizations, and other states to encourage partnerships that promote sustainable economic development opportunities in counties along the Mississippi river; enhance awareness about the river and its uses; encourage the protection, restoration, and expansion of critical habitats; and promote the adoption of soil conservation and water quality best management practices.

(3) Working with federal agencies to optimize the implementation of programs and the expenditure of moneys affecting the Mississippi river and counties in Iowa along the Mississippi river, including the upper Mississippi river basin association and the Mississippi parkway planning commission.

(4) Advising and making recommendations to the water resources coordinating council established in section 466B.3, the governor, the general assembly, and state agencies, regarding strategic plans and priorities impacting the Mississippi river, methods to optimize the implementation of associated programs, and the expenditure of moneys affecting the river and counties bordering the Mississippi river.

(5) Encouraging communities in counties bordering the Mississippi river to develop watershed management plans for their communities to address storm water, erosion, flooding, sedimentation, and pollution problems and encouraging projects for the natural conveyance and storage of floodwaters; the enhancement of wildlife habitat and outdoor recreation opportunities; the recovery, management, and conservation of the Mississippi river; and the preservation of farmland, prairies, and forests.

(6) Identifying and promoting opportunities to enhance economic development and job creation in communities along the Mississippi river, as well as other measurable development efforts, which are compatible with the ecological health of the Mississippi river and the state.

(7) Helping identify possible sources of funding for watershed management projects and sustainable economic development opportunities.

(8) Functioning as a forum for discussion and providing advice or recommendations on matters of public interest that are reasonably related to the purpose of the council.

*b.* The Mississippi river partnership council shall only administer its duties as provided in paragraph "a" within the ten Iowa counties bordering the Mississippi river.

3. The department of agriculture and land stewardship, the department of natural resources, the economic development authority, and the department of transportation may apply for grant moneys or may solicit moneys from sources to support the work of the Mississippi river partnership council.

2009 Acts, ch 146, §3, 14; 2011 Acts, ch 118, §85, 89

Implementation of chapter subject to availability of funding or in-kind services for start-up and first-year administration expenses; 2009 Acts, ch 146, §14

Code editor directive applied

## CHAPTER 29

### DEPARTMENT OF PUBLIC DEFENSE

#### **29.3 Homeland security and emergency management division.**

There shall be within the department of public defense of the state government, as a division of the department, an office of emergency management which shall be known as the “homeland security and emergency management division, department of public defense”, with an administrator of the division who shall be the head of the division. The adjutant general, as the director of the department of public defense, shall exercise supervisory authority over the division.

[C66, 71, 73, 75, 77, 79, 81, §29.3]

92 Acts, ch 1139, §21; 2003 Acts, ch 179, §157

See chapter 29C

Section not amended; footnote deleted

## CHAPTER 29A

### MILITARY CODE

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### **29A.14 Support and facilities improvement fund.**

1. The adjutant general may operate or lease any of the national guard facilities at Camp Dodge. Any income or revenue derived from the operation or leasing shall be deposited with the treasurer of state and credited to the national guard support and facilities improvement fund. The balance in the national guard support and facilities improvement fund is limited to a maximum of two million dollars. Any amount exceeding the limit shall be credited to the general fund of the state.

2. A national guard support and facilities improvement fund is created in the state treasury. The proceeds of the fund are appropriated, and shall be used to support national guard operations and for the construction, improvement, modification, maintenance or repair of national guard facilities. However, proceeds of the fund shall not be used for the construction of a new facility without the approval of the general assembly.

[C35, §467-f44; C39, §467.46; C46, 50, §29.46; C54, 58, 62, §29.14; C66, 71, 73, 75, 77, 79, 81, §29A.14; 81 Acts, ch 14, §19]

86 Acts, ch 1244, §12; 2011 Acts, ch 47, §1, 13

Section amended

#### **29A.14A Use of government facilities.**

Notwithstanding any provision of law to the contrary, the state or any political subdivision of the state, shall permit the rental of facilities under its control, for a fee not in excess of any expenses incurred by the state or political subdivision, for designated military events. For purposes of this section, “*designated military event*” means an event for military family readiness groups, departing units, or returning veterans of the national guard, reserves, or regular components of the armed forces of the United States for a period of up to one year from the date of return from active duty.

2010 Acts, ch 1170, §1; 2011 Acts, ch 47, §2

Section amended

### **29A.19 Quartermaster.**

A present or retired member of the national guard who has ten years' service in the Iowa army national guard or the Iowa air national guard shall be detailed to be the quartermaster and property officer of the state, who shall have charge of and be accountable for, under the adjutant general, all state military property. The quartermaster shall keep property returns and reports and give bond to the state of Iowa as the governor may direct.

[S13, §2215-f28; C24, 27, 31, §456; C35, §467-f18, -f46; C39, §467.18, 467.48; C46, 50, §29.18, 29.48; C54, 58, 62, §29.19; C66, 71, 73, 75, 77, 79, 81, §29A.19]

2002 Acts, ch 1117, §10, 23; 2011 Acts, ch 47, §3

Section amended

### **29A.23 Roll of retired officers and enlisted personnel.**

An officer or enlisted person who is a member of the Iowa national guard who has completed twenty years of military service under 10 U.S.C. § 1331(d), as evidenced by a letter of notification of retired pay at age sixty, shall upon retirement from the Iowa national guard and written request to the adjutant general be placed by order of the commander in chief on a roll in the office of the adjutant general to be known as the "roll of retired national guard military personnel". A member registered on the roll is entitled to wear the uniform of the rank last held on state or other occasions of ceremony, when the wearing of such uniform is not in conflict with federal law.

[C35, §467-f15; C39, §467.15; C46, 50, §29.15; C54, 58, 62, §29.23; C66, 71, 73, 75, 77, 79, 81, §29A.23]

2011 Acts, ch 47, §4

Section amended

### **29A.27 Pay and allowances — injury or death benefit boards — judicial review — damages.**

1. Officers and enlisted persons while in state active duty shall receive the same pay, per diem, and allowances as are paid for the same rank or grade for federal service. However, a person shall not be paid at a base rate of pay of less than one hundred dollars per calendar day of state active duty.

2. a. In the event any officer or enlisted person shall be killed while on duty or in state active duty, in line of duty, or shall die as the result of injuries received or as a result of illness or disease contracted while on duty or in state active duty, in line of duty, dependents, as defined by the workers' compensation law of the state, shall receive the maximum compensation provided by such law.

b. Any officer or enlisted person who suffers injuries or contracts a disease causing disability, in line of duty, while on duty or in state active duty, shall receive hospitalization and medical treatment, and during the period that the officer or enlisted person is totally disabled from returning to military duty the officer or enlisted person shall also receive the pay and allowances of the officer's or enlisted person's grade. In the event of partial disability, the officer or enlisted person shall be allowed partial pay and allowances as determined by an evaluation board of three officers to be appointed by the adjutant general. At least one member of the board shall be a medical officer.

c. Any claim for death, illness, or disease contracted in line of duty while on duty or in state active duty, shall be filed with the adjutant general within six months from the date of death or contraction of the illness or disease.

3. Where the provisions of this section may be applicable or at other times as considered necessary, but at least once a year, the adjutant general shall appoint a state review board consisting of three officers, one of whom shall be a medical officer, for the purpose of determining the continuation of benefits for individuals who have established their eligibility under this section. Once established, benefits shall be paid until terminated by the review board and shall continue for the duration of the disability even though the individual may no longer be medically qualified for military service and may have been discharged from the national guard.

4. Judicial review of any decision of the evaluation or state review board may be sought

in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, petitions for judicial review must be filed within a period of thirty days from date of mailing by the adjutant general by certified mail of notice of the board's decision. Within thirty days after the filing of a petition for judicial review, the adjutant general shall make, certify, and file in the office of the clerk of the district court in which the judicial review is sought a full and complete transcript of all documents in the proceeding. The transcript shall include any depositions and a transcript or certification of the evidence, if reported. The attorney general of Iowa, upon the request of the adjutant general, shall represent the board appointed by the adjutant general against whom any such appeal has been instituted.

5. The provisions herein provided shall apply to all individuals receiving benefits under this section or who subsequently may become entitled to such benefits.

6. a. All payments provided for under this section shall be paid on the approval of the adjutant general from the contingent fund of the executive council created in section 29C.20.

b. In the event benefits for death, injuries or illness are paid in part by the federal government, the state shall pay only the balance necessary to constitute the above designated amounts.

7. No payment received by any officer or enlisted person under the provisions of this section shall bar the right of such officer or enlisted person, or their heirs or representatives, to recover damages from any partnership, corporation, firm or persons whomsoever who otherwise would be liable, nor shall any such sums received under the provisions of this section reduce the amount of damages recoverable by such officer, enlisted person, or their heirs or representatives, against any partnership, corporation, firm or persons whomsoever who otherwise would be liable.

[C51, §625; R60, §1006; C73, §1051; C97, §2189, 2212, 2213; S13, §2215-f23; C24, 27, 31, §452; C35, §467-f21, -f31; C39, §467.21, 467.31; C46, 50, §29.21, 29.31; C54, 58, 62, §29.27; C66, 71, 73, 75, 77, 79, 81, §29A.27]

84 Acts, ch 1170, §1; 92 Acts, ch 1238, §15; 99 Acts, ch 99, §1; 2001 Acts, 2nd Ex, ch 1, §15, 28; 2003 Acts, ch 44, §114; 2011 Acts, ch 131, §21, 158

Workers' compensation, see chapter 85  
Section editorially internally redesignated  
Subsection 6, paragraph a amended

### **29A.43 Discrimination prohibited — leave of absence — continuation of health coverage.**

1. A person shall not discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States or any member of the civil air patrol because of that membership. An employer, or agent of an employer, shall not discharge a person from employment because of being an officer or enlisted person of the military forces of the state or member of the civil air patrol, or hinder or prevent the officer or enlisted person or member of the civil air patrol from performing any military service or civil air patrol duty the person is called upon to perform by proper authority. A member of the national guard or organized reserves of the armed forces of the United States ordered to temporary duty or service, as defined in section 29A.1, subsection 3, 11, or 12, or a member of the civil air patrol performing duty pursuant to section 29A.3A, for any purpose is entitled to a leave of absence during the period of the duty or service, from the member's private employment unless the employment is of a temporary nature. Upon completion of the duty or service, the employer shall restore the person to the position held prior to the leave of absence or employ the person in a position of like seniority, status, and pay. However, the person shall give evidence to the employer of satisfactory completion of the duty or service, and that the person is still qualified to perform the duties of the position. The period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment.

2. An officer or enlisted person of the national guard or organized reserves of the armed forces of the United States who is insured as a dependent under a group policy for accident or health insurance as a full-time student less than twenty-five years of age, whose

coverage under the group policy would otherwise terminate while the officer or enlisted person was on a leave of absence during a period of temporary duty or service, as defined for members of the national guard in section 29A.1, subsection 3, 11, or 12, or as a member of the organized reserves called to active duty from a reserve component status, shall be considered to have been continuously insured under the group policy for the purpose of returning to the insured dependent status as a full-time student who is less than twenty-five years of age. This subsection does not apply to coverage of an injury suffered or a disease contracted by a member of the national guard or organized reserves of the armed forces of the United States in the line of duty.

3. A person violating a provision of this section is guilty of a simple misdemeanor. Violations of this section shall be prosecuted by the attorney general or the county attorney of the county in which the violation occurs.

[C35, §467-f5; C39, §467.05; C46, 50, §29.5; C54, 58, 62, §29.43; C66, 71, 73, 75, 77, 79, 81, §29A.43]

87 Acts, ch 115, §8; 2001 Acts, 2nd Ex, ch 1, §18, 28; 2002 Acts, ch 1117, §17, 23; 2003 Acts, ch 91, §1; 2006 Acts, ch 1185, §61; 2008 Acts, ch 1003, §3 – 5; 2011 Acts, ch 34, §14

Leave for civil employees; §29A.28  
Subsection 1 amended

### **29A.57 Armory board.**

1. The governor shall appoint an armory board which consists of the adjutant general serving as chairperson, at least two officers from the active commissioned personnel of the national guard, and at least one other person, who is a citizen of the state of Iowa. One member of the board shall have at least five years' experience in the building construction trade. The board shall meet at times and places as ordered by the governor. The members shall serve at the pleasure of the governor. Members of the board shall receive actual expenses for each day in which they are actually employed under this chapter. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

2. The board may acquire land or real estate by purchase, contract for purchase, gift, or bequest and acquire, own, contract for the construction of, erect, purchase, maintain, alter, operate, and repair installations and facilities of the Iowa army national guard and the Iowa air national guard when funds for the installations and facilities are made available by the federal government, the state of Iowa, municipalities, corporations, or individuals. The title to the property so acquired shall be taken in the name of the state of Iowa and the real estate may be sold or exchanged by the executive council, upon recommendation of the board, when it is no longer needed for the purpose for which it was acquired. Income or revenue derived from the sale of the real estate shall be credited to the national guard support and facilities improvement fund and used for the purposes specified in section 29A.14, subsection 2.

3. In carrying out this section, the armory board may:

- a. Borrow money.
- b. Mortgage any real estate acquired and the improvements erected on the real estate when purchasing or improving the property, in order to secure necessary loans.
- c. Pledge the sales, rents, profits and income received from the property for the discharge of obligations executed.
- d. Grant a temporary or permanent easement with or without monetary consideration for utility, public highway, or other purposes if granting the easement will not adversely affect use of the real estate for military purposes.
- e. Enter into a design-build contract with a successful bidder identified as a result of a competitive bidding process for a facility to be funded entirely with federal funds and to be used solely by the national guard or jointly by the national guard and other armed forces of the United States. A design-build contract may provide that design and construction of the project may be in sequential or concurrent phases. As used in this paragraph, "design-build contract" means a single contract providing for both design services and construction services that may include maintenance, operations, preconstruction, and other related services.

4. An obligation created under this section shall not be a charge against the state of Iowa,

but all the obligations, including principal and interest, are payable solely from any of the following:

a. The sales, net rents, profits and income arising from the property so pledged or mortgaged.

b. The sales, net rents, profits and income which have not been pledged for other purposes arising from any other installation and facility or like improvement under the control and management of said board.

c. The income derived from gifts and bequests for installations and facilities under the control of the armory board.

5. All property, real or personal, acquired by, and all bonds, debentures or other written evidences of indebtedness, given as security by the board, are exempt from taxation.

6. When property acquired by the armory board, under this chapter, is free and clear of all indebtedness, the title of the property shall pass to the state of Iowa.

7. There is no liability to the state of Iowa under this section. Members of the armory board and of the state executive council shall not be held to any personal or individual liability for any action taken by them under this chapter.

8. The board shall fix the amount to be paid to commanding officers of each organization and unit of the national guard for headquarters expenses and shall provide by regulation how the amount shall be disbursed by the commanding officers. The governor may disapprove the actions of the armory board.

9. The allowances made by the armory board shall be paid from the funds appropriated for the support and maintenance of the national guard.

[C24, 27, 31, §453; C35, §467-f47; C39, §467.49; C46, 50, §29.49; C54, 58, 62, §29.57; C66, 71, 73, 75, 77, 79, 81, §29A.57; 81 Acts, ch 14, §20]

86 Acts, ch 1245, §1703; 92 Acts, ch 1238, §16; 2006 Acts, ch 1143, §1; 2007 Acts, ch 74, §2; 2007 Acts, ch 126, §13; 2011 Acts, ch 47, §5

Subsection 2 amended

#### SUBCHAPTER IV

#### NATIONAL GUARD AWARDS

##### **29A.78 Brevet rank.**

The commander in chief, on the recommendation of the adjutant general, may commission by brevet general and field grade officers in the national guard whose names appear on the roll of retired military personnel as defined in section 29A.23 in the next higher grade than that held at retirement or resignation. Brevet rank is only honorary and does not confer any privilege, precedence or command or pay any emoluments. Brevet officers may wear the uniform of their brevet rank on occasions of ceremonies related to state functions only.

[C81, §29A.78]

2011 Acts, ch 47, §6

Section amended

### CHAPTER 29C

#### EMERGENCY MANAGEMENT AND SECURITY

##### **29C.2 Definitions.**

1. “*Commission*” means a local emergency management commission or joint emergency management commission.

2. “*Disaster*” means man-made and natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threaten the public peace, health, and safety of the people or which damage

and destroy public or private property. The term includes attack, sabotage, or other hostile action from within or without the state.

3. “*Homeland security*” means the detection, prevention, preemption, deterrence of, and protection from attacks targeted at state territory, population, and infrastructure.

4. “*Local emergency management agency*” means a countywide joint county-municipal public agency organized to administer this chapter under the authority of a commission.

5. “*Public disorder*” means such substantial interference with the public peace as to constitute a significant threat to the health and safety of the people or a significant threat to public or private property. The term includes insurrection, rioting, looting, and persistent violent civil disobedience.

[C77, 79, 81, §29C.2; 81 Acts, ch 32, §1]

92 Acts, ch 1139, §2; 2001 Acts, 2nd Ex, ch 1, §20, 21, 28; 2011 Acts, ch 69, §1, 2

Emergency care or assistance rendered during disasters, see §613.17

NEW subsection 1 and former subsections 1 – 4 renumbered as 2 – 5

Subsection 4 amended

### **29C.6 Proclamation of disaster emergency by governor.**

In exercising the governor’s powers and duties under this chapter and to effect the policy and purpose, the governor may:

1. After finding a disaster exists or is threatened, proclaim a state of disaster emergency. This proclamation shall be in writing, indicate the area affected and the facts upon which it is based, be signed by the governor, and be filed with the secretary of state. If the state of disaster emergency specifically constitutes a public health disaster as defined in section 135.140, the written proclamation shall include a statement to that effect. A state of disaster emergency shall continue for thirty days, unless sooner terminated or extended in writing by the governor. The general assembly may, by concurrent resolution, rescind this proclamation. If the general assembly is not in session, the legislative council may, by majority vote, rescind this proclamation. Rescission shall be effective upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state. A proclamation of disaster emergency shall activate the disaster response and recovery aspect of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan applies, and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available.

2. When, at the request of the governor, the president of the United States has declared a major disaster to exist in this state, enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and to make such units available to any political subdivision of the state, to assist any political subdivision of this state which is the locus of temporary housing for disaster victims, to acquire sites necessary for such temporary housing and to do all things required to prepare such sites to receive and utilize temporary housing units, by advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source, allocating funds made available by any agency, public or private, or becoming a copartner with the political subdivision for the execution and performance of any temporary housing for disaster victims project. Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements are necessary to prepare or equip such sites to utilize the housing units. The governor may temporarily suspend or modify, for not to exceed sixty days, any public health, safety, zoning, transportation, or other requirement of law or regulation within this state when by proclamation, the governor deems such suspension or modification essential to provide temporary housing for disaster victims.

3. When the president of the United States has declared a major disaster to exist in the state and upon the governor’s determination that a local government of the state will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government for a loan, receive and disburse the proceeds

of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, and certify the same to the federal government; however, no application amount shall exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs. The governor may recommend to the federal government, based upon the governor's review, the cancellation of all or any part or repayment when, in the first three full fiscal year period following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

4. When a disaster emergency is proclaimed, notwithstanding any other provision of law, through the use of state agencies or the use of any of the political subdivisions of the state, clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety or public or private property. The governor may accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water. Authority shall not be exercised by the governor unless the affected local government, corporation, organization or individual shall first present an additional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, such corporation, organization or individual shall first agree to hold harmless the state or local government against any claim arising from such removal. When the governor provides for clearance of debris or wreckage, employees of the designated state agencies or individuals appointed by the state may enter upon private land or waters and perform any tasks necessary to the removal or clearance operation. Any state employee or agent complying with orders of the governor and performing duties pursuant to such orders under this chapter shall be considered to be acting within the scope of employment within the meaning specified in chapter 669.

5. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund such financial assistance, subject to such terms and conditions as may be imposed upon the grant and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized in an amount not to exceed twenty-five percent thereof, and, if state funds are not otherwise available to the governor, accept an advance of the state share from the federal government to be repaid when the state is able to do so.

6. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules, of any state agency, if strict compliance with the provisions of any statute, order or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency by stating in a proclamation such reasons. Upon the request of a local governing body, the governor may also suspend statutes limiting local governments in their ability to provide services to aid disaster victims.

7. On behalf of this state, enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state.

8. Delegate any administrative authority vested in the governor under this chapter and provide for the subdelegation of any such authority.

9. Cooperate with the president of the United States and the heads of the armed forces, the emergency management agencies of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to emergency management of the state and nation.

10. Utilize all available resources of the state government as reasonably necessary to cope with the disaster emergency and of each political subdivision of the state.

11. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management.

12. Subject to any applicable requirements for compensation, commandeer or utilize any private property if the governor finds this necessary to cope with the disaster emergency.

13. Direct the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery.

14. Prescribe routes, modes of transportation, and destinations in connection with evacuation.

15. Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in such area.

16. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

17. *a.* When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of local and state government adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund the financial assistance, subject to terms and conditions imposed upon the grant, and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized to local government and eligible private nonprofit agencies in an amount not to exceed ten percent of the total eligible expenses, with the applicant providing the balance of any participation amount. If financial assistance is granted by the federal government for state disaster-related expenses or serious needs, the state shall participate in the funding of the financial assistance authorized in an amount not to exceed twenty-five percent of the total eligible expenses. If financial assistance is granted by the federal government for hazard mitigation, the state may participate in the funding of the financial assistance authorized to a local government in an amount not to exceed ten percent of the eligible expenses, with the applicant providing the balance of any participation amount. If financial assistance is granted by the federal government for state-related hazard mitigation, the state may participate in the funding of the financial assistance authorized, not to exceed fifty percent of the total eligible expenses. If state funds are not otherwise available to the governor, an advance of the state share may be accepted from the federal government to be repaid when the state is able to do so.

*b.* State participation in funding financial assistance under paragraph "a" is contingent upon the local government having on file a state-approved, comprehensive emergency plan which meets the standards adopted pursuant to section 29C.9, subsection 8.

[C62, §28A.3; C66, 71, 73, 75, §29C.3; C77, 79, 81, §29C.6; 81 Acts, ch 32, §2]

85 Acts, ch 53, §1; 92 Acts, ch 1139, §4; 99 Acts, ch 86, §3, 4; 2003 Acts, ch 33, §7, 11; 2011 Acts, ch 69, §3

Emergency care or assistance rendered during disasters, see §613.17  
Subsection 17, paragraph b amended

### **29C.8 Powers and duties of administrator.**

1. The homeland security and emergency management division shall be under the management of an administrator appointed by the governor.

2. The administrator shall be vested with the authority to administer emergency management and homeland security affairs in this state and shall be responsible for preparing and executing the emergency management and homeland security programs of this state subject to the direction of the adjutant general.

3. The administrator, upon the direction of the governor and supervisory control of the director of the department of public defense, shall:

*a.* Prepare a comprehensive emergency plan and emergency management program for homeland security, disaster preparedness, response, recovery, mitigation, emergency operation, and emergency resource management of this state. The plan and program shall be integrated into and coordinated with the homeland security and emergency plans of the federal government and of other states to the fullest possible extent and coordinate the preparation of plans and programs for emergency management of the political subdivisions

and various state departments of this state. The plans shall be integrated into and coordinated with a comprehensive state homeland security and emergency program for this state as coordinated by the administrator of the homeland security and emergency management division to the fullest possible extent.

b. Make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the vulnerabilities of critical state infrastructure and assets to attack and the capabilities of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof.

c. Provide technical assistance to any commission requiring the assistance in the development of an emergency management or homeland security program.

d. Implement planning and training for emergency response teams as mandated by the federal government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

e. Prepare a critical asset protection plan that contains an inventory of infrastructure, facilities, systems, other critical assets, and symbolic landmarks; an assessment of the criticality, vulnerability, and level of threat to the assets; and information pertaining to the mobilization, deployment, and tactical operations involved in responding to or protecting the assets.

f. Approve and support the development and ongoing operations of homeland security and emergency response teams to be deployed as a resource to supplement and enhance disrupted or overburdened local emergency and disaster operations and deployed as available to provide assistance to other states pursuant to the interstate emergency management assistance compact described in section 29C.21. The following shall apply to homeland security and emergency response teams:

(1) A member of a homeland security and emergency response team acting under this section upon the directive of the administrator or pursuant to a governor's disaster proclamation as provided in section 29C.6 shall be considered an employee of the state for purposes of section 29C.21 and chapter 669 and shall be afforded protection as an employee of the state under section 669.21. Disability, workers' compensation, and death benefits for team members working under the authority of the administrator or pursuant to the provisions of section 29C.6 shall be paid by the state in a manner consistent with the provisions of chapter 85, 410, or 411 as appropriate, depending on the status of the member, provided that the member is registered with the homeland security and emergency management division as a member of an approved team and is participating as a team member in a response or recovery operation initiated by the administrator or governor pursuant to this section or in a training or exercise activity approved by the administrator.

(2) Each approved homeland security and emergency management response team shall establish standards for team membership, shall provide the division with a listing of all team members, and shall update the list each time a member is removed from or added to the team. Individuals so identified as team members shall be considered to be registered as team members for purposes of subparagraph (1).

(3) Upon notification of a compensable loss to a member of a homeland security and emergency management response team, the department of administrative services shall process the claim and seek authorization from the executive council to pay as an expense paid from the appropriations addressed in section 7D.29 those costs associated with covered benefits.

g. Implement and support the national incident management system as established by the United States department of homeland security to be used by state agencies and local and tribal governments to facilitate efficient and effective assistance to those affected by emergencies and disasters.

4. The administrator, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy administrator and such technical, clerical, stenographic, and other personnel and make such expenditures within the appropriation

or from other funds made available to the department of public defense for purposes of emergency management, as may be necessary to administer this chapter.

5. The homeland security and emergency management division may charge fees for the repair, calibration, or maintenance of radiological detection equipment and may expend funds in addition to funds budgeted for the servicing of the radiological detection equipment. The division shall adopt rules pursuant to chapter 17A providing for the establishment and collection of fees for radiological detection equipment repair, calibration, or maintenance services and for entering into agreements with other public and private entities to provide the services. Fees collected for repair, calibration, or maintenance services shall be treated as repayment receipts as defined in section 8.2 and shall be used for the operation of the division's radiological maintenance facility or radiation incident response training.

[C62, §28A.4, 28A.5; C66, 71, 73, 75, §29C.4, 29C.5; C77, 79, 81, §29C.8]

88 Acts, ch 1190, §1; 92 Acts, ch 1139, §6 – 8; 99 Acts, ch 86, §2; 2001 Acts, 2nd Ex, ch 1, §23, 24, 28; 2002 Acts, ch 1117, §54, 56; 2003 Acts, ch 179, §104, 157; 2005 Acts, ch 119, §5; 2006 Acts, ch 1185, §62; 2011 Acts, ch 69, §4; 2011 Acts, ch 131, §22, 158

Subsection 3, paragraphs a and c amended

Subsection 3, paragraph f, subparagraph (3) amended

#### **29C.8A Emergency response fund created.**

1. An emergency response fund is created in the state treasury. The first one hundred thousand dollars received annually by the treasurer of state for the civil penalties and fines imposed by the court pursuant to sections 455B.146, 455B.191, 455B.386, and 455B.477 shall be deposited in the waste volume reduction and recycling fund created in section 455D.15. The next hundred thousand dollars shall be deposited in the emergency response fund and any additional moneys shall be deposited in the household hazardous waste account. All moneys received annually by the treasurer of the state for the fines imposed by sections 716B.2, 716B.3, and 716B.4 shall also be deposited in the emergency response fund.

2. The emergency response fund shall be administered by the homeland security and emergency management division to carry out planning and training for the emergency response teams.

88 Acts, ch 1190, §2; 90 Acts, ch 1260, §21; 92 Acts, ch 1139, §9; 2003 Acts, ch 179, §157; 2011 Acts, ch 9, §1

Subsection 1 amended

#### **29C.9 Local emergency management commissions.**

1. The county boards of supervisors, city councils, and the sheriff in each county shall cooperate with the homeland security and emergency management division of the department of public defense to establish a commission to carry out the provisions of this chapter.

2. The commission shall be composed of a member of the board of supervisors or its appointed representative, the sheriff or the sheriff's representative, and the mayor or the mayor's representative from each city within the county. The commission members shall be the operations liaison officers between their jurisdiction and the commission.

3. The name used by the commission shall be (county name) county emergency management commission. The name used by the office of the commission shall be (county name) county emergency management agency.

4. For the purposes of this chapter, a commission is a municipality as defined in section 670.1.

5. The commission shall model its bylaws and conduct its business according to the guidelines provided in the state division's administrative rules.

6. The commission shall determine the mission of its agency and program and provide direction for the delivery of the emergency management services of planning, administration, coordination, training, and support for local governments and their departments. The commission shall coordinate its services in the event of a disaster. The commission may also provide joint emergency response communications services through an agreement entered into under chapter 28E.

7. The commission shall delegate to the emergency management coordinator the

authority to fulfill the commission duties as described in the division's administrative rules. Each commission shall appoint a local emergency management coordinator who shall meet the qualifications specified in the administrative rules by the administrator of the homeland security and emergency management division. Additional emergency management personnel may be appointed at the discretion of the commission.

8. The commission shall develop, adopt, and submit for approval by local governments within the commission's jurisdiction, a comprehensive emergency plan which meets standards adopted by the division in accordance with chapter 17A. If an approved comprehensive emergency plan has not been prepared according to established standards and the administrator of the homeland security and emergency management division finds that satisfactory progress is not being made toward the completion of the plan, or if the administrator finds that a commission has failed to appoint a qualified emergency management coordinator as provided in this chapter, the administrator shall notify the governing bodies of the counties and cities affected by the failure and the governing bodies shall not appropriate any moneys to the local emergency management fund until the comprehensive emergency plan is prepared and approved or a qualified emergency management coordinator is appointed. If the administrator finds that a commission has appointed an unqualified emergency management coordinator, the administrator shall notify the commission citing the qualifications which are not met and the commission shall not approve the payment of the salary or expenses of the unqualified emergency management coordinator.

9. The commission shall encourage local officials to support and participate in exercise programs which test proposed or established jurisdictional emergency plans and capabilities. During emergencies when lives are threatened and extensive damage has occurred to property, the county and all cities involved shall fully cooperate with the emergency management agency to provide assistance in order to coordinate emergency management activities including gathering of damage assessment data required by state and federal authorities for the purposes of emergency declarations and disaster assistance.

10. Two or more commissions may, upon review by the state administrator and with the approval of their respective boards of supervisors and cities, enter into agreements pursuant to chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

[C62, §28A.7; C66, 71, 73, 75, §29C.7; C77, 79, 81, §29C.9]

83 Acts, ch 123, §40, 209; 92 Acts, ch 1139, §10; 2003 Acts, ch 179, §157; 2007 Acts, ch 149, §1; 2011 Acts, ch 69, §5

Subsections 1, 4, 7, and 8 amended

#### **29C.10 Emergency management coordinator.**

1. The commission shall appoint an emergency management coordinator who shall serve at the pleasure of the commission, shall be responsible for the development of the comprehensive emergency plan, shall coordinate emergency planning activities, and shall provide technical assistance to political subdivisions comprising the commission.

2. When an emergency or disaster occurs, the emergency management coordinator shall provide coordination and assistance to the governing officials of the political subdivisions comprising the commission.

3. The commission and its members shall cooperate with the president of the United States and the heads of the armed forces and other appropriate federal, state, and local officers and agencies and with the officers and agencies of adjoining states in matters pertaining to comprehensive emergency management for political subdivisions comprising the commission.

[C66, 71, 73, 75, §29C.7; C77, 79, 81, §29C.10]

92 Acts, ch 1139, §11; 2011 Acts, ch 69, §6

Section amended

#### **29C.11 Local mutual aid arrangements.**

1. The local emergency management commission shall, in collaboration with other

public and private agencies within this state, develop mutual aid arrangements for reciprocal disaster services and recovery aid and assistance in case of disaster too great to be dealt with unassisted. The arrangements shall be consistent with the homeland security and emergency management division plan and program, and in time of emergency each local emergency management agency shall render assistance in accordance with the provisions of the mutual aid arrangements.

2. The chairperson of a commission may, subject to the approval of the governor, enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency services and recovery aid and assistance in case of disaster too great to be dealt with unassisted.

[C77, 79, 81, §29C.11]

92 Acts, ch 1139, §12; 2003 Acts, ch 179, §157; 2011 Acts, ch 69, §7

Section amended

### **29C.17 Local emergency management fund.**

1. A local emergency management fund is created in the office of the county treasurer. Revenues provided and collected shall be deposited in the fund. An unencumbered balance in the fund shall not revert to county general revenues. Any reimbursement, matching funds, moneys received from sale of property, or moneys obtained from any source in connection with the local emergency management program shall be deposited in the local emergency management fund. The commission shall be the fiscal authority and the chairperson or vice chairperson of the commission is the certifying official.

2. For the purposes consistent with this chapter, the local emergency management agency's approved budget may be funded by one or any combination of the following options:

- a. A countywide special levy approved by the board of supervisors.
  - b. Per capita allocation funded from city and county general funds or by a combination of city and county special levies which may be apportioned among the member jurisdictions.
  - c. An allocation computed as each jurisdiction's relative share of the total assessed valuation within the county.
  - d. A voluntary share allocation.
3. A political subdivision may appropriate additional funds for the purpose of supporting commission expenses relating to special or unique matters extending beyond the resources of the agency.

4. Expenditures from the local emergency management fund shall be made on warrants drawn by the county auditor, supported by claims and vouchers signed by the emergency management coordinator or chairperson of the commission.

5. Subject to chapter 24, the commission shall adopt, certify, and submit a budget, on or before February 28 of each year, to the county board of supervisors and the cities for the ensuing fiscal year which will include an itemized list of the number of emergency management personnel, their salaries and cost of personnel benefits, travel and transportation costs, fixed costs of operation, and all other anticipated emergency management expenses. The salaries and compensation of agency personnel coming under the merit system as determined by the commission will include salary schedules for classes in which the salary of a class is based on merit qualifications for the positions.

[C62, §28A.12; C66, 71, 73, 75, §29C.13; C77, 79, 81, §29C.17]

92 Acts, ch 1139, §16; 2011 Acts, ch 69, §8, 9

Subsection 1 amended

Subsection 2, unnumbered paragraph 1 amended

### **29C.20 Contingent fund — disaster aid.**

1. a. A contingent fund is created in the state treasury for the use of the executive council. Funding for the contingent fund, if authorized by the executive council, shall be paid from the appropriations addressed in section 7D.29. Moneys in the contingent fund may be expended for the following purposes:

- (1) Paying the expenses of suppressing an insurrection or riot, actual or threatened, when state aid has been rendered by order of the governor.

(2) Repairing, rebuilding, or restoring state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause.

(3) Repairing, rebuilding, or restoring state property that is fiberoptic cable and that is injured or destroyed by a wild animal.

(4) Purchasing a police service dog for the department of corrections when such a dog is injured or destroyed.

(5) Paying the expenses incurred by and claims of a homeland security and emergency response team when acting under the authority of section 29C.8 and public health response teams when acting under the provisions of section 135.143.

(6) (a) Aiding any governmental subdivision in an area declared by the governor to be a disaster area due to natural disasters or to expenditures necessitated by the governmental subdivision toward averting or lessening the impact of the potential disaster, where the effect of the disaster or action on the governmental subdivision is the immediate financial inability to meet the continuing requirements of local government.

(b) Upon application by a governmental subdivision in such an area, accompanied by a showing of obligations and expenditures necessitated by an actual or potential disaster in a form and with further information the executive council requires, the aid may be made in the discretion of the executive council and, if made, shall be in the nature of a loan up to a limit of seventy-five percent of the showing of obligations and expenditures. The loan, without interest, shall be repaid by the maximum annual emergency levy authorized by section 24.6, or by the appropriate levy authorized for a governmental subdivision not covered by section 24.6. The aggregate total of loans shall not exceed one million dollars during a fiscal year. A loan shall not be for an obligation or expenditure occurring more than two years previous to the application.

b. When a state department or agency requests that moneys from the contingent fund be expended to repair, rebuild, or restore state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, or to repair, rebuild, or restore state property that is fiberoptic cable and that is injured or destroyed by a wild animal, or to purchase a police service dog for the department of corrections when such a dog is injured or destroyed, or for payment of the expenses incurred by and claims of a homeland security and emergency response team when acting under the authority of section 29C.8, the executive council shall consider the original source of the funds for acquisition of the property before authorizing the expenditure. If the original source was other than the general fund of the state, the department or agency shall be directed to utilize moneys from the original source if possible. The executive council shall not authorize the repairing, rebuilding, or restoring of the property from the disaster aid contingent fund if it determines that moneys from the original source are available to finance the project.

2. The proceeds of such loan shall be applied toward the payment of costs and obligations necessitated by such actual or potential disaster and the reimbursement of local funds from which such expenditures have been made. Any such project for repair, rebuilding or restoration of state property for which no specific appropriation has been made, shall, before work is begun, be subject to approval or rejection by the executive council.

3. If the president of the United States, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses, serious needs, or hazard mitigation projects of local governments and eligible private nonprofit agencies adversely affected by the major disaster if those expenses or needs cannot otherwise be met from other means of assistance. The amount of the grant shall not exceed ten percent of the total eligible expenses and is conditional upon the federal government providing at least seventy-five percent for public assistance grants and at least fifty percent for hazard mitigation grants of the eligible expenses.

4. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance. The amount of a financial grant shall not exceed the maximum federal authorization in the aggregate to

an individual or family in any single major disaster declared by the president. All grants authorized to individuals and families will be subject to the federal government providing no less than seventy-five percent of each grant and the declaration of a major disaster in the state by the president of the United States.

5. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may lease or purchase sites and develop such sites to accommodate temporary housing units for disaster victims.

6. For the purposes of this section, “*governmental subdivision*” means any political subdivision of this state.

[C73, §120; C97, §170; C24, 27, 31, 35, 39, §286; C46, 50, 54, 58, 62, 66, 71, 73, 75, §19.7; C77, 79, 81, §29C.20]

85 Acts, ch 53, §2; 85 Acts, ch 195, §6; 89 Acts, ch 315, § 27; 92 Acts, ch 1139, §18; 97 Acts, ch 210, §19; 2003 Acts, ch 155, §1; 2003 Acts, ch 179, §105; 2005 Acts, ch 89, §1; 2006 Acts, ch 1185, §63, 64; 2011 Acts, ch 131, §23, 158

Subsection 1, paragraph a, unnumbered paragraph 1 amended

### **29C.20A Disaster aid individual assistance grant fund.**

1. A disaster aid individual assistance grant fund is created in the state treasury for the use of the executive council. Moneys in the fund may be expended following the governor’s proclamation of a state of disaster emergency. The executive council may make financial grants to meet disaster-related expenses or serious needs of individuals or families adversely affected by a disaster which cannot otherwise be met by other means of financial assistance. The aggregate total of grants awarded shall not be more than one million dollars during a fiscal year. However, within the same fiscal year, additional funds may be specifically authorized by the executive council to meet additional needs.

2. The grant funds shall be administered by the department of human services. The department shall adopt rules to create the Iowa disaster aid individual assistance grant program. The rules shall specify the eligibility of applicants and eligible items for grant funding. The executive council shall use grant funds to reimburse the department of human services for its actual expenses associated with the administration of the grants.

3. To be eligible for a grant, an applicant shall have an annual household income that is less than two hundred percent of the federal poverty level based on the number of people in the applicant’s household as defined by the most recently revised poverty income guidelines published by the United States department of health and human services. The amount of a grant for a household shall not exceed five thousand dollars. Expenses eligible for grant funding shall be limited to personal property, home repair, food assistance, and temporary housing assistance. An applicant for a grant shall sign an affidavit committing to refund any part of the grant that is duplicated by any other assistance, such as but not limited to insurance or assistance from community development groups, charities, the small business administration, and the federal emergency management agency.

4. A recipient of grant funding shall receive reimbursement for expenses upon presenting a receipt for an eligible expense or shall receive a voucher through a voucher system developed by the department of human services and administered locally within the designated disaster area. A voucher system shall ensure sufficient data collection to discourage and prevent fraud. The department shall consult with long-term disaster recovery committees and disaster recovery case management committees in developing a voucher system.

5. The department of human services shall submit an annual report, by January 1 of each year, to the legislative fiscal committee and the general assembly’s standing committees on government oversight concerning the activities of the grant program in the previous fiscal year.

2007 Acts, ch 145, §1; 2008 Acts, ch 1078, §1; 2009 Acts, ch 86, §3; 2010 Acts, ch 1150, §1; 2011 Acts, ch 69, §10

Subsection 5 amended

### **29C.20B Disaster case management.**

1. The homeland security and emergency management division shall work with the department of human services and nonprofit, voluntary, and faith-based organizations active in disaster recovery and response in coordination with the department of human services to establish a statewide system of disaster case management to be activated following the governor's proclamation of a disaster emergency or the declaration of a major disaster by the president of the United States for individual assistance purposes. Under the system, the homeland security and emergency management division shall coordinate case management services locally through local committees as established in each commission's emergency plan.

2. The homeland security and emergency management division, in conjunction with the department of human services and an Iowa representative to the national voluntary organizations active in disaster, shall adopt rules pursuant to chapter 17A to create coordination mechanisms and standards for the establishment and implementation of a statewide system of disaster case management which shall include at least all of the following:

- a. Disaster case management standards.
- b. Disaster case management policies.
- c. Reporting requirements.
- d. Eligibility criteria.
- e. Coordination mechanisms necessary to carry out the services provided.
- f. Development of formal working relationships with agencies and creation of interagency agreements for those considered to provide disaster case management services.
- g. Coordination of all available services for individuals from multiple agencies.

2010 Acts, ch 1096, §1; 2011 Acts, ch 25, §8; 2011 Acts, ch 69, §11; 2011 Acts, ch 122, §29, 30; 2011 Acts, ch 129, §83, 156

See Code editor's note  
Section amended

### **29C.22 Statewide mutual aid compact.**

This statewide mutual aid compact is entered into with all other emergency management commissions established pursuant to section 29C.9, counties, cities, and other political subdivisions that enter into this compact in substantially the following form:

1. *Article I — Purpose and authorities.*
  - a. This compact is made and entered into by and between the participating emergency management commissions established pursuant to section 29C.9, counties, cities, and political subdivisions which enact this compact. For the purposes of this agreement, the term "*participating governments*" means emergency management commissions, counties, cities, townships, and other political subdivisions of the state which have not, through ordinance or resolution of the governing body, acted to withdraw from this compact. The inclusion of emergency management commissions in the term "*participating governments*" shall not convey taxing authority or other legal authority to emergency management commissions that is not otherwise granted in this chapter.
  - b. The purpose of this compact is to provide for mutual assistance between the participating governments entering into this compact in managing any emergency or disaster that is declared in accordance with a comprehensive emergency plan or by the governor, whether arising from natural disaster, technological hazard, man-made disaster, community disorder, insurgency, terrorism, or enemy attack.
  - c. This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by participating governments during emergencies, such actions occurring outside actual declared emergency periods.

2. *Article II — General implementation.*

- a. Each participating government entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each

participating government further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to the emergency. This is because few, if any, individual governments have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

b. The prompt, full, and effective use of resources of the participating governments, including any resources on hand or available from any source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by the governor or any participating government, shall be the underlying principle on which all articles of this compact shall be understood.

c. On behalf of the participating government in the compact, the legally designated official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate intrastate mutual aid plans and procedures necessary to implement this compact.

3. *Article III — Participating government responsibilities.*

a. It shall be the responsibility of each participating government to formulate procedural plans and programs for intrastate cooperation in the performance of the responsibilities listed in this article. In formulating the plans, and in carrying them out, the participating governments, insofar as practical, shall:

(1) Review individual hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the participating governments might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, civil disorders, insurgency, terrorism, or enemy attack.

(2) Review the participating governments' individual emergency plans and develop a plan that will determine the mechanism for the intrastate management and provision of assistance concerning any potential emergency.

(3) Develop intrastate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the participating governments' boundaries.

(5) Protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

(6) Inventory and set procedures for the intrastate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any ordinances that restrict the implementation of the above responsibilities.

b. The authorized representative of a participating government may request assistance of another participating government by contacting the authorized representative of that participating government. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide all of the following:

(1) A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(2) The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time that the personnel, equipment, materials, and supplies will be needed.

(3) The specific place and time for staging of the assisting participating government's response and a point of contact at that location.

c. The authorized representative of a participating government may initiate a request by contacting the homeland security and emergency management division of the state

department of public defense. When a request is received by the division, the division shall directly contact other participating governments to coordinate the provision of mutual aid.

d. Frequent consultation shall occur between officials who have been assigned emergency management responsibilities and other appropriate representatives of the participating governments with affected jurisdictions and state government, with free exchange of information, plans, and resource records relating to emergency capabilities.

e. For purposes of this subsection, “*authorized representative of a participating government*” means a mayor or the mayor’s designee, a member of the county board of supervisors or a representative of the board, or an emergency management coordinator or the coordinator’s designee.

4. *Article IV — Limitations.* Any participating government requested to render mutual aid or conduct exercises and training for mutual aid shall take the necessary action to provide and make available the resources covered by this compact in accordance with the terms of the compact. However, it is understood that the participating government rendering aid may withhold resources to the extent necessary to provide reasonable protection for the participating government. Each participating government shall afford to the emergency forces of any other participating government, while operating within its jurisdictional limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving participating government, duties, rights, and privileges as are afforded forces of the participating government in which the emergency forces are performing emergency services. Emergency forces shall continue under the command and control of their regular leaders, but the organizational units shall come under the operational control of the emergency services authorities of the participating government receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor or by competent authority of the participating government that is to receive assistance, or commencement of exercises or training for mutual aid, and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving jurisdiction, whichever is longer.

5. *Article V — Licenses and permits.* If a person holds a license, certificate, or other permit issued by any participating government to this compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when the assistance is requested by another participating government, the person shall be deemed licensed, certified, or permitted by the participating government requesting assistance to render aid involving the skill to meet a declared emergency or disaster, subject to the limitations and conditions as the governor may prescribe by executive order or otherwise.

6. *Article VI — Liability.* Officers or employees of a participating government rendering aid in another participating government jurisdiction pursuant to this compact shall be considered agents of the requesting participating government for tort liability and immunity purposes and a participating government or its officers or employees rendering aid in another jurisdiction pursuant to this compact shall not be liable on account of any act or omission in good faith on the part of the forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection with the aid. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

7. *Article VII — Supplementary agreements.* Because it is probable that the pattern and detail of the machinery for mutual aid among two or more participating governments may differ from that among other participating governments, this compact contains elements of a broad base common to all political subdivisions, and this compact shall not preclude any political subdivision from entering into supplementary agreements with another political subdivision or affect any other agreements already in force between political subdivisions. Supplementary agreements may include, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

8. *Article VIII — Workers’ compensation.* Each participating government shall provide for the payment of workers’ compensation and death benefits to injured members of the

emergency forces of that participating government and representatives of deceased members of the emergency forces in case the members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

9. *Article IX — Reimbursement.* Any participating government rendering aid in another jurisdiction pursuant to this compact shall be reimbursed by the participating government receiving the emergency aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with the requests. However, an aiding political subdivision may assume in whole or in part the loss, damage, expense, or other cost, or may loan the equipment or donate the services to the receiving participating government without charge or cost, and any two or more participating governments may enter into supplementary agreements establishing a different allocation of costs among the participating governments. Article VIII expenses shall not be reimbursable under this provision.

10. *Article X — Evacuation and sheltering.* Plans for the orderly evacuation and reception of portions of the civilian population as the result of any emergency or disaster shall be worked out and maintained between the participating governments and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur. The plans shall be put into effect by request of the participating government from which evacuees come and shall include the manner of transporting the evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of the evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans shall provide that the participating government receiving evacuees and the participating government from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. The expenditures shall be reimbursed as agreed by the participating government from which the evacuees come. After the termination of the emergency or disaster, the participating government from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

11. *Article XI — Implementation.*

a. This compact shall become operative July 1, 2009.

b. Any participating government may withdraw from this compact by adopting an ordinance or resolution repealing the same, but a withdrawal shall not take effect until thirty days after the governing body of the withdrawing participating government has given notice in writing of the withdrawal to the administrator of the homeland security and emergency management division who shall notify all other participating governments. The action shall not relieve the withdrawing political subdivision from obligations assumed under this compact prior to the effective date of withdrawal.

c. Duly authenticated copies of this compact and any supplementary agreements as may be entered into shall be deposited, at the time of their approval, with the administrator of the homeland security and emergency management division who shall notify all participating governments and other appropriate agencies of state government.

12. *Article XII — Validity.* This compact shall be construed to effectuate the purposes stated in article I. If any provision of this compact is declared unconstitutional, or the applicability of the compact to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability of this compact to other persons and circumstances shall not be affected.

2002 Acts, ch 1117, §55, 56; 2003 Acts, ch 179, §157; 2008 Acts, ch 1032, §201; 2009 Acts, ch 67, §1 – 4; 2011 Acts, ch 69, §12

Subsection 1, paragraph b amended

## CHAPTER 30

### CHEMICAL EMERGENCIES — EMERGENCY RESPONSE COMMISSION

#### **30.2 Iowa emergency response commission established.**

1. The Iowa emergency response commission is established. The commission is responsible directly to the governor. The commission is attached to the department of public defense for routine administrative and support services only.

2. *a.* The commission is composed of fifteen members appointed by the governor. One member shall be appointed to represent the department of agriculture and land stewardship, one to represent the department of workforce development, one to represent the department of justice, one to represent the department of natural resources, one to represent the department of public defense, one to represent the Iowa department of public health, one to represent the department of public safety, one to represent the state department of transportation, one to represent the state fire service and emergency response council, one to represent a local emergency planning committee, one to represent the Iowa hazardous materials task force, and one to represent the office of the governor. Three representatives from private industry shall also be appointed by the governor, subject to confirmation by the senate.

*b.* The commission members representing the departments of workforce development, natural resources, public defense, public safety, and transportation, a local emergency planning committee, and one private industry representative designated by the commission shall be voting members of the commission. The remaining members of the commission shall serve as nonvoting, advisory members.

3. The commission members shall be appointed for staggered terms of three years each, beginning and ending as provided in section 69.19. Vacancies shall be filled in the same manner as the original appointments were made.

89 Acts, ch 204, §3; 96 Acts, ch 1186, §23; 2000 Acts, ch 1020, §7; 2000 Acts, ch 1232, §45; 2011 Acts, ch 69, §13

Confirmation, see §2.32  
Subsection 2, paragraph b amended

#### **30.9 Duties to be allocated to department of public defense.**

Agreements negotiated by the commission and the department of public defense shall provide for the allocation of duties to the department of public defense as follows:

1. Comprehensive emergency plans required to be developed under section 303 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11003, shall be submitted to the department of public defense. Committee submission to that department constitutes compliance with the requirement for reporting to the commission. After initial submission, a plan need not be resubmitted unless revisions are requested by the commission. The department of public defense shall review the plan on behalf of the commission and shall incorporate the provisions of the plan into its responsibilities under chapter 29C.

2. The department of public defense shall advise the commission of the failure of any committee to submit an initial comprehensive emergency plan or a revised plan requested by the commission.

3. The department of public defense shall make available to the public upon request during normal working hours the information in its possession pursuant to section 324 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11044.

89 Acts, ch 204, §10; 2011 Acts, ch 69, §14  
Subsections 1 and 2 amended

## CHAPTER 34A

### ENHANCED 911 EMERGENCY TELEPHONE SYSTEMS

This chapter not enacted as a part of this title; transferred from chapter 477B in Code 1993

#### SUBCHAPTER I

#### LOCAL OPTION E911 SERVICE SURCHARGE AND E911 SERVICE

##### **34A.15 E911 communications council established — duties.**

1. An E911 communications council is established. The council consists of the following thirteen members:

- a. One person appointed by the commissioner of public safety.
- b. One person appointed by the Iowa state sheriffs' and deputies' association.
- c. One person appointed by the Iowa association of chiefs of police and peace officers.
- d. One person appointed by the Iowa emergency medical services association.
- e. One person appointed by the Iowa association of professional fire fighters.
- f. One person appointed by the Iowa firefighters association.
- g. One person appointed by the Iowa chapter of the national emergency number association.
- h. One person appointed by the Iowa chapter of the association of public safety communications officials-international, inc.
- i. One person appointed by the Iowa emergency management directors association.
- j. Two persons appointed by the Iowa telephone association, with one person appointed to represent telephone companies having fifteen thousand or more customers and one person appointed to represent telephone companies having less than fifteen thousand customers.
- k. Two persons appointed by the Iowa wireless industry. One appointee shall represent cellular companies and the other appointee shall represent personal communications services companies.

2. The auditor of state or the auditor of state's designee shall serve as an ex officio nonvoting member.

3. The council shall advise and make recommendations to the administrator and program manager regarding the implementation of this chapter. Such advice and recommendations shall be provided on issues at the request of the administrator or program manager or as deemed necessary by the council.

4. A member of the council shall be reimbursed for actual and necessary expenses incurred in the performance of the member's duties, if such member is not otherwise reimbursed for such expenses.

5. The authority of the council is limited to the issues specifically identified in this section and does not preempt the authority of the utilities board, created in section 474.1, to act on issues within the jurisdiction of the utilities board.

96 Acts, ch 1219, §64; 98 Acts, ch 1101, §10 – 13, 16; 2004 Acts, ch 1175, §459, 460; 2011 Acts, ch 25, §9

Subsection 1, paragraph f amended

## CHAPTER 35A

### DEPARTMENT OF VETERANS AFFAIRS

##### **35A.3 Duties of the commission.**

The commission shall do all of the following:

1. Organize and annually select a chairperson.
2. Review and approve, prior to adoption, all proposed rules submitted by the department concerning the management and operation of the department and programs administered by the department.
3. *a.* Advise and make recommendations to the department, the general assembly, and the governor concerning issues involving and impacting veterans in this state.
- b.* Advise and make recommendations to the general assembly and the governor concerning the management and operation of the department.
4. Supervise the commandant's administration of commission policy for the operations and conduct of the Iowa veterans home.
5. Conduct an equal number of meetings at Camp Dodge and the Iowa veterans home. The agenda for each meeting shall include a reasonable time period for public comment.
6. Provide guidance and make recommendations to the department during an annual review of the department's proposed budget and provide guidance and make recommendations for budget changes that occur during the fiscal year.
7. Consult with the department regarding certification training for executive directors and administrators of county commissions of veteran affairs pursuant to section 35B.6.

[C39, §482.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §35.1; C79, 81, §35A.3]

86 Acts, ch 1245, §1707; 92 Acts, ch 1140, §9; 94 Acts, ch 1107, §3; 95 Acts, ch 161, §3; 2004 Acts, ch 1175, §223; 2005 Acts, ch 115, §10, 11, 40; 2007 Acts, ch 202, §3; 2011 Acts, ch 74, §1, 2

Subsection 2 amended  
NEW subsections 6 and 7

### **35A.5 Duties of the department.**

The department shall do all of the following:

1. Maintain and disseminate information to veterans and the public regarding facilities, benefits, and services available to veterans and their families and assist veterans and their families in obtaining such benefits and services.
2. Maintain information and data concerning the military service records of Iowa veterans.
3. Assist county veteran affairs commissions established pursuant to chapter 35B. The department shall provide to county commissions suggested uniform benefits and administrative procedures for carrying out the functions and duties of the county commissions.
4. Permanently maintain the records including certified records of bonus applications for awards paid from the war orphans educational fund under chapter 35.
5. Collect and maintain information concerning veterans affairs.
6. Conduct two service schools each year for the Iowa association of county commissioners and executive directors.
7. Assist the United States department of veterans affairs, the Iowa veterans home, funeral directors, and federally chartered veterans service organizations in providing information concerning veterans service records and veterans affairs data.
8. Maintain alphabetically a permanent registry of the graves of all persons who served in the military or naval forces of the United States in time of war and whose mortal remains rest in Iowa.
9. After consultation with the commission, provide certification training to executive directors and administrators of county commissions of veteran affairs pursuant to section 35B.6. Training provided under this subsection shall include accreditation by the national association of county veteran service officers. Training provided by the department shall be certified by the national association of county veteran service officers and, in addition, shall ensure that each executive director and administrator is proficient in the use of electronic mail, general computer use, and use of the internet to access information regarding facilities, benefits, and services available to veterans and their families. The department may adopt rules in accordance with chapter 17A to provide for training of county veteran affairs executive directors and administrators.
10. Establish and operate a state veterans cemetery and make application to the

government of the United States or any subdivision, agency, or instrumentality thereof, for funds for the purpose of establishing such a cemetery.

a. The department may enter into agreements with any subdivision of the state for assistance in operating the cemetery.

b. The state shall own the land on which the cemetery is located.

c. The department shall have the authority to accept federal grant funds, funding from state subdivisions, donations from private sources, and federal "plot allowance" payments.

d. The department through the director shall have the authority to accept suitable cemetery land, in accordance with federal veterans cemetery grant guidelines, from the federal government, state government, state subdivisions, private sources, and any other source wishing to transfer land for use as a veterans cemetery.

e. The department may lease or use property received pursuant to this subsection for any purpose so long as such leasing or use does not interfere with the use of the property for cemetery purposes and is not contrary to federal or state guidelines.

f. All funds received pursuant to this subsection, including lease payments or funds generated from any activity engaged in on any property accepted pursuant to this subsection, shall be deposited into an account dedicated to the establishment, operation, and maintenance of a veterans cemetery and these funds shall be expended only for those purposes.

g. Notwithstanding section 8.33, any moneys in the account for a state veterans cemetery shall not revert and, notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the account.

11. Authorize the sale, trade, or transfer of veterans commemorative property pursuant to chapter 37A.

12. Adopt rules pursuant to chapter 17A and establish policy for the management and operation of the department. Prior to adopting rules, the department shall submit proposed rules to the commission for review and approval pursuant to the requirements of section 35A.3.

13. Provide information requested by the commission concerning the management and operation of the department and the programs administered by the department.

14. Annually, by August 31, prepare and submit a report to the governor and the general assembly relating to county commissions of veteran affairs. Copies of the report shall also be provided to each county board of supervisors and to each county commission of veteran affairs by electronic means. Pursuant to section 35B.11, the department may request any information necessary to prepare the report from each county commission of veteran affairs. The report shall include all of the following:

a. Information related to compliance with the training requirements under section 35B.6 during the previous calendar year.

b. The weekly operating schedule of each county commission of veteran affairs office maintained under section 35B.6.

c. The number of hours of veterans' services provided by each county commission of veteran affairs executive director or administrator during the previous calendar year.

d. Population of each county, including the number of veterans residing in each county.

e. The total amount of compensation, disability benefits, or pensions received by the residents of each county under laws administered by the United States department of veterans affairs.

f. An analysis of the information contained in paragraphs "a" through "e", including an analysis of such information for previous years.

15. Upon receipt of certificate of release or discharge from active duty, create a roster of information that includes the name of the military member, the member's address of record, and the member's county of residence listed on the certificate. The department shall, within thirty days of receipt of the certificate of release or discharge from active duty, provide a copy of the roster to the county commission of veteran affairs in each county listed on the roster.

16. In coordination with the military division of the department of public defense, advise service members prior to, and after returning from, deployment on active duty service outside the United States of issues related to the filing of tax returns and the payment of taxes due

and encourage a service member who has not filed a return or who owes taxes to contact the department of revenue prior to deployment.

17. Carry out the policies of the department.

2005 Acts, ch 115, §13, 40; 2006 Acts, ch 1107, §1; 2006 Acts, ch 1185, §65; 2007 Acts, ch 202, §4, 5; 2008 Acts, ch 1031, §20; 2008 Acts, ch 1130, §1, 10; 2009 Acts, ch 26, §4; 2009 Acts, ch 122, §1; 2010 Acts, ch 1102, §1; 2011 Acts, ch 45, §1; 2011 Acts, ch 74, §3

Subsection 12 amended

NEW subsection 15 and former subsections 15 and 16 renumbered as 16 and 17

**35A.8A Vietnam Conflict veterans bonus — limited residency requirement — appropriation.** Repealed by its own terms effective June 30, 2011; 2008 Acts, ch 1131, §1.

With respect to amendment to former §35A.8A by 2011 Acts, ch 129, §51, 76, see Code editor's note

### **35A.11 Veterans license fee fund.**

A veterans license fee fund is created in the state treasury under the control of the commission. Notwithstanding section 12C.7, interest or earnings on moneys in the veterans license fee fund shall be credited to the veterans license fee fund. Moneys in the fund are appropriated to the commission to be used to fulfill the responsibilities of the commission. The fund shall include the fees credited by the treasurer of state from the sale of the following special motor vehicle registration plates:

1. Veteran special plates issued pursuant to section 321.34, subsection 13, paragraph "d".
2. National guard special plates issued pursuant to section 321.34, subsection 16.
3. Pearl Harbor special plates issued pursuant to section 321.34, subsection 17.
4. Purple heart special plates issued pursuant to section 321.34, subsection 18.
5. United States armed forces retired special plates issued pursuant to section 321.34, subsection 19.
6. Silver star and bronze star special plates issued pursuant to section 321.34, subsection 20.
7. Distinguished service cross, navy cross, and air force cross special plates issued pursuant to section 321.34, subsection 20A.
8. Soldier's medal, navy and marine corps medal, and airman's medal special plates issued pursuant to section 321.34, subsection 20B.
9. Combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, and combat medical badge plates issued pursuant to section 321.34, subsection 20C.
10. Gold star special plates issued pursuant to section 321.34, subsection 24.

99 Acts, ch 201, §8; 2007 Acts, ch 178, §1, 3; 2007 Acts, ch 184, §1, 7; 2011 Acts, ch 114, §1  
NEW subsection 9 and former subsection 9 renumbered as 10

### **35A.13 Veterans trust fund.**

1. A veterans trust fund is created in the state treasury under the control of the commission.

2. The trust fund shall consist of all of the following:

a. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the trust fund.

b. Interest attributable to investment of moneys in the fund or an account of the trust fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the trust fund shall be credited to the trust fund.

3. Moneys credited to the trust fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except as provided in this section. Moneys in the trust fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the trust fund by the end of that fiscal year.

4. The minimum balance of the trust fund required prior to expenditure of moneys from the trust fund is five million dollars. Once the minimum balance is reached, the interest and earnings on the fund and any moneys received under subsection 2, paragraph "a", are

appropriated to the commission to be used to achieve the purposes of this section. It is the intent of the general assembly that the balance in the trust fund reach fifty million dollars.

5. It is the intent of the general assembly that beginning with the fiscal year beginning July 1, 2008, appropriations be made annually to the veterans trust fund. Prior to any additional appropriations to this fund, the department shall provide the general assembly with information identifying immediate and long-term veteran services throughout the state and a plan for delivering those services.

6. Moneys appropriated to the commission under this section shall not be used to supplant funding provided by other sources. The moneys may be expended upon a majority vote of the commission membership for the benefit of veterans and the spouses and dependents of veterans, for any of the following purposes:

a. Travel expenses for wounded veterans, and their spouses, directly related to follow-up medical care.

b. Job training or college tuition assistance for job retraining.

c. Unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.

d. Expenses related to the purchase of durable medical equipment or services to allow veterans to remain in their homes.

e. Expenses related to hearing care, dental care, vision care, or prescription drugs.

f. Individual counseling or family counseling programs.

g. Family support group programs or programs for children of members of the military.

h. Honor guard services.

i. Expenses related to ambulance and emergency room services for veterans who are trauma patients.

j. Emergency expenses related to vehicle repair, housing repair, or temporary housing assistance.

k. Expenses related to establishing whether a minor child is a dependent of a deceased veteran.

l. Matching funds to veterans organizations to provide for accredited veteran service officers. However, moneys expended for this purpose in a fiscal year shall not exceed the lesser of one hundred fifty thousand dollars or twenty percent of the moneys appropriated to the commission from interest and earnings on the fund in that fiscal year.

7. If the commission identifies other purposes for which the moneys appropriated under this section may be used for the benefit of veterans and the spouses and dependents of veterans, the commission shall submit recommendations for the addition of such purposes to the general assembly for review.

8. The commission shall submit an annual report to the general assembly by January 15 of each year concerning the veterans trust fund created by this section. The annual report shall include financial information concerning the moneys in the trust fund and shall also include information on the number, amount, and type of expenditures, if any, from the fund during the prior calendar year for the purposes described in subsection 6.

9. The department may adopt emergency rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph "b", to implement the provisions of this section and the rules shall be effective immediately upon filing unless a later date is specified in the rules. Any rules adopted in accordance with this subsection shall also be published as a notice of intended action as provided in section 17A.4.

2003 Acts, ch 131, §1; 2006 Acts, ch 1110, §1, 2; 2006 Acts, ch 1185, §66 – 68; 2007 Acts, ch 202, §7; 2008 Acts, ch 1012, §1; 2008 Acts, ch 1129, §1, 2, 3, 9; 2009 Acts, ch 164, §2, 7

FY 2007-2008 appropriation from veterans trust fund to Vietnam Conflict veterans bonus fund; moneys remaining after repeal of limited residency requirement for Vietnam Conflict veterans bonus to be transferred to veterans trust fund; expenditure limitation; 2007 Acts, ch 176, §3; 2008 Acts, ch 1187, §68; 2009 Acts, ch 182, §82, 87; 2010 Acts, ch 1192, §55, 73; 2011 Acts, ch 129, §52, 74

Section not amended; footnote revised

### **35A.14 Injured veterans grant program.**

1. For the purposes of this section, "veteran" means any of the following:

a. A resident of this state who is or was a member of the national guard, reserve, or regular

component of the armed forces of the United States who has served on active duty at any time after September 11, 2001, and, if discharged, was discharged under honorable conditions.

b. A nonresident of this state who is or was a member of a national guard unit located in this state prior to alert for mobilization who has served on active duty at any time after September 11, 2001, was injured while serving in the national guard unit located in this state, is not eligible to receive a similar grant from another state for that injury, and, if discharged, was discharged under honorable conditions.

2. An injured veterans grant program is created under the control of the department for the purpose of providing grants to eligible injured veterans. Providing grants to eligible injured veterans pursuant to this section is deemed to serve a vital and valid public purpose of the state by assisting injured veterans and their families.

3. The department may receive and accept donations, grants, gifts, and contributions from any public or private source for the purpose of providing grants under this section. Moneys received by the department pursuant to this subsection shall be deposited in an injured veterans trust fund which shall be created in the state treasury under the control of the department. Moneys credited to the trust fund are appropriated to the department for the purpose of providing injured veterans grants under this section and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the trust fund shall be credited to the trust fund.

4. Moneys appropriated to or received by the department for providing injured veterans grants under this section may be expended for grants of up to ten thousand dollars to a seriously injured veteran to provide financial assistance to the veteran so that family members of the veteran may be with the veteran during the veteran's recovery from an injury received in the line of duty in a combat zone or in a zone where the veteran was receiving hazardous duty pay after September 11, 2001.

5. The department shall adopt rules governing the distribution of grants under this section in accordance with the following:

a. Grants shall be paid in increments of two thousand five hundred dollars, up to a maximum of ten thousand dollars, upon proof that the veteran has been evacuated from the operational theater in which the veteran was injured to a military hospital or that the veteran has suffered an injury requiring at least thirty consecutive days of hospitalization at a military hospital, for an injury received in the line of duty and shall continue to be paid, at thirty-day intervals, up to the maximum amount, so long as the veteran is hospitalized or receiving medical care or rehabilitation services authorized by the military.

b. Proof of continued medical care or rehabilitation services may include any reasonably reliable documentation showing that the veteran is receiving continued medical or rehabilitative care as a result of qualifying injuries. Proof that the injury occurred in the line of duty shall be made based upon the circumstances of the injury known at the time of evacuation from the combat zone or zone in which the veteran was receiving hazardous duty pay.

c. Grants for veterans injured after September 11, 2001, but prior to May 8, 2006, shall be payable, upon a showing that the veteran would have been eligible for payment had the injury occurred on or after May 8, 2006.

d. (1) A seriously injured veteran meeting all other requirements of this section may receive additional grants for subsequent, unrelated injuries that meet the requirements of this section. Any subsequent, unrelated injury shall be treated as if it were an initial injury for the purposes of determining eligibility or allotment.

(2) Grants for veterans suffering subsequent, unrelated injuries after September 11, 2001, but prior to March 30, 2011, shall be payable, upon a showing that the veteran would have been eligible for payment had the subsequent, unrelated injury occurred on or after March 30, 2011.

6. The department may appear before the executive council and request funds to meet

the funding needs of the grant program under this section if funds are made available to the executive council for this purpose.

2006 Acts, ch 1106, §1, 4; 2006 Acts, ch 1185, §115; 2007 Acts, ch 22, §112, 116; 2007 Acts, ch 142, §1, 2; 2010 Acts, ch 1047, §1; 2011 Acts, ch 12, §1 – 3

Section is effective May 8, 2006, and applies retroactively on or after September 11, 2001, to veterans seriously injured after that date; 2006 Acts, ch 1106, §4

2011 amendments adding subsection 5, paragraph d, and subsection 6 take effect March 30, 2011, and apply retroactively to September 11, 2001, for veterans suffering a subsequent, unrelated injury after that date; 2011 Acts, ch 12, §3

Subsection 5, NEW paragraph d

NEW subsection 6

## CHAPTER 40

### CONGRESSIONAL DISTRICTS

#### 40.1 Congressional districts.

The state of Iowa is hereby organized and divided into four congressional districts, which shall be composed, respectively, of the following counties:

1. The first district shall consist of the counties of Worth, Mitchell, Howard, Winneshiek, Allamakee, Bremer, Fayette, Clayton, Black Hawk, Buchanan, Delaware, Dubuque, Marshall, Tama, Benton, Linn, Jones, Jackson, Poweshiek, and Iowa.

2. The second district shall consist of the counties of Jasper, Johnson, Cedar, Clinton, Marion, Mahaska, Keokuk, Washington, Louisa, Muscatine, Scott, Clarke, Lucas, Monroe, Wapello, Jefferson, Henry, Des Moines, Decatur, Wayne, Appanoose, Davis, Van Buren, and Lee.

3. The third district shall consist of the counties of Guthrie, Dallas, Polk, Pottawattamie, Cass, Adair, Madison, Warren, Mills, Montgomery, Adams, Union, Fremont, Page, Taylor, and Ringgold.

4. The fourth district shall consist of the counties of Lyon, Osceola, Dickinson, Emmet, Kossuth, Winnebago, Sioux, O'Brien, Clay, Palo Alto, Hancock, Cerro Gordo, Floyd, Chickasaw, Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Woodbury, Ida, Sac, Calhoun, Webster, Hamilton, Hardin, Grundy, Monona, Crawford, Carroll, Greene, Boone, Story, Harrison, Shelby, and Audubon.

[C27, 31, 35, §526-a1; C39, §526.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §40.1; 81 Acts 2d Ex, ch 1, §1]

91 Acts, ch 223, §1; 2001 Acts, 1st Ex, ch 1, §1, 6; 2011 Acts, ch 76, §1, 6

Constitutional provision, Iowa Constitution, Art. III, §37

Membership beginning in 2013; vacancies prior to 2013; see 2011 Acts, ch 76, §3, 4

Section stricken and rewritten

## CHAPTER 41

### STATE SENATORIAL AND REPRESENTATIVE DISTRICTS

#### 41.1 Representative districts.

The state of Iowa is hereby divided into one hundred representative districts as follows:

1. The first representative district shall consist of:

a. Lyon county.

b. Osceola county.

c. In Dickinson county:

(1) The city of West Okoboji.

(2) Silver Lake, Diamond Lake, Spirit Lake, Superior, Excelsior, Lakeville, and Richland

townships, and that portion of Center Grove township not contained in the second representative district.

2. The second representative district shall consist of:

- a. Clay county.
- b. Palo Alto county.
- c. In Dickinson county:

(1) Westport, Milford, and Lloyd townships, and that portion of Okoboji township lying outside the corporate limits of the city of West Okoboji.

(2) That portion of Center Grove township bounded by a line commencing at the point the west corporate limit of the city of Milford intersects the south boundary of Center Grove township, then proceeding first north, then in a clockwise manner along the corporate limits of the city of Milford until it intersects the south boundary of Center Grove township, then proceeding west along the boundary of Center Grove township to the point of origin.

3. The third representative district shall consist of:

- a. O'Brien county.
- b. Cherokee county.
- c. In Sioux county, Floyd, Grant, Lynn, and Sheridan townships.

d. In Plymouth county, Henry township, that portion of Meadow township and Remsen township lying outside the corporate limits of the city of Remsen, and that portion of Garfield township lying outside the corporate limits of the city of Kingsley.

4. The fourth representative district in Sioux county shall consist of Buncombe, Capel, Center, Eagle, East Orange, Garfield, Holland, Lincoln, Logan, Nassau, Plato, Reading, Rock, Settlers, Sherman, Sioux, Washington, Welcome, and West Branch townships.

5. The fifth representative district shall consist of:

- a. In Plymouth county:

(1) The cities of Remsen and Kingsley.

(2) America, Elgin, Elkhorn, Fredonia, Grant, Hancock, Hungerford, Johnson, Liberty, Lincoln, Marion, Perry, Plymouth, Portland, Preston, Sioux, Stanton, Union, Washington, and Westfield townships.

- b. In Woodbury county:

(1) The cities of Lawton and Correctionville.

(2) Arlington, Banner, Grant, Merville, Rutland, Union, West Fork, and Wolf Creek townships, and that portion of Kedron township lying outside the corporate limits of the city of Anthon.

6. The sixth representative district in Woodbury county shall consist of:

- a. The city of Sergeant Bluff.

b. Grange, Lakeport, and Liberty townships, those portions of Woodbury township lying outside the corporate limits of the city of Sioux City, and that portion of Floyd township lying outside the corporate limits of the city of Lawton.

c. That portion of the city of Sioux City bounded by a line commencing at the point the east corporate limit of the city of Sioux City intersects Stone avenue, then proceeding west along Stone avenue until it intersects Morningside avenue, then proceeding southeasterly along Morningside avenue until it intersects Peters avenue, then proceeding west along Peters avenue until it intersects South Paxton street, then proceeding north along South Paxton street until it intersects Stone avenue, then proceeding west along Stone avenue until it intersects South Cecelia street, then proceeding north along South Cecelia street until it intersects Morningside avenue, then proceeding southeasterly, then northerly along Morningside avenue until it intersects South Cecelia street, then proceeding northerly along South Cecelia street, then Cecelia street south until it intersects Leech avenue, then proceeding west along Leech avenue until it intersects Alice street South, then proceeding north along Alice street South until it intersects Correctionville road, then proceeding west along Correctionville road until it intersects South Westcott street, then proceeding south along South Westcott street until it intersects Gordon drive, then proceeding west along Gordon drive until it intersects South Court street, then proceeding southerly along South Court street and its extension until it intersects the boundary of the state of Iowa and the corporate limit of the city of Sioux City, then proceeding first southerly, then in a

counterclockwise manner along the corporate limits of the city of Sioux City to the point of origin.

7. The seventh representative district shall consist of:

- a. Emmet county.
- b. Winnebago county.
- c. In Kossuth county:

(1) That portion of the city of Algona bounded by a line commencing at the point the east corporate limit of the city of Algona intersects the south boundary of Plum Creek township, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Algona to the point of origin.

(2) Burt, Eagle, Fenton, Grant, Harrison, Hebron, Ledyard, Lincoln, Seneca, Springfield, Swea, and Union townships, and that portion of Greenwood township lying outside the corporate limits of the city of Bancroft.

8. The eighth representative district shall consist of:

- a. Hancock county.
- b. Wright county.
- c. In Kossuth county:

(1) The city of Bancroft and that portion of the city of Algona not contained in the seventh representative district.

(2) Buffalo, Cresco, Garfield, German, Irvington, Lotts Creek, Lu Verne, Plum Creek, Portland, Prairie, Ramsey, Riverdale, Sherman, Wesley, and Whittemore townships.

9. The ninth representative district in Webster county shall consist of:

a. The cities of Duncombe and Fort Dodge.  
b. Badger, Colfax, Cooper, Deer Creek, Douglas, Elkhorn, Jackson, and Newark townships.

10. The tenth representative district shall consist of:

- a. Calhoun county.
- b. Humboldt county.
- c. Pocahontas county.
- d. In Webster county, Clay, Fulton, Gowrie, Johnson, Lost Grove, and Roland townships.

11. The eleventh representative district shall consist of:

- a. Buena Vista county.
- b. Sac county.

12. The twelfth representative district shall consist of:

a. Audubon county.  
b. Carroll county.  
c. In Crawford county, Hayes, Iowa, Jackson, Milford, Nishnabotny, Stockholm, and West Side townships, and that portion of East Boyer township lying outside the corporate limits of the city of Denison.

13. The thirteenth representative district in Woodbury county shall consist of:

a. Concord township.  
b. That portion of the city of Sioux City bounded by a line commencing at the point the north boundary of Woodbury county intersects Hamilton boulevard, then proceeding east along the boundary of Woodbury county until it intersects the east corporate limit of the city of Sioux City, then proceeding southerly along the corporate limits of the city of Sioux City until it intersects Stone avenue, then proceeding west along Stone avenue until it intersects Morningside avenue, then proceeding southeasterly along Morningside avenue until it intersects Peters avenue, then proceeding west along Peters avenue until it intersects South Paxton street, then proceeding north along South Paxton street until it intersects Stone avenue, then proceeding west along Stone avenue until it intersects South Cecelia street, then proceeding north along South Cecelia street until it intersects Morningside avenue, then proceeding southeasterly, then northerly along Morningside avenue until it intersects South Cecelia street, then proceeding northerly along South Cecelia street, then Cecelia street south until it intersects Leech avenue, then proceeding west along Leech avenue until it intersects Alice street South, then proceeding north along Alice street South until it intersects Correctionville road, then proceeding west along Correctionville road

until it intersects South Westcott street, then proceeding south along South Westcott street until it intersects Gordon drive, then proceeding west along Gordon drive until it intersects South Court street, then proceeding southerly along South Court street and its extension until it intersects the boundary of the state of Iowa, then proceeding westerly along the boundary of the state of Iowa until it intersects Wesley parkway, then proceeding northerly along Wesley parkway until it intersects Perry street, then proceeding northeasterly along Perry street until it intersects West Eighth street, then proceeding northwesterly along West Eighth street until it intersects Bluff street, then proceeding northerly along Bluff street until it intersects Summit street, then proceeding northerly along Summit street until it intersects Twelfth street, then proceeding east along Twelfth street until it intersects Nebraska street, then proceeding north along Nebraska street until it intersects Thirteenth street, then proceeding east along Thirteenth street until it intersects Jackson street, then proceeding south along Jackson street until it intersects Twelfth street, then proceeding east along Twelfth street until it intersects Court street, then proceeding north along Court street until it intersects Fourteenth street, then proceeding easterly along Fourteenth street until it intersects Floyd boulevard, then proceeding south along Floyd boulevard until it intersects Thirteenth street, then proceeding easterly along Thirteenth street until it intersects the Union Pacific Railroad tracks, then proceeding northerly along the Union Pacific Railroad tracks until it intersects Nineteenth street, then proceeding westerly along Nineteenth street until it intersects Iowa street, then proceeding south along Iowa street until it intersects Eighteenth street, then proceeding west along Eighteenth street until it intersects Court street, then proceeding south along Court street until it intersects Sixteenth street, then proceeding west along Sixteenth street until it intersects Virginia street, then proceeding north along Virginia street until it intersects Seventeenth street, then proceeding west along Seventeenth street until it intersects Ingleside avenue, then proceeding southerly along Ingleside avenue until it intersects Seventeenth street, then proceeding west along Seventeenth street until it intersects Pierce street, then proceeding north along Pierce street until it intersects Twenty-second street, then proceeding east along Twenty-second street until it intersects Nebraska street, then proceeding north along Nebraska street until it intersects Twenty-third street, then proceeding west along Twenty-third street until it intersects Pierce street, then proceeding north along Pierce street until it intersects Stone Park boulevard, then proceeding northwesterly along Stone Park boulevard until it intersects West Clifton avenue, then proceeding easterly along West Clifton avenue and its extension until it intersects Hamilton boulevard, then proceeding northerly along Hamilton boulevard until it intersects Perry creek, then proceeding southerly along Perry creek until it intersects Thirty-fourth street and its extension, then proceeding east along Thirty-fourth street and its extension until it intersects Jones street, then proceeding north along Jones street until it intersects Thirty-eighth street, then proceeding easterly along Thirty-eighth street until it intersects Thirty-seventh street, then proceeding south and then east along Thirty-seventh street until it intersects Cheyenne boulevard, then proceeding northerly along Cheyenne boulevard until it intersects Outer drive North, then proceeding easterly along Outer drive North until it intersects Buckwalter drive, then proceeding northwesterly along Buckwalter drive until it intersects Hamilton boulevard, then proceeding northerly along Hamilton boulevard to the point of origin.

14. The fourteenth representative district in Woodbury county shall consist of that portion of the city of Sioux City bounded by a line commencing at the point the boundary of the state of Iowa intersects the north boundary of Woodbury county, then proceeding east along the boundary of Woodbury county until it intersects Hamilton boulevard, then proceeding southerly along Hamilton boulevard until it intersects Buckwalter drive, then proceeding southeasterly along Buckwalter drive until it intersects Outer drive North, then proceeding westerly along Outer drive North until it intersects Cheyenne boulevard, then proceeding southerly along Cheyenne boulevard until it intersects Thirty-seventh street, then proceeding west and then north along Thirty-seventh street until it intersects Thirty-eighth street, then proceeding westerly along Thirty-eighth street until it intersects Jones street, then proceeding southerly along Jones street until it intersects Thirty-fourth street, then proceeding westerly along Thirty-fourth street and its extension until it intersects Perry

creek, then proceeding northerly along Perry creek until it intersects Hamilton boulevard, then proceeding southerly along Hamilton boulevard until it intersects West Clifton avenue and its extension, then proceeding westerly along West Clifton avenue and its extension until it intersects Stone Park boulevard, then proceeding southeasterly along Stone Park boulevard until it intersects Pierce street, then proceeding south along Pierce street until it intersects Twenty-third street, then proceeding east along Twenty-third street until it intersects Nebraska street, then proceeding south along Nebraska street until it intersects Twenty-second street, then proceeding west along Twenty-second street until it intersects Pierce street, then proceeding south along Pierce street until it intersects Seventeenth street, then proceeding east along Seventeenth street until it intersects Ingleside avenue, then proceeding northerly along Ingleside avenue until it intersects Seventeenth street, then proceeding east along Seventeenth street until it intersects Virginia street, then proceeding south along Virginia street until it intersects Sixteenth street, then proceeding east along Sixteenth street until it intersects Court street, then proceeding north along Court street until it intersects Eighteenth street, then proceeding east along Eighteenth street until it intersects Iowa street, then proceeding north along Iowa street until it intersects Nineteenth street, then proceeding easterly along Nineteenth street until it intersects the Union Pacific Railroad tracks, then proceeding southerly along the Union Pacific Railroad tracks until it intersects Thirteenth street, then proceeding westerly along Thirteenth street until it intersects Floyd boulevard, then proceeding north along Floyd boulevard until it intersects Fourteenth street, then proceeding westerly along Fourteenth street until it intersects Court street, then proceeding south along Court street until it intersects Twelfth street, then proceeding west along Twelfth street until it intersects Jackson street, then proceeding north along Jackson street until it intersects Thirteenth street, then proceeding west along Thirteenth street until it intersects Nebraska street, then proceeding south along Nebraska street until it intersects Twelfth street, then proceeding west along Twelfth street until it intersects Summit street, then proceeding southerly along Summit street until it intersects Bluff street, then proceeding southerly along Bluff street until it intersects West Eighth street, then proceeding southeasterly along West Eighth street until it intersects Perry street, then proceeding southwestly along Perry street until it intersects Wesley parkway, then proceeding southerly along Wesley parkway until it intersects the boundary of the state of Iowa, then proceeding first west, then in a clockwise manner along the boundary of the state of Iowa to the point of origin.

15. The fifteenth representative district in Pottawattamie county shall consist of:

a. The city of Carter Lake.

b. That portion of the city of Council Bluffs bounded by a line commencing at the point the corporate limits of the city of Council Bluffs and the boundary of the state of Iowa intersect the Union Pacific Railroad tracks, then proceeding easterly along the Union Pacific Railroad tracks until it intersects Ninth avenue, then proceeding east along Ninth avenue until it intersects South Twelfth street, then proceeding northerly along South Twelfth street until it intersects Seventh avenue, then proceeding east along Seventh avenue until it intersects South Ninth street, then proceeding north along South Ninth street until it intersects West Broadway, then proceeding east along West Broadway until it intersects North Eighth street, then proceeding north along North Eighth street until it intersects West Washington avenue, then proceeding easterly along West Washington avenue until it intersects North Main street, then proceeding southerly along North Main street until it intersects Kaneshville boulevard, then proceeding northeasterly along Kaneshville boulevard until it intersects North First street and its extension, then proceeding southerly along North First street and its extension until it intersects East Broadway, then proceeding northeasterly along East Broadway until it intersects Union street, then proceeding southeasterly along Union street until it intersects East Pierce street, then proceeding northeasterly along East Pierce street until it intersects Frank street, then proceeding northwesterly along Frank street until it intersects East Broadway, then proceeding northeasterly along East Broadway until it intersects East Kaneshville boulevard, then proceeding southwestly along East Kaneshville boulevard until it intersects Harrison street, then proceeding northerly along Harrison street until it intersects Mount Vernon street, then proceeding easterly along Mount

Vernon street until it intersects Trail Ridge drive, then proceeding northerly along Trail Ridge drive until it intersects Grand avenue, then proceeding northerly along Grand avenue until it intersects South Sierra drive, then proceeding easterly, then northerly, along South Sierra drive until it intersects North Sierra drive, then proceeding westerly along North Sierra drive until it intersects Grand avenue, then proceeding northerly along Grand avenue until it intersects the north corporate limit of the city of Council Bluffs, then proceeding first west, then in a counterclockwise manner along the corporate limits of the city of Council Bluffs to the point of origin.

16. The sixteenth representative district in Pottawattamie county shall consist of that portion of the city of Council Bluffs bounded by a line commencing at the point the corporate limits of the city of Council Bluffs and the boundary of the state of Iowa intersect the Union Pacific Railroad tracks, then proceeding easterly along the Union Pacific Railroad tracks until it intersects Ninth avenue, then proceeding east along Ninth avenue until it intersects South Twelfth street, then proceeding northerly along South Twelfth street until it intersects Seventh avenue, then proceeding east along Seventh avenue until it intersects South Ninth street, then proceeding north along South Ninth street until it intersects West Broadway, then proceeding east along West Broadway until it intersects North Eighth street, then proceeding north along North Eighth street until it intersects West Washington avenue, then proceeding easterly along West Washington avenue until it intersects North Main street, then proceeding southerly along North Main street until it intersects Kaneshville boulevard, then proceeding easterly along Kaneshville boulevard until it intersects North First street and its extension, then proceeding southerly along North First street and its extension until it intersects East Broadway, then proceeding northeasterly along East Broadway until it intersects Union street, then proceeding southeasterly along Union street until it intersects East Pierce street, then proceeding northeasterly along East Pierce street until it intersects Frank street, then proceeding northwesterly along Frank street until it intersects East Broadway, then proceeding northeasterly along East Broadway until it intersects East Kaneshville boulevard, then proceeding southwestly along East Kaneshville boulevard until it intersects Harrison street, then proceeding northerly along Harrison street until it intersects Mount Vernon street, then proceeding easterly along Mount Vernon street until it intersects Trail Ridge drive, then proceeding northerly along Trail Ridge drive until it intersects Grand avenue, then proceeding northerly along Grand avenue until it intersects South Sierra drive, then proceeding easterly, then northerly, along South Sierra drive until it intersects North Sierra drive, then proceeding westerly along North Sierra drive until it intersects Grand avenue, then proceeding northerly along Grand avenue until it intersects the north corporate limit of the city of Council Bluffs, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Council Bluffs until it intersects McPherson avenue, then proceeding westerly along McPherson avenue until it intersects Gleason avenue, then proceeding westerly along Gleason avenue until it intersects Morningside avenue, then proceeding north along Morningside avenue until it intersects Park lane, then proceeding westerly along Park lane until it intersects Lincoln avenue, then proceeding southerly along Lincoln avenue until it intersects Franklin avenue, then proceeding southeasterly along Franklin avenue until it intersects Bennett avenue, then proceeding southwestly along Bennett avenue until it intersects Madison avenue, then proceeding southeasterly along Madison avenue until it intersects Valley View drive, then proceeding southerly along Valley View drive until it intersects the east corporate limit of the city of Council Bluffs, then proceeding first southerly, then in a clockwise manner along the corporate limits of the city of Council Bluffs to the point of origin.

17. The seventeenth representative district shall consist of:

- a. Ida county.
- b. Monona county.
- c. In Harrison county, Allen, Boyer, Calhoun, Cincinnati, Clay, Jackson, Lincoln, Little Sioux, Magnolia, Morgan, Raglan, St. John, and Taylor townships.
- d. In Woodbury county:
  - (1) The city of Anthon.

(2) Liston, Little Sioux, Miller, Morgan, Oto, Sloan, and Willow townships, and that portion of Rock township lying outside the corporate limits of the city of Correctionville.

18. The eighteenth representative district shall consist of:

a. Shelby county.

b. In Crawford county:

(1) The city of Denison.

(2) Boyer, Charter Oak, Denison, Goodrich, Hanover, Morgan, Otter Creek, Paradise, Soldier, Union, Washington, and Willow townships.

c. In Harrison county, Cass, Douglas, Harrison, Jefferson, La Grange, Union, and Washington townships.

19. The nineteenth representative district shall consist of:

a. The city of Granger.

b. In Polk county:

(1) That portion of the city of Sheldahl in Polk county.

(2) That portion of Polk county bounded by a line commencing at the point the west boundary of Polk county intersects the middle channel of the Des Moines river, then proceeding first north, then east, along the boundary of Polk county until it intersects the west boundary of Lincoln township, then proceeding south along the boundary of Lincoln township until it intersects the north corporate limit of the city of Polk City, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Polk City until it intersects the east boundary of census block 191530115002185, then proceeding south along the east boundary of census block 191530115002185 and census block 191530115002184 until it intersects the middle channel of the Des Moines river, then proceeding northwesterly along the middle channel of the Des Moines river to the point of origin.

c. In Dallas county, Adams, Adel, Beaver, Colfax, Des Moines, Grant, Sugar Grove, and Union townships, and those portions of Boone, Van Meter, and Walnut townships not contained in the forty-fourth representative district.

20. The twentieth representative district shall consist of:

a. Adair county.

b. Guthrie county.

c. In Cass county, Benton, Franklin, Grant, and Lincoln townships.

d. In Dallas county, Dallas, Lincoln, Linn, Spring Valley, and Washington townships.

21. The twenty-first representative district shall consist of:

a. Adams county.

b. Union county.

c. In Cass county, Bear Grove, Brighton, Cass, Edna, Grove, Massena, Noble, Pleasant, Pymosa, Union, Victoria, and Washington townships.

d. In Pottawattamie county, Grove, Layton, Lincoln, Waveland, and Wright townships, and that portion of Center township lying outside the corporate limits of the city of Oakland.

22. The twenty-second representative district in Pottawattamie county shall consist of:

a. The city of Oakland.

b. Belknap, Boomer, Carson, Crescent, Hardin, Hazel Dell, James, Keg Creek, Knox, Macedonia, Minden, Neola, Norwalk, Pleasant, Rockford, Silver Creek, Valley, Washington, and York townships, and those portions of Garner, Lake, and Lewis townships lying outside the corporate limits of the city of Council Bluffs.

c. That portion of the city of Council Bluffs bounded by a line commencing at the point the east corporate limit of the city of Council Bluffs intersects McPherson avenue, then proceeding westerly along McPherson avenue until it intersects Gleason avenue, then proceeding westerly along Gleason avenue until it intersects Morningside avenue, then proceeding north along Morningside avenue until it intersects Park lane, then proceeding westerly along Park lane until it intersects Lincoln avenue, then proceeding southerly along Lincoln avenue until it intersects Franklin avenue, then proceeding southeasterly along Franklin avenue until it intersects Bennett avenue, then proceeding southwesterly along Bennett avenue until it intersects Madison avenue, then proceeding southeasterly along Madison avenue until it intersects Valley View drive, then proceeding southerly along Valley View drive until it intersects the corporate limits of the city of Council Bluffs, then

proceeding first easterly, then in a counterclockwise manner along the corporate limits of the city of Council Bluffs to the point of origin.

23. The twenty-third representative district shall consist of:

- a. Fremont county.
- b. Mills county.

c. In Montgomery county, Douglas, Garfield, Lincoln, Pilot Grove, Red Oak, Sherman, and Washington townships, and that portion of Frankfort township lying outside the corporate limits of the city of Stanton.

24. The twenty-fourth representative district shall consist of:

- a. Page county.
- b. Ringgold county.
- c. Taylor county.
- d. In Montgomery county:

(1) The city of Stanton.

(2) East, Grant, Scott, and West townships.

25. The twenty-fifth representative district shall consist of:

- a. The city of Bevington.
- b. Madison county.
- c. In Warren county:

(1) The cities of Milo and Norwalk.

(2) Jackson, Otter, Squaw, Virginia, and White Oak townships, and that portion of Linn township not contained in the forty-second representative district.

26. The twenty-sixth representative district in Warren county shall consist of:

a. The city of Indianola.

b. Allen, Liberty, Lincoln, Palmyra, Richland, Union, and White Breast townships, that portion of Belmont township lying outside the corporate limits of the city of Milo, that portion of Greenfield township lying outside the corporate limits of the city of Norwalk, and that portion of Jefferson township lying outside the corporate limits of the city of Bevington.

27. The twenty-seventh representative district shall consist of:

- a. Clarke county.
- b. Decatur county.
- c. Wayne county.
- d. In Lucas County:

(1) That portion of the city of Chariton and Lincoln township bounded by a line commencing at the point the north corporate limit of the city of Chariton intersects the east boundary of Whitebreast township, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Chariton to the point of origin.

(2) Jackson, Otter Creek, Union, Warren, and Whitebreast townships.

28. The twenty-eighth representative district shall consist of:

a. In Jasper county, Elk Creek, Fairview, and Lynn Grove townships, and that portion of Palo Alto township lying outside the corporate limits of the city of Newton.

b. In Lucas county, Benton, Cedar, English, Liberty, Pleasant, and Washington townships, and that portion of Lincoln township not contained in the twenty-seventh representative district.

c. In Marion county, Clay, Dallas, Franklin, Indiana, Knoxville, Liberty, Pleasant Grove, Red Rock, Summit, Union, and Washington townships.

29. The twenty-ninth representative district in Jasper county shall consist of:

a. The city of Newton.

b. Buena Vista, Clear Creek, Des Moines, Hickory Grove, Independence, Kellogg, Malaka, Mariposa, Mound Prairie, Newton, Poweshiek, Richland, Rock Creek, Sherman, and Washington townships.

30. The thirtieth representative district in Polk county shall consist of:

a. The city of Altoona.

b. Beaver, Camp, Elkhart, Franklin, and Washington townships.

c. That portion of Douglas township not contained in the thirty-seventh representative district, that portion of Allen township not contained in the thirty-third representative

district, and those portions of Clay and Four Mile townships not contained in the thirty-first representative district.

31. The thirty-first representative district shall consist of that portion of Polk county bounded by a line commencing at the point East Fifteenth street intersects the eastbound lanes of Interstate 235, then proceeding easterly along the eastbound lanes of Interstate 235 until it intersects East University avenue, then proceeding east along East University avenue until it intersects East Twenty-seventh street, then proceeding northerly along East Twenty-seventh street until it intersects Guthrie avenue, then proceeding west along Guthrie avenue until it intersects Hubbell avenue, then proceeding northeasterly along Hubbell avenue until it intersects Arthur avenue, then proceeding east along Arthur avenue until it intersects East Twenty-ninth street, then proceeding north along East Twenty-ninth street until it intersects East Euclid avenue, then proceeding easterly along East Euclid avenue until it intersects Hubbell avenue, then proceeding northeasterly along Hubbell avenue until it intersects East Douglas avenue, then proceeding easterly along East Douglas avenue until it intersects the corporate limits of the city of Des Moines, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects East Four Mile creek, then proceeding south, then west, along the corporate limits of the city of Des Moines until it intersects the east boundary of Delaware township, then proceeding south along the boundary of Delaware township until it intersects Iowa Interstate Railroad tracks, then proceeding south along the boundary of Delaware township until it intersects the corporate limits of the city of Pleasant Hill, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Pleasant Hill until it intersects the south boundary of Clay township, then proceeding easterly along the boundary of Clay township until it intersects the east corporate limit of the city of Pleasant Hill, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Pleasant Hill until it intersects Dean avenue, then proceeding westerly along Dean avenue until it intersects East Thirtieth street, then proceeding south along East Thirtieth street until it intersects Southeast Thirtieth street, then proceeding south along Southeast Thirtieth street until it intersects Iowa Interstate Railroad tracks, then proceeding westerly along Iowa Interstate Railroad tracks until it intersects Southeast Eighteenth street, then proceeding north along Southeast Eighteenth street until it intersects East Eighteenth street, then proceeding north along East Eighteenth street until it intersects Dean avenue, then proceeding west along Dean avenue until it intersects East Seventeenth street, then proceeding northerly along East Seventeenth street until it intersects Lyon street, then proceeding westerly along Lyon street and its extension until it intersects East Fifteenth street, then proceeding northerly along East Fifteenth street to the point of origin.

32. The thirty-second representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point East Fifteenth street intersects the eastbound lanes of Interstate 235, then proceeding easterly along the eastbound lanes of Interstate 235 until it intersects East University avenue, then proceeding east along East University avenue until it intersects East Twenty-seventh street, then proceeding northerly along East Twenty-seventh street until it intersects Guthrie avenue, then proceeding west along Guthrie avenue until it intersects Hubbell avenue, then proceeding northeasterly along Hubbell avenue until it intersects Arthur avenue, then proceeding east along Arthur avenue until it intersects East Twenty-ninth street, then proceeding north along East Twenty-ninth street until it intersects East Euclid avenue, then proceeding easterly along East Euclid avenue until it intersects Hubbell avenue, then proceeding northeasterly along Hubbell avenue until it intersects East Douglas avenue, then proceeding easterly along East Douglas avenue, until it intersects the corporate limits of the city of Des Moines, then proceeding first north, then in a counterclockwise manner along the corporate limits of the city of Des Moines until it intersects East Fourteenth street, then proceeding south along East Fourteenth street until it intersects East Euclid avenue, then proceeding west along East Euclid avenue until it intersects North Union street, then proceeding northerly along North Union street until it intersects East Madison avenue, then proceeding west along East Madison avenue until it intersects Cambridge street, then proceeding south along Cambridge street until it intersects East Euclid avenue, then

proceeding west along East Euclid avenue until it intersects Euclid avenue, then proceeding west along Euclid avenue until it intersects Second avenue, then proceeding south along Second avenue until it intersects the middle channel of the Des Moines river, then proceeding southerly along the middle channel of the Des Moines river until it intersects Court avenue, then proceeding easterly along Court avenue until it intersects East Court avenue, then proceeding easterly along East Court avenue until it intersects East Seventh street, then proceeding southerly along East Seventh street until it intersects Iowa Interstate Railroad tracks, then proceeding easterly along Iowa Interstate Railroad tracks until it intersects Southeast Fourteenth street, then proceeding south along Southeast Fourteenth street until it intersects Union Pacific Railroad tracks, then proceeding easterly along Union Pacific Railroad tracks until it intersects Iowa Interstate Railroad tracks, then proceeding easterly along Iowa Interstate Railroad tracks until it intersects Southeast Eighteenth street, then proceeding north along Southeast Eighteenth street until it intersects East Eighteenth street, then proceeding north along East Eighteenth street until it intersects Dean avenue, then proceeding west along Dean avenue until it intersects East Seventeenth street, then proceeding northerly along East Seventeenth street until it intersects Lyon street, then proceeding westerly along Lyon street and its extension until it intersects East Fifteenth street, then proceeding northerly along East Fifteenth street to the point of origin.

33. The thirty-third representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point the south boundary of Polk county intersects U.S. highway 69, then proceeding northwesterly along U.S. highway 69 until it intersects Southeast Fourteenth street, then proceeding northerly along Southeast Fourteenth street until it intersects East Army Post road, then proceeding west along East Army Post road until it intersects Southeast Fifth street, then proceeding north along Southeast Fifth street until it intersects East Watrous avenue, then proceeding west along East Watrous avenue until it intersects South Union street, then proceeding north along South Union street until it intersects Olinda avenue, then proceeding west along Olinda avenue until it intersects Southwest Ninth street, then proceeding northerly along Southwest Ninth street until it intersects the middle channel of the Raccoon river, then proceeding easterly along the middle channel of the Raccoon river until it intersects the middle channel of the Des Moines river, then proceeding northerly along the middle channel of the Des Moines river until it intersects Court avenue, then proceeding easterly along Court avenue until it intersects East Court avenue, then proceeding easterly along East Court avenue until it intersects East Seventh street, then proceeding southerly along East Seventh street until it intersects Iowa Interstate Railroad tracks, then proceeding easterly along Iowa Interstate Railroad tracks until it intersects Southeast Fourteenth street, then proceeding south along Southeast Fourteenth street until it intersects Union Pacific Railroad tracks, then proceeding easterly along Union Pacific Railroad tracks until it intersects Iowa Interstate Railroad tracks, then proceeding easterly along Iowa Interstate Railroad tracks until it intersects Southeast Thirtieth street, then proceeding north along Southeast Thirtieth street until it intersects East Thirtieth street, then proceeding north along East Thirtieth street until it intersects Dean avenue, then proceeding easterly along Dean avenue until it intersects the east corporate limit of the city of Des Moines, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects Southeast Sixty-fourth avenue, then proceeding first west, then southerly, along the corporate limits of the city of Des Moines until it intersects the south boundary of Polk county, then proceeding easterly along the south boundary of Polk county to the point of origin.

34. The thirty-fourth representative district in Polk county shall consist of that portion of Bloomfield township and the city of Des Moines bounded by a line commencing at the point the south boundary of Polk county intersects U.S. highway 69, then proceeding northwesterly along U.S. highway 69 until it intersects Southeast Fourteenth street, then proceeding northerly along Southeast Fourteenth street until it intersects East Army Post road, then proceeding west along East Army Post road until it intersects Southeast Fifth street, then proceeding north along Southeast Fifth street until it intersects East Watrous avenue, then proceeding west along East Watrous avenue until it intersects South Union street, then proceeding north along South Union street until it intersects Olinda avenue,

then proceeding west along Olinda avenue until it intersects Southwest Ninth street, then proceeding northerly along Southwest Ninth street until it intersects the middle channel of the Raccoon river, then proceeding easterly along the middle channel of the Raccoon river until it intersects the middle channel of the Des Moines river, then proceeding northerly along the middle channel of the Des Moines river until it intersects the eastbound lanes of Interstate 235, then proceeding westerly along the eastbound lanes of Interstate 235 until it intersects Martin Luther King Jr. parkway, then proceeding south along Martin Luther King Jr. parkway until it intersects School street, then proceeding easterly along School street until it intersects the entrance ramp to the eastbound lanes of Interstate 235, then proceeding easterly along the entrance ramp to the eastbound lanes of Interstate 235 until it intersects Eighteenth street and its extension, then proceeding south along Eighteenth street and its extension until it intersects Center street, then proceeding east along Center street until it intersects Seventeenth street, then proceeding southerly along Seventeenth street until it intersects Grand avenue, then proceeding westerly along Grand avenue until it intersects Eighteenth street, then proceeding southerly along Eighteenth street until it intersects Fleur drive, then proceeding southerly along Fleur drive until it intersects the south boundary of Polk county, then proceeding easterly along the boundary of Polk county to the point of origin.

35. The thirty-fifth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point Lower Beaver road intersects the south boundary of Webster township, then proceeding easterly along the south boundary of Webster township until it intersects the corporate limits of the city of Des Moines, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects East Fourteenth street, then proceeding south along East Fourteenth street until it intersects East Euclid avenue, then proceeding west along East Euclid avenue until it intersects North Union street, then proceeding northerly along North Union street until it intersects East Madison avenue, then proceeding west along East Madison avenue until it intersects Cambridge street, then proceeding south along Cambridge street until it intersects East Euclid avenue, then proceeding west along East Euclid avenue until it intersects Euclid avenue, then proceeding west along Euclid avenue until it intersects Second avenue, then proceeding south along Second avenue until it intersects the middle channel of the Des Moines river, then proceeding southerly along the middle channel of the Des Moines river until it intersects the eastbound lanes of Interstate 235, then proceeding westerly along the eastbound lanes of Interstate 235 until it intersects Twenty-eighth street, then proceeding north along Twenty-eighth street until it intersects School street, then proceeding east along School street until it intersects Twenty-fifth street, then proceeding north along Twenty-fifth street until it intersects University avenue, then proceeding west along University avenue until it intersects Thirtieth street and its extension, then proceeding north along Thirtieth street and its extension until it intersects Euclid avenue, then proceeding northwesterly along Euclid avenue until it intersects Douglas avenue, then proceeding easterly along Douglas avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Fleming avenue, then proceeding west along Fleming avenue until it intersects Lawnwoods drive, then proceeding north along Lawnwoods drive until it intersects Madison avenue, then proceeding west along Madison avenue until it intersects Lower Beaver road, then proceeding northerly along Lower Beaver road to the point of origin.

36. The thirty-sixth representative district shall consist of that portion of Polk county bounded by a line commencing at the point the west corporate limit of the city of Des Moines intersects University avenue, then proceeding east along University avenue until it intersects Forty-first street, then proceeding north along Forty-first street until it intersects Forest avenue, then proceeding east along Forest avenue until it intersects Thirtieth street, then proceeding northerly along Thirtieth street until it intersects Euclid avenue, then proceeding northwesterly along Euclid avenue until it intersects Douglas avenue, then proceeding easterly along Douglas avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Fleming avenue, then proceeding west along Fleming avenue until it intersects Lawnwoods drive, then proceeding north along Lawnwoods drive

until it intersects Madison avenue, then proceeding west along Madison avenue until it intersects Lower Beaver road, then proceeding northerly along Lower Beaver road until it intersects the south boundary of Webster township, then proceeding easterly along the south boundary of Webster township until it intersects the middle channel of the Des Moines river, then proceeding northerly along the middle channel of the Des Moines river until it intersects the south corporate limit of the city of Johnston, then proceeding first west, then in a clockwise manner along the corporate limits of the city of Johnston until it intersects the north corporate limit of the city of Urbandale, then proceeding south along the corporate limits of the city of Urbandale until it intersects the north corporate limit of the city of Des Moines, then proceeding first south, then in a counterclockwise manner along the corporate limits of the city of Des Moines to the point of origin.

37. The thirty-seventh representative district in Polk county shall consist of:

a. That portion of Lincoln township lying outside the corporate limits of the cities of Polk City and Sheldahl.

b. That portion of Polk county bounded by a line commencing at the point the west corporate limit of the city of Ankeny intersects the south boundary of Lincoln township, then proceeding first south, then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects Southwest Magazine drive, then proceeding east along Southwest Magazine drive until it intersects Northwest Sixteenth street, then proceeding northerly along Northwest Sixteenth street until it intersects West First street, then proceeding east along West First street until it intersects Union Pacific Railroad tracks, then proceeding southeasterly along Union Pacific Railroad tracks until it intersects Southwest Maple street, then proceeding southerly along Southwest Maple street until it intersects Southwest Third street, then proceeding east along Southwest Third street until it intersects Southwest Cherry street, then proceeding south along Southwest Cherry street until it intersects Union Pacific Railroad tracks, then proceeding southeasterly along Union Pacific Railroad tracks until it intersects South Ankeny boulevard, then proceeding south along South Ankeny boulevard until it intersects Southeast Magazine road, then proceeding east along Southeast Magazine road until it intersects Southeast Trilein drive, then proceeding north along Southeast Trilein drive until it intersects Southeast Peterson drive, then proceeding east along Southeast Peterson drive until it intersects Northeast Twenty-second street, then proceeding north along Northeast Twenty-second street until it intersects East First street, then proceeding east along East First street until it intersects the corporate limits of the city of Ankeny, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Ankeny until it intersects the south boundary of Douglas township, then proceeding east along the boundary of Douglas township until it intersects the west corporate limit of the city of Bondurant, then proceeding first north, then in a clockwise manner along the corporate limits of the city of Bondurant until it intersects the east boundary of Douglas township, then proceeding first north, then west, along the boundary of Douglas township until it intersects the south boundary of Lincoln township, then proceeding west along the boundary of Lincoln township to the point of origin.

38. The thirty-eighth representative district shall consist of that portion of Polk county bounded by a line commencing at the point the north corporate limit of the city of Des Moines intersects the middle channel of the Des Moines river, then proceeding northerly along the middle channel of the Des Moines river until it intersects the south boundary of census block 191530114042143 and the corporate limits of the city of Johnston, then proceeding northerly along the corporate limits of the city of Johnston until it intersects Saylorville reservoir lake and the middle channel of the Des Moines river, then proceeding northerly along the middle channel of the Des Moines river until it intersects the east boundary of census block 191530115002184, then proceeding north along the east boundary of census block 191530115002184 and census block 191530115002185 until it intersects the corporate limits of the city of Polk City, then proceeding first east, then in a counterclockwise manner along the corporate limits of the city of Polk City until it intersects the south boundary of Lincoln township, then proceeding east along the boundary of Lincoln township until it intersects the west corporate limit of the city of Ankeny, then proceeding first south, then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects

Southwest Magazine drive, then proceeding east along Southwest Magazine drive until it intersects Northwest Sixteenth street, then proceeding northerly along Northwest Sixteenth street until it intersects West First street, then proceeding east along West First street until it intersects Union Pacific Railroad tracks, then proceeding southeasterly along Union Pacific Railroad tracks until it intersects Southwest Maple street, then proceeding southerly along Southwest Maple street until it intersects Southwest Third street, then proceeding east along Southwest Third street until it intersects Southwest Cherry street, then proceeding south along Southwest Cherry street until it intersects Union Pacific Railroad tracks, then proceeding southeasterly along Union Pacific Railroad tracks until it intersects South Ankeny boulevard, then proceeding south along South Ankeny boulevard until it intersects Southeast Magazine road, then proceeding east along Southeast Magazine road until it intersects Southeast Trilein drive, then proceeding north along Southeast Trilein drive until it intersects Southeast Peterson drive, then proceeding east along Southeast Peterson drive until it intersects Northeast Twenty-second street, then proceeding north along Northeast Twenty-second street until it intersects East First street, then proceeding east along East First street until it intersects the corporate limits of the city of Ankeny, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Ankeny until it intersects the north boundary of Delaware township, then proceeding first east, then south along the boundary of Delaware township until it intersects the north corporate limit of the city of Altoona, then proceeding first west, then in a counterclockwise manner along the corporate limits of the city of Altoona until it bisects the east boundary of Delaware township, then proceeding south along the boundary of Delaware township until it intersects the north corporate limit of the city of Des Moines, then proceeding first northwest, then in a counterclockwise manner along the corporate limits of the city of Des Moines to the point of origin.

39. The thirty-ninth representative district shall consist of that portion of Polk county bounded by a line commencing at the point the west boundary of Polk county intersects the middle channel of the Des Moines river, then proceeding southeasterly along the middle channel of the Des Moines river until it intersects the corporate limit of the city of Johnston, then proceeding southerly along the corporate limits of the city of Johnston until it intersects the south boundary of census block 191530114042143 and the middle channel of the Des Moines river, then proceeding southerly along the middle channel of the Des Moines river until it intersects the south corporate limit of the city of Johnston, then proceeding westerly along the corporate limits of the city of Johnston until it intersects the north corporate limit of the city of Urbandale, then proceeding first westerly, then in a counterclockwise manner along the corporate limits of the city of Urbandale until it intersects Northwest Seventy-second street, then proceeding southerly along Northwest Seventy-second street until it intersects Seventy-second street, then proceeding southerly along Seventy-second street and its extension until it intersects Aurora avenue, then proceeding west along Aurora avenue until it intersects Seventy-fifth street, then proceeding northerly along Seventy-fifth street until it intersects Meredith drive, then proceeding west along Meredith drive until it intersects Eighty-sixth street, then proceeding north along Eighty-sixth street until it intersects the corporate limits of the city of Urbandale, then proceeding first north, then in a counterclockwise manner along the corporate limits of the city of Urbandale until it intersects the west boundary of Polk county, then proceeding north along the boundary of Polk county until it intersects the corporate limits of the city of Granger, then proceeding first southeasterly, then in a counterclockwise manner along the corporate limits of the city of Granger until it intersects the west boundary of Polk county, then proceeding north along the boundary of Polk county to the point of origin.

40. The fortieth representative district in Polk county shall consist of that portion of the city of Urbandale bounded by a line commencing at the point the south corporate limit of the city of Urbandale intersects the west boundary of Polk county, then proceeding north along the boundary of Polk county until it intersects the corporate limit of the city of Urbandale, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Urbandale until it intersects Eighty-sixth street, then proceeding south along Eighty-sixth street until it intersects Meredith drive, then proceeding east along Meredith

drive until it intersects Seventy-fifth street, then proceeding southerly along Seventy-fifth street until it intersects Aurora avenue, then proceeding east along Aurora avenue until it intersects Seventy-second street, then proceeding northerly along Seventy-second street and its extension until it intersects Northwest Seventy-second street, then proceeding northerly along Northwest Seventy-second street until it intersects the north corporate limit of the city of Urbandale, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Urbandale to the point of origin.

41. The forty-first representative district in Polk county shall consist of that portion of Polk county bounded by a line commencing at the point the south boundary of Polk county intersects the east corporate limit of the city of West Des Moines, then proceeding north along the corporate limits of the city of West Des Moines until it intersects the south corporate limit of the city of Des Moines, then proceeding first north, then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects University avenue, then proceeding east along University avenue until it intersects Forty-first street, then proceeding north along Forty-first street until it intersects Forest avenue, then proceeding east along Forest avenue until it intersects Thirtieth street, then proceeding south along Thirtieth street until it intersects Thirtieth street and its extension, then proceeding south along Thirtieth street and its extension until it intersects University avenue, then proceeding east along University avenue until it intersects Twenty-fifth street, then proceeding south along Twenty-fifth street until it intersects School street, then proceeding west along School street until it intersects Twenty-eighth street, then proceeding south along Twenty-eighth street until it intersects the eastbound lanes of Interstate 235, then proceeding easterly along the eastbound lanes of Interstate 235 until it intersects Martin Luther King Jr. parkway, then proceeding south along Martin Luther King Jr. parkway until it intersects School street, then proceeding easterly along School street until it intersects the entrance ramp to the eastbound lanes of Interstate 235, then proceeding easterly along the entrance ramp to the eastbound lanes of Interstate 235 until it intersects Eighteenth street and its extension, then proceeding south along Eighteenth street and its extension until it intersects Center street, then proceeding east along Center street until it intersects Seventeenth street, then proceeding southerly along Seventeenth street until it intersects Grand avenue, then proceeding westerly along Grand avenue until it intersects Eighteenth street, then proceeding southerly along Eighteenth street until it intersects Fleur drive, then proceeding southerly along Fleur drive until it intersects the south boundary of Polk county, then proceeding westerly along the boundary of Polk county to the point of origin.

42. The forty-second representative district shall consist of:

a. In Polk county, that portion of Bloomfield township and the city of West Des Moines bounded by a line commencing at the point the west boundary of Polk county intersects Ashworth road, then proceeding east along Ashworth road until it intersects Interstate 35, then proceeding south along Interstate 35 until it intersects E.P. True parkway, then proceeding easterly along E.P. True parkway until it intersects Thirty-ninth street, then proceeding north along Thirty-ninth street until it intersects Ashworth road, then proceeding east along Ashworth road until it intersects Vine street, then proceeding southeasterly along Vine street until it intersects Grand avenue, then proceeding northeasterly along Grand avenue until it intersects Sixteenth street, then proceeding northerly along Sixteenth street until it intersects Ashworth road, then proceeding west along Ashworth road until it intersects Sixteenth street, then proceeding northerly along Sixteenth street until it intersects Pleasant street, then proceeding westerly along Pleasant street until it intersects Seventeenth street, then proceeding northerly along Seventeenth street until it intersects the eastbound lanes of Interstate 235, then proceeding easterly along the eastbound lanes of Interstate 235 until it intersects the east corporate limit of the city of West Des Moines, then proceeding first south, then in a clockwise manner along the corporate limits of the city of West Des Moines until it intersects the south boundary of Polk county, then proceeding first west, then in a clockwise manner along the boundary of Polk county to the point of origin.

b. In Warren county, that portion of Linn township bounded by a line commencing at the point the north boundary of Warren county intersects the west corporate limit of the city of Norwalk, then proceeding south along the corporate limits of the city of Norwalk until it

intersects the north corporate limit of the city of Cumming, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Cumming until it intersects the west boundary of Warren county, then proceeding first north, then in a clockwise manner along the boundary of Warren county to the point of origin.

43. The forty-third representative district shall consist of that portion of Polk county bounded by a line commencing at the point the west boundary of Polk county intersects Ashworth road, then proceeding east along Ashworth road until it intersects Interstate 35, then proceeding south along Interstate 35 until it intersects E.P. True parkway, then proceeding easterly along E.P. True parkway until it intersects Thirty-ninth street, then proceeding north along Thirty-ninth street until it intersects Ashworth road, then proceeding east along Ashworth road until it intersects Vine street, then proceeding southeasterly along Vine street until it intersects Grand avenue, then proceeding northeasterly along Grand avenue until it intersects Sixteenth street, then proceeding northerly along Sixteenth street until it intersects Ashworth road, then proceeding west along Ashworth road until it intersects Sixteenth street, then proceeding northerly along Sixteenth street until it intersects Pleasant street, then proceeding westerly along Pleasant street until it intersects Seventeenth street, then proceeding northerly along Seventeenth street until it intersects the eastbound lanes of Interstate 235, then proceeding easterly along the eastbound lanes of Interstate 235 until it intersects the west corporate limit of the city of Windsor Heights, then proceeding first south, then in a counterclockwise manner along the corporate limits of the city of Windsor Heights until it intersects Sixty-third street, then proceeding north along Sixty-third street until it intersects Hickman road, then proceeding west along Hickman road until it intersects the west corporate limit of the city of Des Moines, then proceeding north along the corporate limits of the city of Des Moines until it intersects the south corporate limit of the city of Urbandale, then proceeding west along the corporate limits of the city of Urbandale until it intersects the west boundary of Polk county, then proceeding southerly along the boundary of Polk county to the point of origin.

44. The forty-fourth representative district in Dallas county shall consist of:

a. The city of Waukee, that portion of the city of Clive in Dallas county, and that portion of the city of West Des Moines in Dallas county.

b. That portion of Boone township bounded by a line commencing at the point the west boundary of Boone township intersects the south boundary of Walnut township, then proceeding east along the south boundary of Walnut township until it intersects the corporate limits of the city of Waukee, then proceeding first east, then in a counterclockwise manner along the corporate limits of the city of Waukee until it intersects the west boundary of Boone township, then proceeding north along the boundary of Boone township to the point of origin.

45. The forty-fifth representative district in Story County shall consist of:

a. The city of Kelley.

b. That portion of Milford township lying outside the corporate limits of the city of Ames, those portions of Washington township lying outside the corporate limits of the city of Kelley and the city of Ames, and those portions of Grant township lying outside the corporate limits of the city of Ames and not contained in the forty-ninth representative district.

c. That portion of the city of Ames bounded by a line commencing at the point the north corporate limit of the city of Ames intersects Grand avenue, then proceeding south along Grand avenue until it intersects Twenty-eighth street, then proceeding east along Twenty-eighth street until it intersects Luther drive, then proceeding southerly along Luther drive until it intersects Jensen avenue, then proceeding south along Jensen avenue until it intersects Twenty-fourth street, then proceeding west along Twenty-fourth street until it intersects Grand avenue, then proceeding south along Grand avenue until it intersects Lincoln way, then proceeding west along Lincoln way until it intersects Beach avenue, then proceeding south along Beach avenue until it intersects Greeley street, then proceeding westerly along Greeley street until it intersects Pearson avenue, then proceeding westerly along Pearson avenue until it intersects Sunset drive, then proceeding westerly along Sunset drive until it intersects Ash avenue, then proceeding south along Ash avenue until it intersects Knapp street, then proceeding west along Knapp street until it intersects Hayward

avenue, then proceeding north along Hayward avenue until it intersects Lincoln way, then proceeding west along Lincoln way until it intersects Colorado avenue, then proceeding north along Colorado avenue until it intersects West street, then proceeding west along West street until it intersects North Franklin avenue, then proceeding north along North Franklin avenue until it intersects Oakland street, then proceeding easterly along Oakland street until it intersects Hyland avenue, then proceeding north along Hyland avenue until it intersects Clear creek, then proceeding westerly along Clear creek until it intersects North Dakota avenue, then proceeding north along North Dakota avenue until it intersects Ontario street, then proceeding west along Ontario street until it intersects Idaho avenue, then proceeding northerly along Idaho avenue until it intersects the north corporate limit of the city of Ames, then proceeding first west, then in a counterclockwise manner along the corporate limits of the city of Ames to the point of origin.

46. The forty-sixth representative district in Story county shall consist of that portion of the city of Ames bounded by a line commencing at the point the north corporate limit of the city of Ames intersects Grand avenue, then proceeding south along Grand avenue until it intersects Twenty-eighth street, then proceeding east along Twenty-eighth street until it intersects Luther drive, then proceeding southerly along Luther drive until it intersects Jensen avenue, then proceeding south along Jensen avenue until it intersects Twenty-fourth street, then proceeding west along Twenty-fourth street until it intersects Grand avenue, then proceeding south along Grand avenue until it intersects Lincoln way, then proceeding west along Lincoln way until it intersects Beach avenue, then proceeding south along Beach avenue until it intersects Greeley street, then proceeding westerly along Greeley street until it intersects Pearson avenue, then proceeding westerly along Pearson avenue until it intersects Sunset drive, then proceeding westerly along Sunset drive until it intersects Ash avenue, then proceeding south along Ash avenue until it intersects Knapp street, then proceeding west along Knapp street until it intersects Hayward avenue, then proceeding north along Hayward avenue until it intersects Lincoln way, then proceeding west along Lincoln way until it intersects Colorado avenue, then proceeding north along Colorado avenue until it intersects West street, then proceeding west along West street until it intersects North Franklin avenue, then proceeding north along North Franklin avenue until it intersects Oakland street, then proceeding easterly along Oakland street until it intersects Hyland avenue, then proceeding north along Hyland avenue until it intersects Clear creek, then proceeding westerly along Clear creek until it intersects North Dakota avenue, then proceeding north along North Dakota avenue until it intersects Ontario street, then proceeding west along Ontario street until it intersects Idaho avenue, then proceeding northerly along Idaho avenue until it intersects the north corporate limit of the city of Ames, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Ames to the point of origin.

47. The forty-seventh representative district shall consist of:

a. Greene county.

b. In Boone county:

(1) The cities of Fraser and Luther.

(2) Amaqua, Beaver, Cass, Des Moines, Grant, Marcy, Peoples, Pilot Mound, Union, Worth, and Yell townships, and that portion of Douglas township lying outside the corporate limits of the city of Madrid.

48. The forty-eighth representative district shall consist of:

a. Hamilton county.

b. In Boone county:

(1) The city of Madrid.

(2) Garden, Harrison, and Jackson townships, that portion of Colfax township lying outside the corporate limits of the city of Luther, and that portion of Dodge township lying outside the corporate limits of the city of Fraser.

c. In Story county:

(1) That portion of Franklin township lying outside the corporate limits of the city of Ames and that portion of Lafayette township lying outside the corporate limits of the city of Story City.

(2) That portion of Palestine township bounded by a line commencing at the point the east corporate limit of the city of Sheldahl intersects the south boundary of Story county, then proceeding north along the corporate limits of the city of Sheldahl until it intersects the south corporate limit of the city of Slater, then proceeding first east, then in a counterclockwise manner along the corporate limits of the city of Slater until it intersects the west boundary of Story county, then proceeding first south, then east, along the boundary of Story county to the point of origin.

d. In Webster county, Burnside, Dayton, Hardin, Otho, Pleasant Valley, Sumner, Webster, and Yell townships, and that portion of Washington township lying outside the corporate limits of the city of Duncombe.

49. The forty-ninth representative district shall consist of:

a. In Hardin county:

(1) The city of Eldora.

(2) Concord, Eldora, Grant, Pleasant, Providence, Sherman, Tipton, and Union townships.

b. In Story county:

(1) The city of Story City.

(2) Collins, Howard, Indian Creek, Lincoln, Nevada, New Albany, Richland, Sherman, Union, and Warren townships, and that portion of Palestine township lying outside the corporate limits of the city of Kelley and not contained in the forty-eighth representative district.

(3) That portion of the city of Nevada and Grant township bounded by a line commencing at the point the south corporate limit of the city of Nevada intersects the east boundary of Grant township, then proceeding first west, then in a clockwise manner along the corporate limits of the city of Nevada until it intersects the north boundary of Grant township, then proceeding east along the boundary of Grant township until it intersects the west boundary of Nevada township and the north corporate limit of the city of Nevada, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Nevada to the point of origin.

50. The fiftieth representative district shall consist of:

a. Grundy county.

b. In Butler county, Albion, Beaver, Jefferson, Monroe, Ripley, and Shell Rock townships.

c. In Hardin county, Alden, Buckeye, Clay, Ellis, Etna, Hardin, and Jackson townships.

51. The fifty-first representative district shall consist of:

a. Howard county.

b. Mitchell county.

c. Worth county.

d. In Winneshiek county, Bluffton, Burr Oak, Fremont, Lincoln, Madison, and Orleans townships.

52. The fifty-second representative district shall consist of:

a. Chickasaw county.

b. Floyd county.

c. In Cerro Gordo county, Dougherty, Falls, Owen, and Portland townships.

53. The fifty-third representative district in Cerro Gordo county shall consist of:

a. The city of Mason City.

b. Bath, Geneseo, Lime Creek, and Mason townships.

54. The fifty-fourth representative district shall consist of:

a. Franklin county.

b. In Butler county, Bennezzette, Butler, Coldwater, Dayton, Fremont, Jackson, Madison, Pittsford, Washington, and West Point townships.

c. In Cerro Gordo county:

(1) The city of Clear Lake.

(2) Clear Lake, Grant, Grimes, Lake, Lincoln, Mount Vernon, Pleasant Valley, and Union townships.

55. The fifty-fifth representative district shall consist of:

a. In Clayton county, Boardman, Highland, and Marion townships.

- b. In Fayette county:
    - (1) The cities of Fayette and West Union.
    - (2) Auburn, Bethel, Clermont, Dover, Eden, Illyria, Pleasant Valley, Union, Westfield, and Windsor townships.
  - c. In Winneshiek county, Bloomfield, Calmar, Canoe, Decorah, Frankville, Glenwood, Hesper, Highland, Jackson, Military, Pleasant, Springfield, Sumner, and Washington townships.
56. The fifty-sixth representative district shall consist of:
- a. Allamakee county.
  - b. In Clayton county, Buena Vista, Cass, Clayton, Cox Creek, Elk, Farmersburg, Garnavillo, Giard, Grand Meadow, Jefferson, Lodomillo, Mallory, Mendon, Millville, Monona, Read, Sperry, Volga, and Wagner townships.
57. The fifty-seventh representative district in Dubuque county consists of:
- a. The city of Asbury.
  - b. That portion of Center township bounded by a line commencing at the point the east boundary of Center township intersects the north corporate limits of the city of Asbury, then proceeding first south, then in a counterclockwise manner along the corporate limits of the city of Asbury until it intersects the corporate limits of the city of Dubuque, then proceeding first west, then in a counterclockwise manner along the corporate limits of the city of Dubuque until it intersects the east boundary of Center township, then proceeding south along the east boundary of Center township until it intersects the corporate limits of the city of Dubuque, then proceeding first south, then in a counterclockwise manner along the corporate limits of the city of Dubuque until it intersects the south boundary of Center township, then proceeding first west, then in a clockwise manner along the boundary of Center township to the point of origin.
  - c. Liberty, Concord, Jefferson, Peru, New Wine, Iowa, Dodge, Taylor, Mosalem, Prairie Creek, and Vernon townships, and that portion of Washington township lying outside the corporate limits of the city of Zwingle.
  - d. That portion of Table Mound township not contained in the ninety-ninth representative district.
58. The fifty-eighth representative district shall consist of:
- a. The city of Zwingle.
  - b. Jackson county.
  - c. In Dubuque county, Cascade and Whitewater townships.
  - d. In Jones county, Clay, Greenfield, Hale, Madison, Oxford, Richland, Rome, Scotch Grove, Washington, and Wyoming townships, and that portion of Fairview township not contained in the ninety-sixth representative district.
59. The fifty-ninth representative district in Black Hawk county consists of that portion of the city of Cedar Falls bounded by a line commencing at the point the east corporate limits of the city of Cedar Falls intersects East Greenhill road, then proceeding westerly along East Greenhill road until it intersects Cedar Heights drive, then proceeding north along Cedar Heights drive until it intersects Greenhill drive and its extension, then proceeding west along Greenhill drive and its extension until it intersects Hillside drive, then proceeding north along Hillside drive until it intersects Valley High drive, then proceeding west along Valley High drive until it intersects Clearview drive, then proceeding north along Clearview drive until it intersects Primrose drive, then proceeding west along Primrose drive until it intersects Rownd street, then proceeding north along Rownd street until it intersects Primrose drive, then proceeding westerly along Primrose drive until it intersects Maryhill drive, then proceeding southerly along Maryhill drive until it intersects Carlton drive, then proceeding northerly along Carlton drive until it intersects Orchard drive, then proceeding west along Orchard drive until it intersects South Main street, then proceeding north along South Main street until it intersects Oregon road, then proceeding easterly along Oregon road until it intersects Dallas drive, then proceeding north along Dallas drive until it intersects Utah road, then proceeding east along Utah road until it intersects Tucson drive, then proceeding north along Tucson drive until it intersects Idaho road, then proceeding east along Idaho road until it intersects Boulder drive, then proceeding north along Boulder

drive until it intersects University avenue, then proceeding west along University avenue until it intersects Grove street, then proceeding north along Grove street until it intersects East Seerley boulevard, then proceeding westerly along East Seerley boulevard until it intersects West Seerley boulevard, then proceeding westerly along West Seerley boulevard until it intersects College street, then proceeding south along College street until it intersects University avenue, then proceeding southwestwardly along University avenue until it intersects the corporate limits of the city of Cedar Falls, then proceeding first west, then in a clockwise manner along the corporate limits of the city of Cedar Falls to the point of origin.

60. The sixtieth representative district in Black Hawk county consists of:

a. Black Hawk, Cedar Falls, and Lincoln townships.

b. That portion of the city of Cedar Falls bounded by a line commencing at the point the east corporate limits of the city of Cedar Falls intersects East Greenhill road, then proceeding westerly along East Greenhill road until it intersects Cedar Heights drive, then proceeding north along Cedar Heights drive until it intersects Greenhill drive and its extension, then proceeding west along Greenhill drive and its extension until it intersects Hillside drive, then proceeding north along Hillside drive until it intersects Valley High drive, then proceeding west along Valley High drive until it intersects Clearview drive, then proceeding north along Clearview drive until it intersects Primrose drive, then proceeding west along Primrose drive until it intersects Rownd street, then proceeding north along Rownd street until it intersects Primrose drive, then proceeding westerly along Primrose drive until it intersects Maryhill drive, then proceeding southerly along Maryhill drive until it intersects Carlton drive, then proceeding northerly along Carlton drive until it intersects Orchard drive, then proceeding west along Orchard drive until it intersects South Main street, then proceeding north along South Main street until it intersects Oregon road, then proceeding easterly along Oregon road until it intersects Dallas drive, then proceeding north along Dallas drive until it intersects Utah road, then proceeding east along Utah road until it intersects Tucson drive, then proceeding north along Tucson drive until it intersects Idaho road, then proceeding east along Idaho road until it intersects Boulder drive, then proceeding north along Boulder drive until it intersects University avenue, then proceeding west along University avenue until it intersects Grove street, then proceeding north along Grove street until it intersects East Seerley boulevard, then proceeding westerly along East Seerley boulevard until it intersects West Seerley boulevard, then proceeding westerly along West Seerley boulevard until it intersects College street, then proceeding south along College street until it intersects University avenue, then proceeding southwestwardly along University avenue until it intersects the corporate limits of the city of Cedar Falls, then proceeding first east, then in a counterclockwise manner along the corporate limits of the city of Cedar Falls to the point of origin.

c. That portion of the city of Waterloo bounded by a line commencing at the point Rainbow drive intersects the west corporate limit of the city of Waterloo, then proceeding southeasterly along Rainbow drive until it intersects Hanna boulevard, then proceeding southerly along Hanna boulevard until it intersects Maxine avenue, then proceeding west along Maxine avenue until it intersects Auburn street, then proceeding south along Auburn street until it intersects Maynard avenue, then proceeding west along Maynard avenue until it intersects Beverly Hill street, then proceeding southerly along Beverly Hill street until it intersects Carriage Hill drive, then proceeding southeasterly along Carriage Hill drive until it intersects Stephan avenue, then proceeding southerly along Stephan avenue until it intersects Falls avenue, then proceeding southwestwardly along Falls avenue until it intersects University avenue, then proceeding southeasterly along University avenue until it intersects Ansbrough avenue, then proceeding south along Ansbrough avenue until it intersects Black Hawk creek, then proceeding easterly along Black Hawk creek until it intersects Fletcher avenue, then proceeding south along Fletcher avenue until it intersects Campbell avenue, then proceeding east along Campbell avenue until it intersects West Fourth street, then proceeding northeasterly along West Fourth street until it intersects Bayard street, then proceeding southerly along Bayard street until it intersects Byron avenue, then proceeding west along Byron avenue until it intersects Hale street, then proceeding south along Hale street until it intersects Carolina avenue, then proceeding west along Carolina avenue until

it intersects Kimball avenue, then proceeding south along Kimball avenue until it intersects East San Marnan drive, then proceeding east along East San Marnan drive until it intersects Hawkeye road, then proceeding south along Hawkeye road until it intersects the south corporate limit of the city of Waterloo, then proceeding first west, then in a clockwise manner along the corporate limits of the city of Waterloo to the point of origin.

61. The sixty-first representative district in Black Hawk county shall consist of:

a. Orange, Cedar, Fox, and Spring Creek townships.

b. That portion of Poyner township bounded by a line commencing at the point Indian Creek road intersects the east boundary of Poyner township, then proceeding first south, and then in a clockwise manner along the boundary of Poyner township until it intersects Gilbertville road, then proceeding southeasterly along Gilbertville road until it intersects Indian Creek road, then proceeding southeasterly, then east, along Indian Creek road to the point of origin.

c. That portion of the city of Waterloo bounded by a line commencing at the point the east corporate limit of the city of Waterloo intersects the main channel of the Cedar river, then proceeding northwesterly along the main channel of the Cedar river until it intersects Conger street, then proceeding southwesterly along Conger street until it intersects West Conger street, then proceeding southwesterly along West Conger street until it intersects Westfield avenue, then proceeding southeasterly along Westfield avenue until it intersects Black Hawk creek, then proceeding southwesterly along Black Hawk creek until it intersects Fletcher avenue, then proceeding south along Fletcher avenue until it intersects Campbell avenue, then proceeding east along Campbell avenue until it intersects West Fourth street, then proceeding northeasterly along West Fourth street until it intersects Bayard street, then proceeding southerly along Bayard street until it intersects Byron avenue, then proceeding west along Byron avenue until it intersects Hale street, then proceeding south along Hale street until it intersects Carolina avenue, then proceeding west along Carolina avenue until it intersects Kimball avenue, then proceeding south along Kimball avenue until it intersects East San Marnan drive, then proceeding east along East San Marnan drive until it intersects Hawkeye road, then proceeding south along Hawkeye road until it intersects the south corporate limit of the city of Waterloo, then proceeding first east, then in a counterclockwise manner along the corporate limits of the city of Waterloo to the point of origin.

62. The sixty-second representative district in Black Hawk county shall consist of:

a. The cities of Elk Run Heights, Evansdale, and Raymond.

b. That portion of the city of Waterloo bounded by a line commencing at the point Rainbow drive intersects the west corporate limit of the city of Waterloo, then proceeding first north, then in a clockwise manner along the corporate limits of the city of Waterloo until it intersects the main channel of the Cedar river, then proceeding northwesterly along the main channel of the Cedar river until it intersects Conger street, then proceeding southwesterly along Conger street until it intersects West Conger street, then proceeding southwesterly along West Conger street until it intersects Westfield avenue, then proceeding southeasterly along Westfield avenue until it intersects Black Hawk creek, then proceeding southwesterly along Black Hawk creek until it intersects Ansborough avenue, then proceeding north along Ansborough avenue until it intersects University avenue, then proceeding northwesterly along University avenue until it intersects Falls avenue, then proceeding northerly along Falls avenue until it intersects Stephan avenue, then proceeding northerly along Stephan avenue until it intersects Carriage Hill drive, then proceeding westerly along Carriage Hill drive until it intersects Beverly Hill street, then proceeding northerly along Beverly Hill street until it intersects Maynard avenue, then proceeding east along Maynard avenue until it intersects Auburn street, then proceeding north along Auburn street until it intersects Maxine avenue, then proceeding east along Maxine avenue until it intersects Hanna boulevard, then proceeding northerly along Hanna boulevard until it intersects Rainbow drive, then proceeding northwesterly along Rainbow drive to the point of origin.

63. The sixty-third representative district shall consist of:

a. Bremer county.

b. In Black Hawk county, Barclay, Bennington, East Waterloo, Lester, Mount Vernon,

Union, and Washington townships, and that portion of Poyner township not contained in the sixty-first and sixty-second representative districts.

64. The sixty-fourth representative district shall consist of:

a. In Buchanan county, Buffalo, Byron, Fairbank, Fremont, Hazleton, Jefferson, Liberty, Madison, Perry, Sumner, Washington, and Westburg townships.

b. In Fayette county:

(1) That portion of the city of Sumner in Fayette county.

(2) Banks, Center, Fairfield, Fremont, Harlan, Jefferson, Oran, Putnam, Scott, and Smithfield townships.

65. The sixty-fifth representative district in Linn county consists of that portion of the city of Cedar Rapids and Bertram township bounded by a line commencing at the point the east corporate limit of the city of Cedar Rapids intersects Thirty-fifth street drive Southeast, then proceeding westerly along Thirty-fifth street drive Southeast until it intersects First avenue East, then proceeding southerly along First avenue East until it intersects Nineteenth street Northeast, then proceeding northwesterly along Nineteenth street Northeast until it intersects E avenue Northeast, then proceeding northeasterly along E avenue Northeast until it intersects Twentieth street Northeast, then proceeding northerly along Twentieth street Northeast until it intersects Prairie drive Northeast, then proceeding northwesterly along Prairie drive Northeast until it intersects Robinwood lane Northeast, then proceeding westerly along Robinwood lane Northeast until it intersects Elmhurst drive Northeast, then proceeding westerly along Elmhurst drive Northeast until it intersects Oakland road Northeast, then proceeding southerly along Oakland road Northeast until it intersects F avenue Northeast, then proceeding southwestwardly along F avenue Northeast until it intersects Interstate 380, then proceeding southerly along Interstate 380 until it intersects Union Pacific Railroad tracks, then proceeding southerly along Union Pacific Railroad tracks until it intersects Cedar Rapids and Iowa City Railway tracks, then proceeding first southerly, then westerly along Cedar Rapids and Iowa City Railway tracks until it intersects First street Southwest, then proceeding southerly along First street Southwest until it intersects C street Southwest, then proceeding southeasterly along C street Southwest until it intersects Sixteenth avenue Southwest, then proceeding southwestwardly along Sixteenth avenue Southwest until it intersects Second street Southwest, then proceeding southerly along Second street Southwest until it intersects Seventeenth avenue Southwest, then proceeding easterly along Seventeenth avenue Southwest until it intersects Second street Southwest, then proceeding south along Second street Southwest until it intersects Wilson avenue Southwest, then proceeding west along Wilson avenue Southwest until it intersects Second street Southwest, then proceeding south along Second street Southwest until it intersects Twenty-sixth avenue Southwest, then proceeding west along Twenty-sixth avenue Southwest until it intersects J street Southwest, then proceeding southerly along J street Southwest until it intersects Union Pacific Railroad tracks, then proceeding easterly along Union Pacific Railroad tracks until it intersects the middle channel of the Cedar river, then proceeding easterly along the middle channel of the Cedar river until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first north, then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids to the point of origin.

66. The sixty-sixth representative district in Linn county consists of that portion of the city of Cedar Rapids and Monroe township bounded by a line commencing at the point the corporate limit of the city of Cedar Rapids and the south corporate limit of the city of Robins intersects Council street Northeast, then proceeding south along Council street Northeast until it intersects Collins road Northeast, then proceeding easterly along Collins road Northeast until it intersects Twixt Town road Northeast, then proceeding northerly along Twixt Town road Northeast until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects Thirty-fifth street drive Southeast, then proceeding westerly along Thirty-fifth street drive Southeast until it intersects First avenue East, then proceeding southerly along First avenue East until it intersects Nineteenth street Northeast, then proceeding northwesterly along Nineteenth street Northeast until it intersects E avenue

Northeast, then proceeding northeasterly along E avenue Northeast until it intersects Twentieth street Northeast, then proceeding northerly along Twentieth street Northeast until it intersects Prairie drive Northeast, then proceeding northwesterly along Prairie drive Northeast until it intersects Robinwood lane Northeast, then proceeding westerly along Robinwood lane Northeast until it intersects Elmhurst drive Northeast, then proceeding westerly along Elmhurst drive Northeast until it intersects Oakland road Northeast, then proceeding southerly along Oakland road Northeast until it intersects F avenue Northeast, then proceeding southwesterly along F avenue Northeast until it intersects Interstate 380, then proceeding southerly along Interstate 380 until it intersects Union Pacific Railroad tracks, then proceeding northwesterly along Union Pacific Railroad tracks until it intersects the middle channel of the Cedar river, then proceeding westerly along the middle channel of the Cedar river until it intersects the east boundary of Clinton township and the corporate limits of the city of Cedar Rapids, then proceeding first southwesterly, then in a clockwise manner along the corporate limits of the city of Cedar Rapids to the point of origin.

67. The sixty-seventh representative district in Linn county consists of:

a. That portion of the city of Robins, the city of Hiawatha, and Monroe township, bounded by a line commencing at the point the south corporate limit of the city of Robins intersects the corporate limits of the city of Cedar Rapids, then proceeding southwesterly along the corporate limits of the city of Cedar Rapids until it intersects the corporate limits of the city of Hiawatha, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Hiawatha until it intersects the west corporate limit of the city of Robins, then proceeding first north, then in a clockwise manner along the corporate limits of the city of Robins to the point of origin.

b. That portion of the city of Marion and Marion township bounded by a line commencing at the point the corporate limits of the city of Marion and the south boundary of that portion of Marion township lying outside the corporate limits of the city of Marion intersect Winslow road, then proceeding southerly along Winslow road until it intersects Indian Creek road, then proceeding southwesterly along Indian Creek road until it intersects Twenty-ninth avenue, then proceeding east along Twenty-ninth avenue until it intersects Twenty-fourth street, then proceeding southerly along Twenty-fourth street until it intersects Seventeenth avenue, then proceeding west along Seventeenth avenue until it intersects Northview drive, then proceeding south along Northview drive until it intersects Fifteenth avenue, then proceeding westerly along Fifteenth avenue until it intersects Douglas court, then proceeding north along Douglas court until it intersects Henderson drive, then proceeding westerly along Henderson drive until it intersects English boulevard, then proceeding southerly along English boulevard until it intersects Park avenue, then proceeding west along Park avenue until it intersects Lincoln drive, then proceeding southerly along Lincoln drive until it intersects Thirteenth avenue, then proceeding west along Thirteenth avenue until it intersects Seventh street, then proceeding south along Seventh street until it intersects Central avenue, then proceeding northwesterly along Central avenue until it intersects Alburnett road, then proceeding northwesterly along Alburnett road until it intersects Indian creek, then proceeding southwesterly along Indian creek until it intersects West Eighth avenue, then proceeding westerly along West Eighth avenue until it intersects Lindale drive, then proceeding southwesterly along Lindale drive until it intersects Chicago Central and Pacific Railroad tracks, then proceeding westerly along Chicago Central and Pacific Railroad tracks until it intersects the corporate limits of the city of Marion, then proceeding first north, then in a clockwise manner along the corporate limits of the city of Marion to the point of origin.

c. That portion of the city of Cedar Rapids bounded by a line commencing at the point the corporate limit of the city of Cedar Rapids and the south corporate limit of the city of Robins intersects Council street Northeast, then proceeding south along Council street Northeast until it intersects Collins road Northeast, then proceeding easterly along Collins road Northeast until it intersects Twixt Town road Northeast, then proceeding northerly along Twixt Town road Northeast until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first west, then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids to the point of origin.

68. The sixty-eighth representative district in Linn county consists of:

a. The city of Ely.  
b. Putnam township, and that portion of Bertram township not contained in the sixty-fifth representative district.

c. That portion of the city of Marion and Marion township bounded by a line commencing at the point the corporate limit of the city of Marion and the south boundary of that portion of Marion township lying outside the corporate limits of the city of Marion intersect Winslow road, then proceeding southerly along Winslow road until it intersects Indian Creek road, then proceeding southwesterly along Indian Creek road until it intersects Twenty-ninth avenue, then proceeding east along Twenty-ninth avenue until it intersects Twenty-fourth street, then proceeding southerly along Twenty-fourth street until it intersects Seventeenth avenue, then proceeding west along Seventeenth avenue until it intersects Northview drive, then proceeding south along Northview drive until it intersects Fifteenth avenue, then proceeding westerly along Fifteenth avenue until it intersects Douglas court, then proceeding north along Douglas court until it intersects Henderson drive, then proceeding westerly along Henderson drive until it intersects English boulevard, then proceeding southerly along English boulevard until it intersects Park avenue, then proceeding west along Park avenue until it intersects Lincoln drive, then proceeding southerly along Lincoln drive until it intersects Thirteenth avenue, then proceeding west along Thirteenth avenue until it intersects Seventh street, then proceeding south along Seventh street until it intersects Central avenue, then proceeding northwesterly along Central avenue until it intersects Alburnett road, then proceeding northwesterly along Alburnett road until it intersects Indian creek, then proceeding southwesterly along Indian creek until it intersects West Eighth avenue, then proceeding westerly along West Eighth avenue until it intersects Lindale drive, then proceeding southwesterly along Lindale drive until it intersects Chicago Central and Pacific Railroad tracks, then proceeding westerly along Chicago Central and Pacific Railroad tracks until it intersects the east corporate limit of the city of Cedar Rapids, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the north boundary of Bertram township, then proceeding east along the boundary of Bertram township until it intersects U.S. highway 151, then proceeding north along U.S. highway 151 until it intersects the south corporate limit of the city of Marion, then proceeding first east, then in a counterclockwise manner along the corporate limits of the city of Marion to the point of origin.

69. The sixty-ninth representative district in Linn county consists of:

a. Fairfax township and that portion of College township lying outside the corporate limits of the city of Ely.

b. That portion of the city of Cedar Rapids bounded by a line commencing at the point the west corporate limit of the city of Cedar Rapids intersects Sixteenth avenue Southwest, then proceeding easterly along Sixteenth avenue Southwest until it intersects Eighteenth street Southwest, then proceeding northerly along Eighteenth street Southwest until it intersects First avenue Northwest, then proceeding easterly along First avenue Northwest until it intersects Twelfth street Southwest, then proceeding southeasterly along Twelfth street Southwest until it intersects Third avenue Southwest, then proceeding east along Third avenue Southwest until it intersects Union Pacific Railroad tracks, then proceeding first northeasterly, then southeasterly along Union Pacific Railroad tracks until it intersects Cedar Rapids and Iowa City Railway tracks, then proceeding first southerly, then westerly along Cedar Rapids and Iowa City Railway tracks until it intersects First street Southwest, then proceeding southerly along First street Southwest until it intersects C street Southwest, then proceeding southeasterly along C street Southwest until it intersects Sixteenth avenue Southwest, then proceeding southwesterly along Sixteenth avenue Southwest until it intersects Second street Southwest, then proceeding southerly along Second street Southwest until it intersects Seventeenth avenue Southwest, then proceeding easterly along Seventeenth avenue Southwest until it intersects Second street Southwest, then proceeding south along Second street Southwest until it intersects Wilson avenue Southwest, then proceeding west along Wilson avenue Southwest until it intersects Second street Southwest, then proceeding south along Second street Southwest until it intersects Twenty-sixth avenue

Southwest, then proceeding west along Twenty-sixth avenue Southwest until it intersects J street Southwest, then proceeding southerly along J street Southwest until it intersects Union Pacific Railroad tracks, then proceeding easterly along Union Pacific Railroad tracks until it intersects the middle channel of the Cedar river, then proceeding easterly along the middle channel of the Cedar river until it intersects the corporate limit of the city of Cedar Rapids, then proceeding first north, then easterly along the corporate limits of the city of Cedar Rapids until it intersects the west boundary of Putnam township, then proceeding southerly along the boundary of Putnam township until it intersects the corporate limit of the city of Cedar Rapids, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Cedar Rapids to the point of origin.

70. The seventieth representative district in Linn county consists of:

a. Clinton township.

b. That portion of the city of Cedar Rapids bounded by a line commencing at the point the west corporate limit of the city of Cedar Rapids intersects Sixteenth avenue Southwest, then proceeding easterly along Sixteenth avenue Southwest until it intersects Eighteenth street Southwest, then proceeding northerly along Eighteenth street Southwest until it intersects First avenue Northwest, then proceeding easterly along First avenue Northwest until it intersects Twelfth street Southwest, then proceeding southeasterly along Twelfth street Southwest until it intersects Third avenue Southwest, then proceeding east along Third avenue Southwest until it intersects Union Pacific Railroad tracks, then proceeding northeasterly along Union Pacific Railroad tracks until it intersects the middle channel of the Cedar river, then proceeding westerly along the middle channel of the Cedar river until it intersects the east boundary of Clinton township and the corporate limits of the city of Cedar Rapids, then proceeding first south, then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids to the point of origin.

71. The seventy-first representative district in Marshall county shall consist of:

a. The city of Marshalltown.

b. Bangor, Liscomb, Marion, Taylor, and Vienna townships.

72. The seventy-second representative district shall consist of:

a. Tama county.

b. In Black Hawk county, Big Creek and Eagle townships.

c. In Marshall county, Eden, Greencastle, Jefferson, Liberty, Logan, Marietta, Minerva, State Center, and Washington townships, and those portions of Le Grand and Timber Creek townships lying outside the corporate limits of the city of Marshalltown.

73. The seventy-third representative district shall consist of:

a. The city of Wilton.

b. Cedar county.

c. In Johnson county, Big Grove, Cedar, Graham, Newport, and Scott townships.

74. The seventy-fourth representative district in Johnson county shall consist of:

a. The city of Coralville.

b. That portion of the city of Iowa City and West Lucas township bounded by a line commencing at the point the west corporate limit of the city of Iowa City intersects state highway 1, then proceeding northeasterly along state highway 1 until it intersects Sunset street, then proceeding northwesterly along Sunset street until it intersects Aber avenue, then proceeding westerly along Aber avenue until it intersects Teg drive, then proceeding first westerly, then northerly, along Teg drive until it intersects West Benton street, then proceeding west along West Benton street until it intersects Keswick drive, then proceeding first northerly, then easterly, along Keswick drive until it intersects Westgate street, then proceeding northerly along Westgate street until it intersects Melrose avenue, then proceeding westerly along Melrose avenue until it intersects Mormon Trek boulevard, then proceeding northerly along Mormon Trek boulevard until it intersects the south corporate limit of the city of Coralville, then proceeding westerly along the corporate limits of the city of Coralville until it intersects the west boundary of West Lucas township, then proceeding south along the boundary of West Lucas township until it intersects the corporate limits of the city of Iowa City, then proceeding first west, then in a counterclockwise manner along the corporate limits of the city of Iowa City to the point of origin.

c. That portion of Penn township and East Lucas township bounded by a line commencing at the point the west boundary of Penn township intersects the north corporate limit of the city of North Liberty, then proceeding first north, then in a clockwise manner along the boundary of Penn township until it intersects the north boundary of East Lucas township, then proceeding first east, then in a clockwise manner along the boundary of East Lucas township until it intersects the boundary of Penn township, then proceeding westerly along the boundary of Penn township until it intersects the corporate limits of the city of Coralville, then proceeding first west, then in a counterclockwise manner along the corporate limits of the city of Coralville until it intersects the south corporate limit of the city of North Liberty, then proceeding first northerly, then in a counterclockwise manner along the corporate limits of the city of North Liberty to the point of origin.

75. The seventy-fifth representative district shall consist of:

a. Benton county.

b. In Iowa county, Honey Creek, Marengo, and Washington townships, and that portion of Hilton township lying outside the corporate limits of the city of Williamsburg.

76. The seventy-sixth representative district shall consist of:

a. Poweshiek county.

b. In Iowa county:

(1) The city of Williamsburg.

(2) Dayton, English, Fillmore, Greene, Hartford, Iowa, Lenox, Lincoln, Pilot, Sumner, Troy, and York townships.

77. The seventy-seventh representative district in Johnson county shall consist of:

a. The city of North Liberty.

b. Fremont, Hardin, Jefferson, Lincoln, Madison, Monroe, Oxford, Pleasant Valley, Sharon, and Washington townships.

c. Those portions of Clear Creek and Union townships lying outside the corporate limits of the city of Coralville, that portion of Penn township not contained in the seventy-fourth representative district, that portion of Liberty township not contained in the eighty-sixth representative district, and that portion of West Lucas township not contained in the seventy-fourth or eighty-sixth representative district.

78. The seventy-eighth representative district shall consist of:

a. Keokuk county.

b. In Washington county, Cedar, Clay, Dutch Creek, English River, Franklin, Highland, Iowa, Jackson, Lime Creek, Oregon, Seventy-Six, and Washington townships.

79. The seventy-ninth representative district shall consist of:

a. In Mahaska county:

(1) The cities of Oskaloosa and University Park.

(2) Black Oak, Garfield, Jefferson, Lincoln, Madison, Prairie, Richland, Scott, and West Des Moines townships.

(3) That portion of East Des Moines township lying outside the corporate limits of the city of Eddyville, and that portion of Spring Creek township not contained in the eightieth representative district.

b. In Marion county, Lake Prairie township.

80. The eightieth representative district shall consist of:

a. The city of Eddyville.

b. Appanoose county.

c. Monroe county.

d. In Mahaska county:

(1) Adams, Cedar, Harrison, Monroe, Pleasant Grove, Union, and White Oak townships.

(2) That portion of Spring Creek township bounded by a line commencing at the point the north corporate limit of the city of University Park and the east corporate limit of the city of Oskaloosa intersects the west boundary of Spring Creek township, then proceeding first north, then in a clockwise manner along the boundary of Spring Creek township until it intersects the corporate limits of the city of University Park, then proceeding first north, then west, along the corporate limits of the city of University Park to the point of origin.

e. In Wapello county:

(1) Adams, Cass, Columbia, Highland, and Polk townships, and that portion of Richland township lying outside the corporate limits of the city of Ottumwa.

(2) That portion of Center township bounded by a line commencing at the point the north boundary of Center township intersects the west corporate limit of the city of Ottumwa, then proceeding first west, then in a counterclockwise manner along the boundary of Center township until it intersects the south corporate limit of the city of Ottumwa, then proceeding first west, then in a clockwise manner along the corporate limits of the city of Ottumwa to the point of origin.

81. The eighty-first representative district in Wapello county shall consist of:

a. The city of Ottumwa.

b. Agency, Competine, Dahlonga, Green, Keokuk, Pleasant, and Washington townships, and that portion of Center township not contained in the eightieth representative district.

82. The eighty-second representative district shall consist of:

a. Davis county.

b. Van Buren county.

c. In Jefferson county:

(1) The city of Fairfield.

(2) Black Hawk, Cedar, Center, Des Moines, Liberty, Locust Grove, Penn, and Polk townships.

83. The eighty-third representative district in Lee county shall consist of:

a. The city of Keokuk.

b. Des Moines, Green Bay, Jackson, Jefferson, Madison, Montrose, Van Buren, and Washington townships, and that portion of Charleston township lying outside the corporate limits of the city of Donnellson.

84. The eighty-fourth representative district shall consist of:

a. Henry county.

b. In Jefferson county, Buchanan, Lockridge, Round Prairie, and Walnut townships.

c. In Lee county:

(1) The city of Donnellson.

(2) Cedar, Denmark, Franklin, Harrison, Marion, Pleasant Ridge, and West Point townships.

d. In Washington county, Brighton, Crawford, and Marion townships.

85. The eighty-fifth representative district in Johnson county shall consist of that portion of the city of Iowa City bounded by a line commencing at the point the west corporate limit of the city of Iowa City intersects Second street, then proceeding southeasterly along Second street until it intersects South Riverside drive, then proceeding southerly along South Riverside drive until it intersects Newton road, then proceeding east along Newton road until it intersects the Iowa river, then proceeding southerly along the Iowa river until it intersects West Burlington street, then proceeding east along West Burlington street until it intersects East Burlington street, then proceeding east along East Burlington street until it intersects South Gilbert street, then proceeding southerly along South Gilbert street until it intersects the Iowa Interstate Railroad tracks, then proceeding southeasterly along the Iowa Interstate Railroad tracks until it intersects South Lucas street and its extension, then proceeding northerly along South Lucas street and its extension until it intersects Bowery street, then proceeding east along Bowery street until it intersects South Governor street, then proceeding north along South Governor street until it intersects East Burlington street, then proceeding east along East Burlington street until it intersects Muscatine avenue, then proceeding first southeasterly, then east, along Muscatine avenue until it intersects American Legion road Southeast, then proceeding east along American Legion road Southeast until it intersects the east corporate limit of the city of Iowa City, then proceeding first north, then in a counterclockwise manner along the corporate limits of the city of Iowa City to the point of origin.

86. The eighty-sixth representative district in Johnson county consists of:

a. The cities of Hills and University Heights.

b. That portion of Liberty, East Lucas, and West Lucas townships, and the city of Iowa City, bounded by a line commencing at the point First avenue intersects Second street on

the corporate limit of the city of Iowa City, then proceeding southeasterly along Second street until it intersects South Riverside drive, then proceeding southerly along South Riverside drive until it intersects Newton road, then proceeding east along Newton road until it intersects the Iowa river, then proceeding southerly along the Iowa river until it intersects West Burlington street, then proceeding east along West Burlington street until it intersects East Burlington street, then proceeding east along East Burlington street until it intersects South Gilbert street, then proceeding southerly along South Gilbert street until it intersects the Iowa Interstate Railroad tracks, then proceeding southeasterly along the Iowa Interstate Railroad tracks until it intersects South Lucas street and its extension, then proceeding northerly along South Lucas street and its extension until it intersects Bowery street, then proceeding east along Bowery street until it intersects South Governor street, then proceeding north along South Governor street until it intersects East Burlington street, then proceeding east along East Burlington street until it intersects Muscatine avenue, then proceeding first southeasterly, then east, along Muscatine avenue until it intersects American Legion road Southeast, then proceeding east along American Legion road Southeast until it intersects the east corporate limit of the city of Iowa City, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Iowa City until it intersects the east boundary of East Lucas township, then proceeding south along the boundary of East Lucas township until it intersects the north boundary of Pleasant Valley township, then proceeding first west, then in a counterclockwise manner along the boundary of Pleasant Valley township until it intersects the corporate limit of the city of Hills, then proceeding first west, then in a counterclockwise manner along the corporate limits of the city of Hills until it intersects the south corporate limit of the city of Iowa City, then proceeding first west, then in a clockwise manner along the corporate limits of the city of Iowa City until it intersects state highway 1, then proceeding northeasterly along state highway 1 until it intersects Sunset street, then proceeding northwesterly along Sunset street until it intersects Aber avenue, then proceeding westerly along Aber avenue until it intersects Teg drive, then proceeding first westerly, then northerly, along Teg drive until it intersects West Benton street, then proceeding west along West Benton street until it intersects Keswick drive, then proceeding first northerly, then easterly, along Keswick drive until it intersects Westgate street, then proceeding northerly along Westgate street until it intersects Melrose avenue, then proceeding westerly along Melrose avenue until it intersects Mormon Trek boulevard, then proceeding northerly along Mormon Trek boulevard until it intersects First avenue, then proceeding northeasterly along First avenue to the point of origin.

87. The eighty-seventh representative district in Des Moines county shall consist of:

- a. The cities of Burlington and West Burlington.
- b. Concordia and Tama townships.

88. The eighty-eighth representative district shall consist of:

a. Louisa county.

b. In Des Moines county:

(1) The cities of Danville, Mediapolis, and Middletown.

(2) Benton, Danville, Flint River, Franklin, Huron, Jackson, Pleasant Grove, Union, Washington, and Yellow Springs townships.

c. In Muscatine county:

(1) Cedar, Goshen, Lake, Orono, Pike, and Wapsinonoc townships, those portions of Moscow and Wilton townships lying outside the corporate limits of the city of Wilton, and that portion of Seventy-Six township lying outside the corporate limits of the city of Muscatine.

(2) That portion of Fruitland township bounded by a line commencing at the point the north boundary of Fruitland township intersects the west corporate limit of the city of Muscatine, then proceeding first west, then in a counterclockwise manner along the boundary of Fruitland township until it intersects the corporate limits of the city of Muscatine, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Muscatine to the point of origin.

89. The eighty-ninth district in Scott county consists of that portion of the city of Davenport bounded by a line commencing at the point the west corporate limit of the

city of Davenport intersects the Iowa Interstate Railroad tracks, then proceeding easterly along the Iowa Interstate Railroad tracks until it intersects West Forty-sixth street, then proceeding east along West Forty-sixth street until it intersects Wisconsin avenue, then proceeding north along Wisconsin avenue until it intersects West Kimberly road, then proceeding southeasterly along West Kimberly road until it intersects Wyoming avenue, then proceeding north along Wyoming avenue until it intersects West Silver creek, then proceeding easterly along West Silver creek until it intersects North Fairmount street, then proceeding south along North Fairmount street until it intersects West Forty-ninth street, then proceeding easterly along West Forty-ninth street until it intersects North Pine street, then proceeding north along North Pine street until it intersects Northwest boulevard, then proceeding northerly along Northwest boulevard until it intersects Ridgeview drive, then proceeding northeasterly along Ridgeview drive until it intersects North Division street, then proceeding southerly along North Division street until it intersects Northwest boulevard, then proceeding southeasterly along Northwest boulevard until it intersects North Harrison street, then proceeding southerly along North Harrison street until it intersects West Thirty-fifth street, then proceeding easterly along West Thirty-fifth street until it intersects Fair avenue, then proceeding north along Fair avenue until it intersects East Thirty-seventh street, then proceeding east along East Thirty-seventh street until it intersects North Brady street, then proceeding southerly along North Brady street until it intersects Brady street, then proceeding southerly along Brady street until it intersects East Thirtieth street, then proceeding west along East Thirtieth street until it intersects Dubuque street, then proceeding south along Dubuque street until it intersects East Thirtieth street, then proceeding west along East Thirtieth street until it intersects West Thirtieth street, then proceeding west along West Thirtieth street until it intersects Sheridan street, then proceeding south along Sheridan street until it intersects West Columbia avenue, then proceeding west along West Columbia avenue until it intersects North Main street, then proceeding south along North Main street until it intersects West Central Park avenue, then proceeding west along West Central Park avenue until it intersects North Harrison street, then proceeding southerly along North Harrison street until it intersects West Rusholme street, then proceeding westerly along West Rusholme street until it intersects Warren street, then proceeding southerly along Warren street until it intersects West Fifteenth street, then proceeding west along West Fifteenth street until it intersects North Marquette street, then proceeding south along North Marquette street until it intersects West Fifteenth street, then proceeding west along West Fifteenth street until it intersects North Sturdevant street, then proceeding south along North Sturdevant street until it intersects West Fourteenth street, then proceeding west along West Fourteenth street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding northerly along the Iowa Interstate Railroad tracks until it intersects West Pleasant street and its extension, then proceeding easterly along West Pleasant street and its extension until it intersects North Howell street, then proceeding northerly along North Howell street until it intersects Frisco drive, then proceeding northerly along Frisco drive until it intersects Hickory Grove road, then proceeding northwesterly along Hickory Grove road until it intersects West Central Park avenue, then proceeding west along West Central Park avenue until it intersects North Michigan avenue, then proceeding south along North Michigan avenue until it intersects West Lombard street, then proceeding east along West Lombard street until it intersects North Clark street, then proceeding southerly along North Clark street until it intersects Waverly road, then proceeding southeasterly along Waverly road until it intersects Telegraph road, then proceeding westerly along Telegraph road until it intersects Wisconsin avenue, then proceeding northerly along Wisconsin avenue until it intersects West Locust street, then proceeding west along West Locust street until it intersects One Hundred Sixtieth street, then proceeding west along One Hundred Sixtieth street until it intersects the west corporate limit of the city of Davenport, then proceeding first west, then in a clockwise manner along the corporate limits of the city of Davenport to the point of origin.

90. The ninetieth district in Scott county consists of:

a. That portion of the city of Buffalo and Buffalo township commencing at the point the west boundary of Scott county intersects the boundary of the state of Iowa, then proceeding

north along the boundary of Scott county until it intersects the south corporate limit of the city of Buffalo, then proceeding first north, then in a clockwise manner along the corporate limits of the city of Buffalo until it intersects the west corporate limit of the city of Davenport, then proceeding south along the corporate limits of the city of Davenport until it intersects the boundary of the state of Iowa, then proceeding westerly along the boundary of the state of Iowa to the point of origin.

b. That portion of Blue Grass township and the city of Davenport bounded by a line commencing at the point the boundary of the state of Iowa and the corporate limits of the city of Davenport intersect the extension of Mound street to the Mississippi river, then proceeding northerly along Mound street and its extension until it intersects East Thirteenth street, then proceeding easterly along East Thirteenth street until it intersects Kirkwood boulevard, then proceeding westerly along Kirkwood boulevard until it intersects Bridge avenue, then proceeding north along Bridge avenue until it intersects East Locust street, then proceeding west along East Locust street until it intersects Iowa street, then proceeding south along Iowa street until it intersects Kirkwood boulevard, then proceeding westerly along Kirkwood boulevard until it intersects Brady street, then proceeding south along Brady street until it intersects West Sixteenth street, then proceeding west along West Sixteenth street until it intersects North Harrison street, then proceeding north along North Harrison street until it intersects West Locust street, then proceeding west along West Locust street until it intersects Ripley street, then proceeding north along Ripley street until it intersects West Pleasant street, then proceeding westerly along West Pleasant street until it intersects Scott street, then proceeding north along Scott street until it intersects West Rusholme street, then proceeding westerly along West Rusholme street until it intersects Warren street, then proceeding southerly along Warren street until it intersects West Fifteenth street, then proceeding west along West Fifteenth street until it intersects North Marquette street, then proceeding south along North Marquette street until it intersects West Fifteenth street, then proceeding west along West Fifteenth street until it intersects North Sturdevant street, then proceeding south along North Sturdevant street until it intersects West Fourteenth street, then proceeding west along West Fourteenth street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding northerly along the Iowa Interstate Railroad tracks until it intersects West Pleasant street and its extension, then proceeding easterly along West Pleasant street and its extension until it intersects North Howell street, then proceeding northerly along North Howell street until it intersects Frisco drive, then proceeding northerly along Frisco drive until it intersects Hickory Grove road, then proceeding northwesterly along Hickory Grove road until it intersects West Central Park avenue, then proceeding west along West Central Park avenue until it intersects North Michigan avenue, then proceeding south along North Michigan avenue until it intersects West Lombard street, then proceeding east along West Lombard street until it intersects North Clark street, then proceeding southerly along North Clark street until it intersects Waverly road, then proceeding southeasterly along Waverly road until it intersects Telegraph road, then proceeding westerly along Telegraph road until it intersects Wisconsin avenue, then proceeding northerly along Wisconsin avenue until it intersects West Locust street, then proceeding west along West Locust street until it intersects One Hundred Sixtieth street, then proceeding west along One Hundred Sixtieth street until it intersects the west corporate limit of the city of Davenport, then proceeding first south, then in a counterclockwise manner along the corporate limits of the city of Davenport to the point of origin.

91. The ninety-first representative district in Muscatine county shall consist of:

a. The city of Muscatine.

b. Bloomington, Fulton, Montpelier, and Sweetland townships, and those portions of Fruitland township not contained in the eighty-eighth representative district.

92. The ninety-second representative district in Scott county consists of:

a. The cities of Dixon, Donahue, and Long Grove.

b. Liberty, Cleona, Hickory Grove, and Sheridan townships, and those portions of Blue Grass and Buffalo townships not contained in the ninetieth representative district.

c. That portion of the city of Davenport bounded by a line commencing at the point the west corporate limit of the city of Davenport intersects the Iowa Interstate Railroad

tracks, then proceeding easterly along the Iowa Interstate Railroad tracks until it intersects West Forty-sixth street, then proceeding east along West Forty-sixth street until it intersects Wisconsin avenue, then proceeding north along Wisconsin avenue until it intersects West Kimberly road, then proceeding southeasterly along West Kimberly road until it intersects Wyoming avenue, then proceeding north along Wyoming avenue until it intersects West Silver Creek, then proceeding easterly along West Silver Creek until it intersects North Fairmount street, then proceeding south along North Fairmount street until it intersects West Forty-ninth street, then proceeding easterly along West Forty-ninth street until it intersects North Pine street, then proceeding north along North Pine street until it intersects Northwest boulevard, then proceeding northerly along Northwest boulevard until it intersects Ridgeview drive, then proceeding northeasterly along Ridgeview drive until it intersects North Division street, then proceeding southerly along North Division street until it intersects Northwest boulevard, then proceeding southeasterly along Northwest boulevard until it intersects North Harrison street, then proceeding southerly along North Harrison street until it intersects West Thirty-fifth street, then proceeding easterly along West Thirty-fifth street until it intersects Fair avenue, then proceeding north along Fair avenue until it intersects East Thirty-seventh street, then proceeding east along East Thirty-seventh street until it intersects Fair avenue, then proceeding northerly along Fair avenue until it intersects East Kimberly road, then proceeding easterly along East Kimberly road until it intersects North Brady street, then proceeding northerly along North Brady street until it intersects East Fifty-third street, then proceeding west along East Fifty-third street until it intersects Welcome way, then proceeding north along Welcome way until it intersects East Sixty-first street and its extension, then proceeding westerly along East Sixty-first street and its extension until it intersects West Sixty-first street, then proceeding westerly along West Sixty-first street until it intersects North Ripley street, then proceeding northerly along North Ripley street until it intersects West Sixty-fifth street, then proceeding easterly along West Sixty-fifth street until it intersects East Sixty-fifth street, then proceeding easterly along East Sixty-fifth street until it intersects North Brady street, then proceeding northerly along North Brady street until it intersects U.S. highway 61, then proceeding northerly along U.S. highway 61 until it intersects the corporate limits of the city of Davenport, then proceeding first northerly, then in a counterclockwise manner along the corporate limits of the city of Davenport to the point of origin.

93. The ninety-third representative district in Scott county consists of that portion of the city of Bettendorf and the city of Davenport bounded by a line commencing at the point the boundary of the state of Iowa and the corporate limits of the city of Davenport intersect the extension of Mound street to the Mississippi river, then proceeding northerly along Mound street and its extension until it intersects East Thirteenth street, then proceeding east along East Thirteenth street until it intersects Kirkwood boulevard, then proceeding westerly along Kirkwood boulevard until it intersects Bridge avenue, then proceeding north along Bridge avenue until it intersects East Locust street, then proceeding west along East Locust street until it intersects Iowa street, then proceeding south along Iowa street until it intersects Kirkwood boulevard, then proceeding westerly along Kirkwood boulevard until it intersects Brady street, then proceeding south along Brady street until it intersects West Sixteenth street, then proceeding west along West Sixteenth street until it intersects North Harrison street, then proceeding north along North Harrison street until it intersects West Locust street, then proceeding west along West Locust street until it intersects Ripley street, then proceeding north along Ripley street until it intersects West Pleasant street, then proceeding westerly along West Pleasant street until it intersects Scott street, then proceeding north along Scott street until it intersects West Rusholme street, then proceeding east along West Rusholme street until it intersects North Harrison street, then proceeding northerly along North Harrison street until it intersects West Central Park avenue, then proceeding east along West Central Park avenue until it intersects North Main street, then proceeding north along North Main street until it intersects West Columbia avenue, then proceeding east along West Columbia avenue until it intersects Sheridan street, then proceeding north along Sheridan street until it intersects West Thirtieth street, then proceeding east along West Thirtieth street until it intersects East Thirtieth street, then proceeding east along East

Thirtieth street until it intersects Dubuque street, then proceeding north along Dubuque street until it intersects East Thirtieth street, then proceeding east along East Thirtieth street until it intersects Brady street, then proceeding northerly along Brady street until it intersects North Brady street, then proceeding northerly along North Brady street until it intersects East Thirty-seventh street, then proceeding west along East Thirty-seventh street until it intersects Fair avenue, then proceeding northerly along Fair avenue until it intersects East Kimberly road, then proceeding easterly along East Kimberly road until it intersects North Brady street, then proceeding northerly along North Brady street until it intersects East Fifty-third street, then proceeding east along East Fifty-third street until it intersects Eastern avenue, then proceeding south along Eastern avenue until it intersects East Forty-sixth street, then proceeding east along East Forty-sixth street until it intersects Jersey Ridge road, then proceeding north along Jersey Ridge road until it intersects East Fifty-third street, then proceeding east along East Fifty-third street until it intersects the east corporate limit of the city of Davenport, then proceeding first south, then west, along the corporate limits of the city of Davenport until it intersects Hamilton drive, then proceeding southerly along Hamilton drive until it intersects Queens drive, then proceeding easterly along Queens drive until it intersects Greenbrier drive, then proceeding southerly along Greenbrier drive until it intersects Tanglefoot lane, then proceeding east along Tanglefoot lane until it intersects Parkdale drive, then proceeding south along Parkdale drive until it intersects Brookside drive, then proceeding east along Brookside drive until it intersects Eighteenth street, then proceeding southerly along Eighteenth street until it intersects Middle road, then proceeding westerly along Middle road until it intersects Fourteenth street, then proceeding southerly along Fourteenth street until it intersects Mississippi boulevard, then proceeding easterly along Mississippi boulevard until it intersects Twenty-second street, then proceeding south along Twenty-second street until it intersects Grant street, then proceeding easterly along Grant street until it intersects Twenty-third street, then proceeding southerly along Twenty-third street and its extension until it intersects the boundary of the state of Iowa, then proceeding westerly along the boundary of the state of Iowa to the point of origin.

94. The ninety-fourth representative district in Scott county consists of:

- a. The cities of Riverdale and Panorama Park.
- b. That portion of Pleasant Valley township lying outside the corporate limits of the city of Bettendorf.
- c. That portion of the city of Bettendorf and the city of Davenport commencing at the point the boundary of the state of Iowa and the corporate limits of the city of Bettendorf intersect Twenty-third street and its extension, then proceeding northerly along Twenty-third street and its extension until it intersects Grant street, then proceeding westerly along Grant street until it intersects Twenty-second street, then proceeding north along Twenty-second street until it intersects Mississippi boulevard, then proceeding westerly along Mississippi boulevard until it intersects Fourteenth street, then proceeding northerly along Fourteenth street until it intersects Middle road, then proceeding easterly along Middle road until it intersects Eighteenth street, then proceeding northeasterly along Eighteenth street until it intersects Brookside drive, then proceeding west along Brookside drive until it intersects Parkdale drive, then proceeding north along Parkdale drive until it intersects Tanglefoot lane, then proceeding west along Tanglefoot lane until it intersects Greenbrier drive, then proceeding northerly along Greenbrier drive until it intersects Queens drive, then proceeding westerly along Queens drive until it intersects Hamilton drive, then proceeding northerly along Hamilton drive until it intersects the corporate limits of the city of Davenport, then proceeding first east, then north, along the corporate limits of the city of Davenport until it intersects East Fifty-third street, then proceeding west along East Fifty-third street until it intersects Jersey Ridge road, then proceeding south along Jersey Ridge road until it intersects East Forty-sixth street, then proceeding west along East Forty-sixth street until it intersects Eastern avenue, then proceeding north along Eastern avenue until it intersects East Fifty-third street, then proceeding west along East Fifty-third street until it intersects Welcome way, then proceeding north along Welcome way until it intersects East Sixty-first street and its extension, then proceeding westerly along East Sixty-first street and its extension until it intersects West Sixty-first street, then proceeding westerly along West

Sixty-first street until it intersects North Ripley street, then proceeding northerly along North Ripley street until it intersects West Sixty-fifth street, then proceeding easterly along West Sixty-fifth street until it intersects East Sixty-fifth street, then proceeding easterly along East Sixty-fifth street until it intersects North Brady street, then proceeding northerly along North Brady street until it intersects U.S. highway 61, then proceeding northerly along U.S. highway 61 until it intersects the corporate limits of the city of Davenport, then proceeding first southerly, then in a clockwise manner along the corporate limits of the city of Davenport until it intersects the west corporate limit of the city of Bettendorf, then proceeding first north, then in a clockwise manner along the corporate limits of the city of Bettendorf to the point of origin.

95. The ninety-fifth representative district shall consist of:

- a. In Buchanan county, Cono, Homer, Middlefield, and Newton townships.
- b. In Linn county, Boulder, Brown, Buffalo, Fayette, Franklin, Grant, Jackson, Linn, Maine, Otter Creek, Spring Grove, and Washington townships, that portion of Marion township not contained in the sixty-seventh or sixty-eighth representative district, and that portion of Monroe township not contained in the sixty-sixth or sixty-seventh representative district.

96. The ninety-sixth representative district shall consist of:

- a. Delaware county.
- b. In Jones county:
  - (1) Cass, Castle Grove, Jackson, Lovell, and Wayne townships.
  - (2) That portion of Fairview township bounded by a line commencing at the point the south corporate limit of the city of Anamosa intersects the east boundary of Fairview township, then proceeding first west, then in a clockwise manner along the corporate limits of the city of Anamosa, until it intersects the north boundary of Fairview township, then proceeding first east, then in a clockwise manner along the boundary of Fairview township to the point of origin.

97. The ninety-seventh representative district shall consist of:

- a. In Clinton county, Bloomfield, Brookfield, De Witt, Grant, Liberty, Olive, Orange, Sharon, Spring Rock, Washington, and Welton townships, that portion of Eden township lying outside the corporate limits of the city of Low Moor, and that portion of Camanche township bounded by a line commencing at the point the boundary of the state of Iowa intersects the east corporate limit of the city of Camanche, then proceeding southwesterly along the boundary of the state of Iowa until it intersects the south boundary of Camanche township, then proceeding first westerly, then in a clockwise manner along the boundary of Camanche township until it intersects the west corporate limit of the city of Camanche, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Camanche to the point of origin.

- b. In Scott county, Butler, Le Claire, Lincoln, and Princeton townships, that portion of Allens Grove township lying outside the corporate limits of the cities of Dixon and Donahue, and that portion of Winfield township lying outside the corporate limits of the city of Long Grove.

98. The ninety-eighth representative district in Clinton county shall consist of:

- a. The cities of Clinton and Low Moor.
- b. Center, Deep Creek, Elk River, Hampshire, and Waterford townships, and those portions of Camanche township not contained in the ninety-seventh representative district.

99. The ninety-ninth representative district in Dubuque county shall consist of:

- a. Those portions of Center, Dubuque, and Table Mound townships, and the city of Dubuque, bounded by a line commencing at the point the north corporate limit of the city of Dubuque intersects John F. Kennedy road, then proceeding southerly along John F. Kennedy road until it intersects Sunset Park circle, then proceeding southwesterly along Sunset Park circle until it intersects Meggan street, then proceeding west along Meggan street until it intersects Bonson road, then proceeding south along Bonson road until it intersects Kaufmann avenue, then proceeding easterly along Kaufmann avenue until it intersects Chaney road, then proceeding southerly along Chaney road until it intersects Asbury road, then proceeding southeasterly along Asbury road until it intersects Rosedale

avenue, then proceeding east along Rosedale avenue until it intersects North Grandview avenue, then proceeding first east, then southerly along North Grandview avenue until it intersects Loras boulevard, then proceeding easterly along Loras boulevard until it intersects Bluff street, then proceeding southerly along Bluff street until it intersects West Eleventh street, then proceeding easterly along West Eleventh street until it intersects Locust street, then proceeding southerly along Locust street until it intersects West Tenth street, then proceeding westerly along West Tenth street until it intersects Bluff street, then proceeding southerly along Bluff street until it intersects Jones street, then proceeding easterly along Jones street and its extension until it intersects Locust street, then proceeding easterly along Jones street and its extension until it intersects Main street, then proceeding southerly along Main street until it intersects Jones street, then proceeding easterly along Jones street until it intersects Terminal street, then proceeding southerly along Terminal street until it intersects Dodge street, then proceeding easterly along Dodge street and the Julien Dubuque bridge until it intersects the corporate limits of the city of Dubuque, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Dubuque until it intersects the east boundary of Table Mound township, then proceeding south along the boundary of Table Mound township until it intersects the corporate limits of the city of Dubuque, then proceeding first south, then in a clockwise manner along the corporate limits of the city of Dubuque until it intersects the south boundary of Dubuque township, then proceeding west along the south boundary of Dubuque township until it intersects the corporate limits of the city of Dubuque, then proceeding first west, then in a clockwise manner along the corporate limits of the city of Dubuque until it intersects the west boundary of Dubuque township, then proceeding north along the west boundary of Dubuque township until it intersects the corporate limits of the city of Dubuque, then proceeding first north, then in a clockwise manner along the corporate limits of the city of Dubuque to the point of origin.

b. That portion of Center township lying outside the corporate limits of the city of Asbury and the city of Dubuque and not contained in the fifty-seventh representative district.

100. The one hundredth representative district in Dubuque county shall consist of:

a. That portion of Dubuque township not contained in the fifty-seventh or ninety-ninth representative district.

b. That portion of the city of Dubuque bounded by a line commencing at the point the north corporate limit of the city of Dubuque intersects John F. Kennedy road, then proceeding southerly along John F. Kennedy road until it intersects Sunset Park circle, then proceeding southwestly along Sunset Park circle until it intersects Meggan street, then proceeding west along Meggan street until it intersects Bonson road, then proceeding south along Bonson road until it intersects Kaufmann avenue, then proceeding easterly along Kaufmann avenue until it intersects Chaney road, then proceeding southerly along Chaney road until it intersects Asbury road, then proceeding southeasterly along Asbury road until it intersects Rosedale avenue, then proceeding east along Rosedale avenue until it intersects North Grandview avenue, then proceeding first east, then southerly along North Grandview avenue until it intersects Loras boulevard, then proceeding easterly along Loras boulevard until it intersects Bluff street, then proceeding southerly along Bluff street until it intersects West Eleventh street, then proceeding easterly along West Eleventh street until it intersects Locust street, then proceeding southerly along Locust street until it intersects West Tenth street, then proceeding westerly along West Tenth street until it intersects Bluff street, then proceeding southerly along Bluff street until it intersects Jones street, then proceeding easterly along Jones street and its extension until it intersects Locust street, then proceeding easterly along Jones street and its extension until it intersects Main street, then proceeding southerly along Main street until it intersects Jones street, then proceeding easterly along Jones street until it intersects Terminal street, then proceeding southerly along Terminal street until it intersects Dodge street, then proceeding easterly along Dodge street and the Julien Dubuque bridge until it intersects the corporate limits of the city of Dubuque, then

proceeding first north, then in a counterclockwise manner along the corporate limits of the city of Dubuque to the point of origin.

[C27, 31, 35, §526-b1, -b2; C39, §526.3, 526.4; C46, 50, 54, 58, 62, §42.1, 42.2; C66, §41.3; C71, §41.4; C73, 75, 77, 79, 81, §41.1; 81 Acts, 2d Ex, ch 1, §2]

86 Acts, ch 1238, §3; 91 Acts, ch 223, §2; 92 Acts, ch 1163, §10, 11; 2001 Acts, 1st Ex, ch 1, §2, 6; 2002 Acts, ch 1175, §79; 2011 Acts, ch 76, §2, 6

References based on January 1, 2010, boundaries and official census maps and Redistricting Census 2010 TIGER/Line files; see 2011 Acts, ch 76, §5

Membership beginning in 2013; vacancies prior to 2013; see 2011 Acts, ch 76, §3, 4

Section stricken and rewritten

### **41.2 Senate districts.**

The state of Iowa is hereby divided into fifty senatorial districts, each composed of two of the representative districts established by section 41.1, as follows:

1. The first senatorial district shall consist of the first and second representative districts.
2. The second senatorial district shall consist of the third and fourth representative districts.
3. The third senatorial district shall consist of the fifth and sixth representative districts.
4. The fourth senatorial district shall consist of the seventh and eighth representative districts.
5. The fifth senatorial district shall consist of the ninth and tenth representative districts.
6. The sixth senatorial district shall consist of the eleventh and twelfth representative districts.
7. The seventh senatorial district shall consist of the thirteenth and fourteenth representative districts.
8. The eighth senatorial district shall consist of the fifteenth and sixteenth representative districts.
9. The ninth senatorial district shall consist of the seventeenth and eighteenth representative districts.
10. The tenth senatorial district shall consist of the nineteenth and twentieth representative districts.
11. The eleventh senatorial district shall consist of the twenty-first and twenty-second representative districts.
12. The twelfth senatorial district shall consist of the twenty-third and twenty-fourth representative districts.
13. The thirteenth senatorial district shall consist of the twenty-fifth and twenty-sixth representative districts.
14. The fourteenth senatorial district shall consist of the twenty-seventh and twenty-eighth representative districts.
15. The fifteenth senatorial district shall consist of the twenty-ninth and thirtieth representative districts.
16. The sixteenth senatorial district shall consist of the thirty-first and thirty-second representative districts.
17. The seventeenth senatorial district shall consist of the thirty-third and thirty-fourth representative districts.
18. The eighteenth senatorial district shall consist of the thirty-fifth and thirty-sixth representative districts.
19. The nineteenth senatorial district shall consist of the thirty-seventh and thirty-eighth representative districts.
20. The twentieth senatorial district shall consist of the thirty-ninth and fortieth representative districts.
21. The twenty-first senatorial district shall consist of the forty-first and forty-second representative districts.
22. The twenty-second senatorial district shall consist of the forty-third and forty-fourth representative districts.
23. The twenty-third senatorial district shall consist of the forty-fifth and forty-sixth representative districts.

24. The twenty-fourth senatorial district shall consist of the forty-seventh and forty-eighth representative districts.

25. The twenty-fifth senatorial district shall consist of the forty-ninth and fiftieth representative districts.

26. The twenty-sixth senatorial district shall consist of the fifty-first and fifty-second representative districts.

27. The twenty-seventh senatorial district shall consist of the fifty-third and fifty-fourth representative districts.

28. The twenty-eighth senatorial district shall consist of the fifty-fifth and fifty-sixth representative districts.

29. The twenty-ninth senatorial district shall consist of the fifty-seventh and fifty-eighth representative districts.

30. The thirtieth senatorial district shall consist of the fifty-ninth and sixtieth representative districts.

31. The thirty-first senatorial district shall consist of the sixty-first and sixty-second representative districts.

32. The thirty-second senatorial district shall consist of the sixty-third and sixty-fourth representative districts.

33. The thirty-third senatorial district shall consist of the sixty-fifth and sixty-sixth representative districts.

34. The thirty-fourth senatorial district shall consist of the sixty-seventh and sixty-eighth representative districts.

35. The thirty-fifth senatorial district shall consist of the sixty-ninth and seventieth representative districts.

36. The thirty-sixth senatorial district shall consist of the seventy-first and seventy-second representative districts.

37. The thirty-seventh senatorial district shall consist of the seventy-third and seventy-fourth representative districts.

38. The thirty-eighth senatorial district shall consist of the seventy-fifth and seventy-sixth representative districts.

39. The thirty-ninth senatorial district shall consist of the seventy-seventh and seventy-eighth representative districts.

40. The fortieth senatorial district shall consist of the seventy-ninth and eightieth representative districts.

41. The forty-first senatorial district shall consist of the eighty-first and eighty-second representative districts.

42. The forty-second senatorial district shall consist of the eighty-third and eighty-fourth representative districts.

43. The forty-third senatorial district shall consist of the eighty-fifth and eighty-sixth representative districts.

44. The forty-fourth senatorial district shall consist of the eighty-seventh and eighty-eighth representative districts.

45. The forty-fifth senatorial district shall consist of the eighty-ninth and ninetieth representative districts.

46. The forty-sixth senatorial district shall consist of the ninety-first and ninety-second representative districts.

47. The forty-seventh senatorial district shall consist of the ninety-third and ninety-fourth representative districts.

48. The forty-eighth senatorial district shall consist of the ninety-fifth and ninety-sixth representative districts.

49. The forty-ninth senatorial district shall consist of the ninety-seventh and ninety-eighth representative districts.

50. The fiftieth senatorial district shall consist of the ninety-ninth and one hundredth representative districts.

[C27, 31, 35, §526-a2; C39, §526.2; C46, 50, 54, 58, 62, §41.1; C66, §41.2; C71, §41.5; C73, 75, 77, 79, 81, §41.2]

Membership beginning in 2013 and effect on incumbent senators, vacancies prior to 2013; see 2011 Acts, ch 76, §3, 4  
Section not amended; footnote revised

## CHAPTER 46

### NOMINATION AND ELECTION OF JUDGES

#### **46.3 Appointment of district judicial nominating commissioners.**

1. The governor shall appoint five eligible electors of each judicial election district to the district judicial nominating commission.

2. The appointments made by the governor shall be to staggered terms of six years each and shall be made in the month of January for terms commencing February 1 of even-numbered years.

3. No more than a simple majority of the commissioners appointed shall be of the same gender.

4. Beginning with terms commencing February 1, 2012, there shall not be more than one appointed commissioner from a county within a judicial election district unless each county within the judicial election district has an appointed or elected commissioner or the number of appointed commissioners exceeds the number of counties within the judicial election district. This subsection shall not be used to remove an appointed commissioner from office prior to the expiration of the commissioner's term.

[C66, 71, 73, 75, 77, 79, 81, §46.3]

87 Acts, ch 218, §3; 2011 Acts, ch 78, §1

Section amended

## CHAPTER 47

### ELECTION COMMISSIONERS

Chapter applicable to primary elections, §43.5  
See also definitions in §39.3

#### **47.10 Optical scan voting system fund.**

An optical scan voting system fund is established in the office of the treasurer of state under the control of the secretary of state. Moneys in the fund are appropriated to the office of the secretary of state for purchase and distribution of optical scan voting system equipment to counties to assist county compliance with section 52.2. The secretary of state, in consultation with the department of administrative services, shall establish a procedure for purchasing and distributing the equipment.

2008 Acts, ch 1176, §1, 10; 2011 Acts, ch 34, §168

Section amended

## CHAPTER 50

### CANVASS OF VOTES

Chapter applicable to primary elections, §43.5  
 Criminal offenses, §39A.2 - 39A.5  
 Definitions in §39.3 applicable to this chapter

#### 50.39 Abstract.

The state board of canvassers shall make an abstract stating the number of ballots cast for each office, the names of all the persons voted for, for what office, the number of votes each received, and whom the state board of canvassers declares to be elected, and if a public question has been submitted to the voters of the state, the number of ballots cast for and against the question and a declaration of the result as determined by the canvassers; which abstract shall be signed by the canvassers in their official capacity and as state canvassers, and have the seal of the state affixed.

[C51, §289, 306; R60, §523, 540; C73, §653, 663; C97, §1163; C24, 27, 31, 35, 39, §878; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.39]

2009 Acts, ch 57, §43; 2011 Acts, ch 34, §15  
 Section amended

## CHAPTER 52

### VOTING SYSTEMS

Chapter applicable to primary elections, §43.5  
 Definitions in §39.3 applicable to this chapter

#### 52.2 Optical scan voting system required.

Notwithstanding any provision to the contrary, for elections held on or after November 4, 2008, a county shall use an optical scan voting system only. The requirements of the federal Help America Vote Act relating to disabled voters shall be met by a county through the use of electronic ballot marking devices that are compatible with an optical scan voting system.

[S13, §1137-a8; C24, 27, 31, 35, 39, §905; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.2]

2004 Acts, ch 1083, §25, 37; 2007 Acts, ch 190, §6; 2008 Acts, ch 1176, §3, 10; 2011 Acts, ch 34, §16

Subsection 1 stricken and subsection 2 redesignated as an unnumbered paragraph

## CHAPTER 68A

### CAMPAIGN FINANCE

Transferred from ch 56 in Code Supplement 2003 pursuant  
 to Code editor directive; 2003 Acts, ch 40, §9  
 Chapter applicable to primary elections; §43.5  
 See §68B.32 et seq. for establishment and duties  
 of ethics and campaign disclosure board  
 See also definitions in §39.3

#### SUBCHAPTER IV

#### REPORTS — INDEPENDENT EXPENDITURES — POLITICAL MATERIAL

#### 68A.401 Reports filed with board.

1. All statements and reports required to be filed under this chapter shall be filed with the board as provided in section 68A.402, subsection 1. The board shall post on its internet

website all statements and reports filed under this chapter. For purposes of this section, the term “*statement*” does not include a bank statement.

a. A state statutory political committee, a political committee expressly advocating for or against the nomination, election, or defeat of a candidate for statewide office or the general assembly, and a candidate’s committee of a candidate for statewide office or the general assembly shall file all statements and reports in an electronic format by 4:30 p.m. of the day the filing is due and according to rules adopted by the board.

b. Effective January 1, 2011, a county statutory political committee shall file all statements and reports in an electronic format by 4:30 p.m. of the day the filing is due and according to rules adopted by the board.

c. Effective January 1, 2011, any other candidate or committee involved in a county, city, school, or other political subdivision election that accepts monetary or in-kind contributions in excess of two thousand dollars, or incurs indebtedness in excess of two thousand dollars in the aggregate in a calendar year, or makes expenditures in excess of two thousand dollars in a calendar year to expressly advocate for or against a clearly identified candidate or ballot issue shall file all statements and reports in an electronic format by 4:30 p.m. of the day the filing is due and according to rules adopted by the board. The committee shall continue to file subsequent statements and reports in an electronic format until being certified as dissolved under section 68A.402B.

d. Any other candidate or political committee not otherwise required to file a statement or report in an electronic format under this section shall file the statements and reports in either an electronic format as prescribed by rule or by one of the methods specified in section 68A.402, subsection 1.

e. If the board determines that a violation of this subsection has occurred, the board may impose any of the remedies or penalties provided for under section 68B.32D, except that the board shall not refer any complaint or supporting information of a violation of this section to the attorney general or any county attorney for prosecution.

2. The board shall retain filed statements and reports for at least five years from the date of the election in which the committee is involved, or at least five years from the certified date of dissolution of the committee, whichever date is later.

3. The candidate of a candidate’s committee, or the chairperson of any other committee, is responsible for filing statements and reports under this chapter. The board shall send notice to a committee that has failed to file a disclosure report at the time required under section 68A.402. A candidate of a candidate’s committee, or the chairperson of any other committee, may be subject to a civil penalty for failure to file a disclosure report required under section 68A.402.

4. Political committees expressly advocating the nomination, election, or defeat of candidates for both federal office and any elected office created by law or the Constitution of the State of Iowa shall file statements and reports with the board in addition to any federal reports required to be filed with the board. However, a political committee that is registered and filing full disclosure reports of all financial activities with the federal election commission may file verified statements as provided in section 68A.201A.

[S13, §1137-a1, -a3; C24, 27, 31, 35, 39, §974, 975; C46, 50, 54, 58, 62, 66, 71, 73, §56.3, 56.4; C75, 77, 79, 81, §56.4; 81 Acts, ch 35, §4]

87 Acts, ch 112, §4; 93 Acts, ch 163, §33; 95 Acts, ch 198, §4; 99 Acts, ch 136, §3, 17; 2002 Acts, ch 1073, §3, 11; 2003 Acts, ch 40, §9; 2003 Acts, ch 44, §28

CS2003, §68A.401

2007 Acts, ch 14, §5; 2007 Acts, ch 80, §1, 2, 5; 2009 Acts, ch 8, §1, 2; 2010 Acts, ch 1024, §3; 2011 Acts, ch 34, §17; 2011 Acts, ch 131, §53, 158

2007 amendment adding paragraphs a and e to subsection 1 applies to committees that file a statement of organization on or after January 1, 2010, and to all committees, regardless of when they file statements of organization, on January 1, 2012; 2007 Acts, ch 80, §5

Subsection 4 amended

## CHAPTER 68B

### GOVERNMENT ETHICS AND LOBBYING

#### SUBCHAPTER II

#### CONFLICTS OF INTEREST

##### **68B.8 Lobbying activities by state agencies.**

1. A state agency of the executive branch of state government shall not employ a person through the use of its public funds whose position with the agency is primarily representing the agency relative to the passage, defeat, approval, or modification of legislation that is being considered by the general assembly.

2. A state agency of the executive branch of state government shall not use or permit the use of its public funds for a paid advertisement or public service announcement thirty days prior to or during a legislative session for the purpose of encouraging the passage, defeat, approval, or modification of a bill that is being considered, or was considered during the previous legislative session, by the general assembly.

2008 Acts, ch 1116, §1; 2011 Acts, ch 122, §4, 5

NEW subsection 1 and former unnumbered paragraph 1 designated as subsection 2

#### SUBCHAPTER V

#### PERSONAL FINANCIAL DISCLOSURE

##### **68B.35 Personal financial disclosure — certain officials, members of the general assembly, and candidates.**

1. The persons specified in subsection 2 shall file a financial statement at times and in the manner provided in this section that contains all of the following:

a. A list of each business, occupation, or profession in which the person is engaged and the nature of that business, occupation, or profession, unless already apparent.

b. A list of any other sources of income if the source produces more than one thousand dollars annually in gross income. Such sources of income listed pursuant to this paragraph may be listed under any of the following categories, or under any other categories as may be established by rule:

- (1) Securities.
- (2) Instruments of financial institutions.
- (3) Trusts.
- (4) Real estate.
- (5) Retirement systems.
- (6) Other income categories specified in state and federal income tax regulations.

2. The financial statement required by this section shall be filed by the following persons:

- a. Any statewide elected official.
- b. The executive or administrative head or heads of any agency of state government.
- c. The deputy executive or administrative head or heads of an agency of state government.
- d. The head of a major subunit of a department or independent state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules adopted by the board, pursuant to chapter 17A, in consultation with the department or agency.

e. Members of the state banking council, the ethics and campaign disclosure board, the credit union review board, the economic development authority, the employment appeal board, the environmental protection commission, the health facilities council, the Iowa finance authority, the Iowa public employees' retirement system investment board, the board of the Iowa lottery authority, the natural resource commission, the board of parole, the

petroleum underground storage tank fund board, the public employment relations board, the state racing and gaming commission, the state board of regents, the tax review board, the transportation commission, the office of consumer advocate, the utilities board, the Iowa telecommunications and technology commission, and any full-time members of other boards and commissions as defined under section 7E.4 who receive an annual salary for their service on the board or commission. The Iowa ethics and campaign disclosure board shall conduct an annual review to determine if members of any other board, commission, or authority should file a statement and shall require the filing of a statement pursuant to rules adopted pursuant to chapter 17A.

*f.* Members of the general assembly.

*g.* Candidates for state office.

*h.* Legislative employees who are the head or deputy head of a legislative agency or whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

3. The board, in consultation with each executive department or independent agency, shall adopt rules pursuant to chapter 17A to implement the requirements of this section that provide for the time and manner for the filing of financial statements by persons in the department or independent agency.

4. The ethics committee of each house of the general assembly shall recommend rules for adoption by each house for the time and manner for the filing of financial statements by members or employees of the particular house. The legislative council shall adopt rules for the time and manner for the filing of financial statements by legislative employees of the central legislative staff agencies. The rules shall provide for the filing of the financial statements with either the chief clerk of the house, the secretary of the senate, or other appropriate person or body.

5. *a.* A candidate for statewide office shall file a financial statement with the ethics and campaign disclosure board, a candidate for the office of state representative shall file a financial statement with the chief clerk of the house of representatives, and a candidate for the office of state senator shall file a financial statement with the secretary of the senate. Statements shall contain information concerning the year preceding the year in which the election is to be held.

*b.* The ethics and campaign disclosure board shall adopt rules pursuant to chapter 17A providing for the filing of the financial statements with the board and for the deposit, retention, and availability of the financial statements. The ethics committees of the house of representatives and the senate shall recommend rules for adoption by the respective houses providing for the filing of the financial statements with the chief clerk of the house or the secretary of the senate and for the deposit, retention, and availability of the financial statements. Rules adopted shall also include a procedure for notification of candidates of the duty to file disclosure statements under this section.

92 Acts, ch 1228, §17; 93 Acts, ch 163, §21; 94 Acts, ch 1092, §9; 96 Acts, ch 1200, §2; 2001 Acts, ch 61, §12; 2003 Acts, ch 178, §100, 121; 2003 Acts, ch 179, §142; 2004 Acts, ch 1091, §11; 2004 Acts, ch 1141, §34; 2009 Acts, ch 9, §5; 2011 Acts, ch 118, §84, 89

Code editor directive applied

## SUBCHAPTER VI

### LOBBYING REGULATION

#### **68B.36 Applicability — lobbyist registration required.**

1. All lobbyists shall, on or before the day their lobbying activity begins, register by electronically filing a lobbyist's registration statement at times and in the manner provided in this section. In addition to any other information required by the general assembly, a lobbyist shall identify in the registration statement all clients of the lobbyist and whether the lobbyist will also be lobbying the executive branch. Lobbyists engaged in lobbying activities before the general assembly and before the office of the governor or any state agency shall

file the statement with the chief clerk of the house of representatives or the secretary of the senate. The chief clerk of the house and the secretary of the senate shall establish an internet site for the electronic filing of lobbyist registrations.

2. Registration shall be valid from the date of registration until the end of the calendar year. Any change in or addition to the information shall be registered within ten days after the change or addition is known to the lobbyist. Changes or additions for registrations of lobbyists shall be filed with either the chief clerk of the house or the secretary of the senate.

3. Beginning December 1 of each year, a person may preregister to lobby for the following calendar year.

4. If a lobbyist's service on behalf of all clients, employers, or causes is concluded prior to the end of the calendar year, the lobbyist may cancel the registration by electronically filing a notice of cancellation with the chief clerk of the house or the secretary of the senate. Upon cancellation of registration, a lobbyist is prohibited from engaging in any lobbying activity on behalf of any employer, client, or cause until reregistering.

5. Federal, state, and local officials who wish to lobby in opposition to the official position of their departments, commissions, boards, or agencies must indicate this on their lobbyist registration statements.

6. The chief clerk of the house or the secretary of the senate shall post all lobbyist registrations in a searchable database on an internet site. The board shall establish a link on the internet site of the board to the lobbyist registration information on the general assembly's internet site.

92 Acts, ch 1228, §18; 93 Acts, ch 163, §23; 94 Acts, ch 1023, §83; 94 Acts, ch 1092, §10; 2010 Acts, ch 1006, §8, 11; 2011 Acts, ch 86, §1

Section amended

### **68B.38 Lobbyist's client reporting.**

1. On or before July 31 of each year, a lobbyist's client shall electronically file with the general assembly a report that contains information on all salaries, fees, retainers, and reimbursement of expenses paid by the lobbyist's client to the lobbyist for lobbying purposes during the preceding twelve calendar months, concluding on June 30 of each year. The amount reported to the general assembly shall include the total amount of all salaries, fees, retainers, and reimbursement of expenses paid to a lobbyist for lobbying both the legislative and executive branches.

2. The chief clerk of the house and the secretary of the senate shall establish an internet site for the filing of lobbyist's client reports in an electronic format.

3. The chief clerk of the house and the secretary of the senate shall post all lobbyist's client reports filed pursuant to this section in a searchable database on an internet site. The board shall establish a link on the internet site of the board to the lobbyist's client report information on the general assembly's internet site.

92 Acts, ch 1228, §20; 93 Acts, ch 163, §25; 2000 Acts, ch 1042, §3; 2001 Acts, ch 24, §20; 2003 Acts, ch 161, §3; 2004 Acts, ch 1091, §13; 2010 Acts, ch 1006, §9, 11; 2011 Acts, ch 86, §2

Section amended

## **CHAPTER 70A**

### **FINANCIAL AND OTHER PROVISIONS FOR PUBLIC OFFICERS AND EMPLOYEES**

For provisions relating to the state employee retirement incentive program, see 2010 Acts, ch 1005, §1, 2

### **70A.27 Leave of absence for charge of a crime — civil penalty.**

1. For the purposes of this section:

a. "*Convicted*" means convicted of an indictable offense and includes a guilty plea or other finding of guilt by a court of competent jurisdiction.

b. “Public employee” means any individual employed by a public employer. “Public employee” includes heads of executive branch agencies.

c. “Public employer” means the state, its boards, commissions, agencies, and departments, and its political subdivisions including school districts and other special purpose districts. “Public employer” includes the general assembly and the governor.

2. a. A public employee on a leave of absence with full or partial compensation because the public employee is charged, by indictment or information, with the commission of a public offense classified as a class “D” felony or greater offense shall pay to the public employer employing the public employee a civil penalty equal to the cash wages that the public employee received during the period of the leave of absence if the public employee is convicted of a public offense classified as a class “D” felony or greater offense.

b. A public employee shall pay to the public employer employing the public employee a civil penalty equal to any payments that the public employee received pursuant to the terms of the public employee’s employment contract that result from the termination of the contract, if the termination was caused by the employee being charged, by indictment or information, with the commission of a public offense classified as a class “D” felony or greater offense, and if the public employee is convicted of a public offense classified as a class “D” felony or greater offense.

2011 Acts, ch 88, §1

NEW section

## CHAPTER 72

### DUTIES RELATING TO PUBLIC CONTRACTS

#### 72.5 Life cycle cost.

1. a. A contract for a public improvement or construction of a public building, including new construction or renovation of an existing public building, by the state, or an agency of the state, shall not be let without satisfying the following requirements:

(1) A design professional submitting a design development proposal for consideration of the public body shall at minimum prepare one proposal meeting the design program’s space and use requirements which reflects the lowest life cycle cost possible in light of existing commercially available technology.

(2) Submission of a cost-benefit analysis of any deviations from the lowest life cycle cost proposal contained in other design proposals requested by or prepared for submission to the public body.

b. The public body may request additional design proposals in light of funds available for construction, aesthetic considerations, or any other reason.

c. This subsection applies for all design development proposals requested on or after January 1, 1991.

2. The director of the economic development authority, in consultation with the department of management, state building code commissioner, and state fire marshal, shall develop standards and methods to evaluate design development documents and construction documents based upon life cycle cost factors to facilitate fair and uniform comparisons between design proposals and informed decision making by public bodies.

3. The department of management shall develop a proposal for submission to the general assembly on or before January 10, 1991, to create a division within the department of management to evaluate life cycle costs on design proposals submitted on public improvement and construction contracts for agencies of the state, to assure uniform comparisons and professional evaluations of design proposals by an independent agency. The report shall also address potential redundancy and conflicts within existing state law regarding life cycle cost analysis and recommend the resolution of any problems which are identified.

4. It is the intent of the general assembly to discourage construction of public buildings based upon lowest acquisition cost, and instead to require that such decisions be based upon life cycle costs to reduce energy consumption, maintenance requirements, and continuing burdens upon taxpayers.

90 Acts, ch 1252, §5; 94 Acts, ch 1173, §5; 2004 Acts, ch 1086, §17; 2006 Acts, ch 1014, §1; 2007 Acts, ch 22, §17; 2008 Acts, ch 1032, §201; 2009 Acts, ch 108, §5, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

## CHAPTER 73

### PREFERENCES

See also §8A.311, §73A.21

#### **73.3 and 73.4** Repealed by 2011 Acts, ch 133, § 9 – 11.

2011 repeal of these sections takes effect September 1, 2011, and applies to all public improvement, public works, and public road projects, and to contracts for public improvement, public works, and public road projects entered into on or after that date; 2011 Acts, ch 133, §10, 11

#### **73.16 Procurements from small businesses and targeted small businesses — goals.**

Notwithstanding any provision of law or rule relating to competitive bidding procedures:

1. Every agency, department, commission, board, committee, officer, or other governing body of the state shall purchase goods and services supplied by small businesses and targeted small businesses in Iowa. In addition to the other provisions of this section relating to procurement contracts for targeted small businesses, all purchasing authorities shall assure that a proportionate share of small businesses and targeted small businesses identified under the uniform small business vendor application program of the economic development authority are given the opportunity to bid on all solicitations issued by agencies and departments of state government.

2. a. Prior to the commencement of a fiscal year, the director of each agency or department of state government having purchasing authority, in cooperation with the targeted small business marketing and compliance manager of the economic development authority, shall establish for that fiscal year a procurement goal from certified targeted small businesses identified pursuant to section 10A.104, subsection 8.

(1) The procurement goal shall include the procurement of all goods and services, including construction, but not including utility services.

(2) A procurement goal shall be stated in terms of a dollar amount of certified purchases and shall be established at a level that exceeds the procurement levels from certified targeted small businesses during the previous fiscal year.

b. The director of an agency or department of state government that has established a procurement goal as required under this subsection shall provide a report within fifteen business days following the end of each calendar quarter to the targeted small business marketing and compliance manager of the economic development authority, providing the total dollar amount of certified purchases from certified targeted small businesses during the previous calendar quarter. The required report shall be made in a form approved by the targeted small business marketing and compliance manager.

c. (1) The director of each department and agency of state government shall cooperate with the director of the department of inspections and appeals, the director of the economic development authority, and the director of the department of management and do all acts necessary to carry out the provisions of this division.

(2) The director of each agency or department of state government having purchasing authority shall issue electronic bid notices for distribution to the targeted small business web page located at the economic development authority if the director releases a solicitation for bids for procurement of equipment, supplies, or services. The notices shall be provided to the targeted small business marketing manager forty-eight hours prior to the issuance of all

bid notices. The notices shall contain a description of the subject of the bid, a point of contact for the bid, and any subcontract goals included in the bid.

(3) A community college, area education agency, or school district shall establish a procurement goal from certified targeted small businesses, identified pursuant to section 10A.104, subsection 8, of at least ten percent of the value of anticipated procurements of goods and services including construction, but not including utility services, each fiscal year.

d. Of the total value of anticipated procurements of goods and services under this subsection, an additional goal shall be established to procure at least forty percent from minority-owned businesses, and forty percent from female-owned businesses.

86 Acts, ch 1245, §832; 88 Acts, ch 1273, §11; 90 Acts, ch 1156, §6; 94 Acts, ch 1076, §5; 2000 Acts, ch 1231, §35; 2007 Acts, ch 207, §10, 18; 2008 Acts, ch 1032, §164; 2009 Acts, ch 133, §19; 2011 Acts, ch 118, §85, 89

State board of regents' bid procedure, §262.34A

Code editor directive applied

### **73.17 Targeted small business procurement goals — preliminary procedures.**

Quarterly the director of each agency and department of state government shall review the agency's or department's anticipated purchasing requirements. The directors shall notify the director of the economic development authority of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter. The directors may divide the procurements so designated into contract award units of economically feasible production runs to facilitate offers or bids from targeted small businesses. In designating procurements intended to satisfy the targeted small business procurement goal, the directors may vary the included procurements so that a variety of goods and services produced by different targeted small businesses may be procured each year. The director of the economic development authority, in conjunction with the director of the department of management, shall review the information submitted and may require modifications from the agencies and departments.

A community college or area education agency shall, on a quarterly basis, and a school district shall, on an annual basis, review the community college's, area education agency's, or school district's anticipated purchasing requirements. A community college, area education agency, or school district shall notify the department of education, which shall report to the economic development authority, of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter, except that school districts shall report annually.

86 Acts, ch 1245, §833; 90 Acts, ch 1156, §7; 91 Acts, ch 267, §223; 2011 Acts, ch 118, §85, 89

Purchases by regents institutions, §262.34A

Code editor directive applied

### **73.18 Notice of solicitation for bids — identification of targeted small businesses.**

The director of each agency or department, the administrator of each area education agency, the president of each community college, and the superintendent of each school district releasing a solicitation for bids or request for proposal under the targeted small business procurement goal program shall consult a directory of certified targeted small businesses produced by the economic development authority that lists all certified targeted small businesses by category of goods or services provided prior to or upon release of the solicitation and shall send a copy of the request for proposal or solicitation to any appropriate targeted small business listed in the directory. The economic development authority may charge the department, agency, area education agency, community college, or school district a reasonable fee to cover the cost of producing, distributing, and updating the directory.

86 Acts, ch 1245, §834; 88 Acts, ch 1273, §12; 90 Acts, ch 1156, §8; 91 Acts, ch 267, §224; 92 Acts, ch 1244, §36; 2011 Acts, ch 118, §85, 89

Code editor directive applied

**73.19 Negotiated price or bid contract.**

In awarding a contract under the targeted small business procurement goal program, a director of an agency or department, or community college, area education agency, or school district, having purchasing authority may use either a negotiated price or bid contract procedure. A director of an agency or department, or community college, area education agency, or school district, using a negotiated contract shall consider any targeted small business engaged in that business. The director of the economic development authority or the director of the department of management may assist in the negotiation of a contract price under this section. Surety bonds guaranteed by the United States small business administration are acceptable security for a construction award under this section.

86 Acts, ch 1245, §835; 90 Acts, ch 1156, §9; 91 Acts, ch 267, §225; 2011 Acts, ch 118, §85, 89

Code editor directive applied

**73.20 Determination of ability to perform.**

Before announcing a contract award pursuant to the targeted small business procurement goal program, the purchasing authority shall evaluate whether the targeted small business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence. If the purchasing authority determines that the targeted small business may be unable to perform, the director of the economic development authority shall be notified and shall assist the targeted small business pursuant to section 15.108, subsection 7, paragraph “c”, subparagraph (3).

86 Acts, ch 1245, §836; 90 Acts, ch 1156, §10; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 73A

### PUBLIC CONTRACTS AND BONDS

This chapter not enacted as a part of this title; transferred from chapter 23 in Code 1993

**73A.21 Reciprocal resident bidder and resident labor force preference by state, its agencies, and political subdivisions — penalties.**

1. For purposes of this section:

a. “*Commissioner*” means the labor commissioner appointed pursuant to section 91.2, or the labor commissioner’s designee.

b. “*Division*” means the division of labor of the department of workforce development.

c. “*Nonresident bidder*” means a person or entity who does not meet the definition of a resident bidder.

d. “*Public body*” means the state and any of its political subdivisions, including a school district, public utility, or the state board of regents.

e. “*Public improvement*” means a building or other construction work to be paid for in whole or in part by the use of funds of the state, its agencies, and any of its political subdivisions and includes road construction, reconstruction, and maintenance projects.

f. “*Public utility*” includes municipally owned utilities and municipally owned waterworks.

g. “*Resident bidder*” means a person or entity authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

h. “*Resident labor force preference*” means a requirement in which all or a portion of a labor force working on a public improvement is a resident of a particular state or country.

2. Notwithstanding this chapter, chapter 73, chapter 309, chapter 310, chapter 331,

or chapter 384, when a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country if that state or foreign country gives or requires any preference to bidders from that state or foreign country, including but not limited to any preference to bidders, the imposition of any type of labor force preference, or any other form of preferential treatment to bidders or laborers from that state or foreign country. The preference allowed shall be equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. In the instance of a resident labor force preference, a nonresident bidder shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder is a resident.

3. If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of any federal law or regulation, this section shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

4. The public body involved in a public improvement shall require a nonresident bidder to specify on all project bid specifications and contract documents whether any preference as described in subsection 2 is in effect in the nonresident bidder's state or country of domicile at the time of a bid submittal.

5. The commissioner and the division shall administer and enforce this section, and the commissioner shall adopt rules for the administration and enforcement of this section as provided in section 91.6.

6. The commissioner shall have the following powers and duties for the purposes of this section:

a. The commissioner may hold hearings and investigate charges of violations of this section.

b. The commissioner may, consistent with due process of law, enter any place of employment to inspect records concerning labor force residency, to question an employer or employee, and to investigate such facts, conditions, or matters as are deemed appropriate in determining whether any person has violated the provisions of this section. The commissioner shall only make such an entry in response to a written complaint.

c. The commissioner shall develop a written complaint form applicable to this section and make it available in division offices and on the department of workforce development's internet site.

d. The commissioner may sue for injunctive relief against the awarding of a contract, the undertaking of a public improvement, or the continuation of a public improvement in response to a violation of this section.

e. The commissioner may investigate and ascertain the residency of a worker engaged in any public improvement in this state.

f. The commissioner may administer oaths, take or cause to be taken deposition of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, registers, payrolls, and other evidence relevant to a matter under investigation or hearing.

g. The commissioner may employ qualified personnel as are necessary for the enforcement of this section. Such personnel shall be employed pursuant to the merit system provisions of chapter 8A, subchapter IV.

h. The commissioner shall require a contractor or subcontractor to file, within ten days of receipt of a request, any records enumerated in subsection 7. If the contractor or subcontractor fails to provide the requested records within ten days, the commissioner may direct, within fifteen days after the end of the ten-day period, that the fiscal or financial office charged with the custody and disbursement of funds of the public body that contracted for construction of the public improvement or undertook the public improvement, to immediately withhold from payment to the contractor or subcontractor up to twenty-five percent of the amount to be paid to the contractor or subcontractor under the terms of the contract or written instrument under which the public improvement is being performed. The amount withheld shall be immediately released upon receipt by the public body of a notice

from the commissioner indicating that the request for records as required by this section has been satisfied.

7. While participating in a public improvement, a nonresident bidder domiciled in a state or country that has established a resident labor force preference shall make and keep, for a period of not less than three years, accurate records of all workers employed by the contractor or subcontractor on the public improvement. The records shall include each worker's name, address, telephone number when available, social security number, trade classification, and the starting and ending time of employment.

8. Any person or entity that violates the provisions of this section is subject to a civil penalty in an amount not to exceed one thousand dollars for each violation found in a first investigation by the division, not to exceed five thousand dollars for each violation found in a second investigation by the division, and not to exceed fifteen thousand dollars for a third or subsequent violation found in any subsequent investigation by the division. Each violation of this section for each worker and for each day the violation continues constitutes a separate and distinct violation. In determining the amount of the penalty, the division shall consider the appropriateness of the penalty to the person or entity charged, upon determination of the gravity of the violations. The collection of these penalties shall be enforced in a civil action brought by the attorney general on behalf of the division.

9. A party seeking review of the division's determination pursuant to this section may file a written request for an informal conference. The request must be received by the division within fifteen days after the date of issuance of the division's determination. During the conference, the party seeking review may present written or oral information and arguments as to why the division's determination should be amended or vacated. The division shall consider the information and arguments presented and issue a written decision advising all parties of the outcome of the conference.

84 Acts, ch 1045, §1; 85 Acts, ch 67, §5

C85, §23.21

C93, §73A.21

2008 Acts, ch 1031, §86; 2011 Acts, ch 133, §7, 10, 11

See also §8A.311

2011 amendment to this section takes effect September 1, 2011, and applies to all public improvement, public works, and public road projects, and to contracts for public improvement, public works, and public road projects entered into on or after that date; 2011 Acts, ch 133, §10, 11

Partial item veto applied

Section amended

## CHAPTER 80B

### LAW ENFORCEMENT ACADEMY

#### **80B.6 Council created — membership.**

1. An Iowa law enforcement academy council is created consisting of the following thirteen voting members appointed by the governor, subject to confirmation by the senate, to terms of four years commencing as provided in section 69.19:

- a. Three residents of the state.
- b. A sheriff of a county with a population of fifty thousand persons or more who is a member of the Iowa state sheriffs and deputies association.
- c. A sheriff of a county with a population of less than fifty thousand persons who is a member of the Iowa state sheriffs and deputies association.
- d. A deputy sheriff of a county who is a member of the Iowa state sheriffs and deputies association.
- e. A member of the Iowa peace officers association.
- f. A member of the Iowa state police association.
- g. A member of the Iowa police chiefs association.

*h.* A police officer who is a member of a police department of a city with a population of fifty thousand persons or more.

*i.* A police officer who is a member of a police department of a city with a population of less than fifty thousand persons.

*j.* A member of the department of public safety.

*k.* A member of the office of motor vehicle enforcement of the department of transportation.

2. One senator appointed by the president of the senate after consultation with the majority leader of the senate, one senator appointed by the minority leader of the senate, one representative appointed by the speaker of the house of representatives, and one representative appointed by the minority leader of the house of representatives are also ex officio, nonvoting members of the council who shall serve terms as provided in section 69.16B.

3. In the event a member appointed pursuant to this section is unable to complete a term, the vacancy shall be filled for the unexpired term in the same manner as the original appointment.

[C71, 73, 75, 77, 79, 81, §80B.6]

86 Acts, ch 1245, §2029; 90 Acts, ch 1223, §15; 2008 Acts, ch 1031, §90; 2008 Acts, ch 1156, §24, 58; 2011 Acts, ch 95, §1

Confirmation, see §2.32

Subsection 1 amended

## CHAPTER 80D

### RESERVE PEACE OFFICERS

#### **80D.5 No exemptions.**

There shall be no exemptions from the personal and training standards provided for in this chapter except as provided in section 80D.7.

[C81, §80D.5]

2011 Acts, ch 34, §169

Section amended

**80D.15 Civil defense auxiliary police exempt.** Repealed by 2011 Acts, ch 34, § 162.

## CHAPTER 84A

### DEPARTMENT OF WORKFORCE DEVELOPMENT

#### **84A.1A Workforce development board.**

1. An Iowa workforce development board is created, consisting of nine voting members appointed by the governor and twelve ex officio, nonvoting members.

*a.* The governor shall appoint the nine voting members of the workforce development board for a term of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate, and the governor's appointments shall include persons knowledgeable in the area of workforce development. Of the nine voting members, one member shall represent a nonprofit organization involved in workforce development services, four members shall represent employers, and four members shall represent nonsupervisory employees. Of the members appointed by the governor to represent nonsupervisory employees, two members shall be from statewide labor organizations, one member shall be an employee representative of a labor management council, and one member shall be a person with experience in worker training programs. The governor

shall consider recommendations from statewide labor organizations for the members representing nonsupervisory employees. Not more than five of the voting members shall be from the same political party.

b. The ex officio, nonvoting members are four legislative members; one president, or the president's designee, of the university of northern Iowa, the university of Iowa, or Iowa state university of science and technology, designated by the state board of regents on a rotating basis; one representative from the largest statewide public employees' organization representing state employees; one president, or the president's designee, of an independent Iowa college, appointed by the Iowa association of independent colleges and universities; one superintendent, or the superintendent's designee, of a community college, appointed by the Iowa association of community college presidents; one representative of the vocational rehabilitation community appointed by the state rehabilitation council in the division of Iowa vocational rehabilitation services; one representative of the department of education appointed by the state board of education; one representative of the economic development authority appointed by the director; and one representative of the United States department of labor, office of apprenticeship. The legislative members are two state senators, one appointed by the president of the senate after consultation with the majority leader of the senate, and one appointed by the minority leader of the senate from their respective parties; and two state representatives, one appointed by the speaker of the house of representatives after consultation with the majority leader of the house of representatives, and one appointed by the minority leader of the house of representatives from their respective parties. The legislative members shall serve for terms as provided in section 69.16B.

2. A vacancy on the workforce development board shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

3. The workforce development board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. However, the chairperson and the vice chairperson shall not be from the same political party. The workforce development board shall meet at the call of the chairperson or when any five members of the workforce development board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the workforce development board. A majority of the voting members constitutes a quorum.

4. Members of the workforce development board, the director of the department of workforce development, and other employees of the department of workforce development shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations for those purposes and the department of workforce development is subject to the budget requirements of chapter 8. Each member of the workforce development board may also be eligible to receive compensation as provided in section 7E.6.

5. If a member of the workforce development board has an interest, either direct or indirect, in a contract to which the department of workforce development is or is to be a party, the interest shall be disclosed to the workforce development board in writing and shall be set forth in the minutes of a meeting of the workforce development board. The member having the interest shall not participate in action by the workforce development board with respect to the contract. This subsection does not limit the right of a member of the workforce development board to acquire an interest in bonds, or limit the right of a member to have an interest in a bank or other financial institution in which the funds of the department of workforce development are deposited or which is acting as trustee or paying agent under a trust indenture to which the department of workforce development is a party.

96 Acts, ch 1186, §9; 97 Acts, ch 110, §1; 2001 Acts, ch 24, §21; 2002 Acts, ch 1050, §10; 2008 Acts, ch 1156, §25, 58; 2009 Acts, ch 3, §1; 2009 Acts, ch 41, §29; 2011 Acts, ch 118, §85, 89

Confirmation, see §2.32  
Code editor directive applied

**84A.5 Department of workforce development — primary responsibilities.**

The department of workforce development, in consultation with the workforce development board and the regional advisory boards, has the primary responsibilities set out in this section.

1. The department of workforce development shall develop and implement a workforce development system which increases the skills of the Iowa workforce, fosters economic growth and the creation of new high skill and high wage jobs through job placement and training services, increases the competitiveness of Iowa businesses by promoting high performance workplaces, and encourages investment in workers.

a. The workforce development system shall strive to provide high quality services to its customers including workers, families, and businesses. The department of workforce development shall maintain a common intake, assessment, and customer tracking system and to the extent practical provide one-stop services to customers at workforce development centers and other service access points. The department of workforce development shall administer a statewide standard skills assessment to assess the employability skills of adult workers statewide and shall instruct appropriate department staff in the administration of the assessment. The assessment shall be included in the one-stop services provided to customers at workforce development centers and other service access points throughout the state.

b. The system shall include an accountability system to measure program performance, identify accomplishments, and evaluate programs to ensure goals and standards are met. The accountability system shall use information obtained from the customer tracking system, the economic development authority, the department of education, and training providers to evaluate the effectiveness of programs. The economic development authority, the department of education, and training providers shall report information concerning the use of any state or federal training or retraining funds to the department of workforce development in a form as required by the department of workforce development. The accountability system shall evaluate all of the following:

- (1) The impact of services on wages earned by individuals.
- (2) The effectiveness of training services providers in raising the skills of the Iowa workforce.
- (3) The impact of placement and training services on Iowa's families, communities, and economy.

2. The department of workforce development shall make information from the customer tracking and accountability system available to the economic development authority, the department of education, and other appropriate public agencies for the purpose of assisting with the evaluation of programs administered by those departments and agencies and for planning and researching public policies relating to education and economic development.

3. The department of workforce development is responsible for administration of unemployment compensation benefits and collection of employer contributions under chapter 96, providing for the delivery of free public employment services established pursuant to chapter 96, other job placement and training programs established pursuant to section 84A.6, and the delivery of services located throughout the state.

4. The division of labor services is responsible for the administration of the laws of this state under chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, and 94A, and section 85.68. The executive head of the division is the labor commissioner, appointed pursuant to section 91.2.

5. The division of workers' compensation is responsible for the administration of the laws of this state relating to workers' compensation under chapters 85, 85A, 85B, 86, and 87. The executive head of the division is the workers' compensation commissioner, appointed pursuant to section 86.1.

6. The director of the department of workforce development shall form a coordinating committee composed of the director of the department of workforce development, the labor commissioner, the workers' compensation commissioner, and other administrators. The committee shall monitor federal compliance issues relating to coordination of functions among the divisions.

7. The department of workforce development shall administer the following programs:
  - a. The Iowa conservation corps established under section 84A.7.
  - b. The workforce investment program established under section 84A.8.
  - c. The statewide mentoring program established under section 84A.9.
  - d. The workforce development centers established under chapter 84B.
8. The department of workforce development shall work with the economic development authority to incorporate workforce development as a component of community-based economic development.
9. The department of workforce development, in consultation with the applicable regional advisory board, shall select service providers, subject to approval by the workforce development board for each service delivery area. A service provider in each service delivery area shall be identified to coordinate the services throughout the service delivery area. The department of workforce development shall select service providers that, to the extent possible, meet or have the ability to meet the following criteria:
  - a. The capacity to deliver services uniformly throughout the service delivery area.
  - b. The experience to provide workforce development services.
  - c. The capacity to cooperate with other public and private agencies and entities in the delivery of education, workforce training, retraining, and workforce development services throughout the service delivery area.
  - d. The demonstrated capacity to understand and comply with all applicable state and federal laws, rules, ordinances, regulations, and orders, including fiscal requirements.
10. The department of workforce development shall provide access to information and documents necessary for employers and payors of income, as defined in sections 252D.16 and 252G.1, to comply with child support reporting and payment requirements. Access to the information and documents shall be provided at the central location of the department of workforce development and at each workforce development center.
11. The director of the department of workforce development may adopt rules pursuant to chapter 17A to charge and collect fees for enhanced or value-added services provided by the department of workforce development which are not required by law to be provided by the department and are not generally available from the department of workforce development. Fees shall not be charged to provide a free public labor exchange. Fees established by the director of the department of workforce development shall be based upon the costs of administering the service, with due regard to the anticipated time spent, and travel costs incurred, by personnel performing the service. The collection of fees authorized by this subsection shall be treated as repayment receipts as defined in section 8.2.

86 Acts, ch 1245, §902

C87, §84A.2

93 Acts, ch 180, §53; 96 Acts, ch 1186, §12

C97, §84A.5

98 Acts, ch 1061, §2, 11; 98 Acts, ch 1170, §19; 99 Acts, ch 21, §3; 99 Acts, ch 68, §1; 99 Acts, ch 130, §7; 2001 Acts, ch 61, §13; 2002 Acts, ch 1050, §11; 2007 Acts, ch 211, §33; 2008 Acts, ch 1191, §43; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **84A.6 Job placement and training programs.**

1. The department of workforce development, in consultation with the workforce development board and the regional advisory boards, the department of education, and the economic development authority shall work together to develop policies encouraging coordination between skill development, labor exchange, and economic development activities.

2. a. The director of the department of workforce development, in cooperation with the department of human services, shall provide job placement and training to persons referred by the department of human services under the promoting independence and self-sufficiency through employment job opportunities and basic skills program established pursuant to chapter 239B and the food stamp employment and training program.

b. The department of workforce development, in consultation with the department of

human services, shall develop and implement departmental recruitment and employment practices that address the needs of former and current participants in the family investment program under chapter 239B.

3. The director of the department of workforce development, in cooperation with the department of human rights and the vocational rehabilitation services division of the department of education, shall establish a program to provide job placement and training to persons with disabilities.

86 Acts, ch 1245, §903

C87, §84A.3

96 Acts, ch 1186, §13

C97, §84A.6

97 Acts, ch 41, §32; 2002 Acts, ch 1050, §12; 2005 Acts, ch 175, §58; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 84B

### WORKFORCE DEVELOPMENT CENTERS

#### **84B.1 Workforce development centers.**

The department of workforce development, in consultation with the departments of education, human services, and human rights, the economic development authority, the department on aging, and the department for the blind, shall establish guidelines for colocating state and federal employment and training programs in centers providing services at the local level. The centers shall be known as workforce development centers. The departments and the authority shall also jointly establish an integrated management information system for linking the programs within a local center to the same programs within other local centers and to the state. The guidelines shall provide for local design and operation within the guidelines. The core services available at a center shall include but are not limited to all of the following:

1. *Information.* Provision of information shall include labor exchange and labor market information as well as career guidance and occupational information. Training and education institutions which receive state or federal funding shall provide to the centers consumer-related information on their programs, graduation rates, wage scales for graduates, and training program prerequisites. Information from local employers, unions, training programs, and educators shall be collected in order to identify demand industries and occupations. Industry and occupation demand information should be published as frequently as possible and be made available through centers.

2. *Assessment.* Individuals shall receive basic assessment regarding their own skills, interests, and related opportunities for employment and training. Assessments are intended to provide individuals with realistic information in order to guide them into training or employment situations. The basic assessment may be provided by the center or by existing service providers such as community colleges or by a combination of the two.

3. *Training accounts.* Training accounts may be established for both basic skill development and vocational or technical training. There shall be no training assistance or limited training assistance in those training areas a center has determined are oversupplied or are for general life improvement.

4. *Referral to training programs or jobs.* Based upon individual assessments, a center shall provide individuals with referrals to other community resources, training programs, and employment opportunities.

5. *Job development and job placement.* A center shall be responsible for job development

activities and job placement services. A center shall seek to create a strong tie to the local job market by working with both business and union representatives.

93 Acts, ch 97, §12; 96 Acts, ch 1186, §17; 2009 Acts, ch 23, §7; 2011 Acts, ch 118, §87, 89  
Code editor directive applied

## CHAPTER 87

### COMPENSATION LIABILITY INSURANCE

#### **87.11E Penalties for filing false financial statements.**

1. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner of insurance under this chapter, any statement of material fact which is, at the time and in the light of circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2. The following persons shall not commit any of the acts or omissions prohibited by subsection 3:

- a. An employer.
- b. A person administering a self-insurance program, in whole or in part, on behalf of an employer.
- c. A partner of the employer or administrator.
- d. An officer of the employer or administrator.
- e. A director of the employer or administrator.
- f. A person occupying a similar status or performing similar functions as persons described in paragraphs "a" through "e".
- g. A person directly or indirectly controlling the employer or administrator.

3. A person listed under subsection 2 shall not do any of the following:

a. File an application for relief under section 87.11 which as of its effective date, or as of any date after filing in the case of an order denying relief, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Willfully violate or willfully fail to comply with any provision of sections 87.11, 87.11A, and 87.11B, or any rule or order adopted or issued pursuant to such sections.

4. The commissioner of insurance may deny, suspend, or revoke a certificate of relief issued pursuant to section 87.11, or may impose a civil penalty for a violation of this section.

5. A civil penalty levied under subsection 4 shall not exceed one thousand dollars per violation per person, and shall not exceed ten thousand dollars in a single proceeding against any one person. All civil penalties shall be deposited pursuant to section 505.7.

6. A person who willfully and knowingly violates this section, or a rule or order adopted or issued pursuant to this section, is guilty of a class "D" felony. The commissioner of insurance may refer such evidence as is available concerning violations of this section to the attorney general or the proper county attorney who may, with or without such reference, institute appropriate criminal proceedings under this section. This section does not limit the power of the state to punish a person for conduct which constitutes a crime under any other statute.

91 Acts, ch 160, §9; 2009 Acts, ch 181, §43

2011 repeal of 2009 Acts, ch 181, §43, amendment to subsection 5 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 88

### OCCUPATIONAL SAFETY AND HEALTH

#### **88.5 Occupational safety and health standards.**

1. *Promulgation of rules.* The commissioner shall, by rule, promulgate standards as needed to conform state occupational safety and health standards to federal occupational safety and health standards. The commissioner shall follow the rulemaking procedures of chapter 17A, and shall file a notice of intended action within ninety days of federal publication of a new, amended, or revoked federal standard.

2. *Toxic materials and other harmful physical agents.* The commissioner, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of the employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate, but in any event shall conform with the provisions of subsection 1 of this section. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, a standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

3. *Temporary variances.*

a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph "b" of this subsection and establishes that the employer is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or operation of the facilities cannot be completed by the effective date, that the employer is taking all available steps to safeguard the employer's employees against the hazards that are covered by the standard, and that the employer has an effective program for coming into compliance with this standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter except that such an order may be renewed not more than twice so long as the requirements of this paragraph are met and an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred and eighty days.

b. An application for a temporary order under this subsection shall contain:

(1) A specification of the standard or portion thereof from which the employer seeks a variance.

(2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the fact represented, that the employer is unable to comply with the standard or portion thereof and a detailed statement of those reasons therefor.

(3) A statement of the steps the employer has taken and will take (with specific dates) to protect employees against the hazard covered by the standard.

(4) A statement of when the employer expects to be able to comply with the standard and what steps the employer has taken and what steps the employer will take (with dates specified) to come into compliance with the standard.

(5) A certification that the employer has informed the employer's employees of any application by giving a copy thereof to their authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other reasonably appropriate means as may be directed by the commissioner.

(6) A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing.

4. *Labels, warnings, protective equipment.* Any standard promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at the employer's cost, to employees exposed to such hazard in order to most effectively determine whether the health of such employee is adversely affected by such exposure. The results of such examinations or tests shall be furnished to the commissioner, and if released by the employee, shall be furnished to the employee's physician and the employer's physician.

5. *Emergency temporary standards.* The commissioner shall provide for an emergency temporary standard to take immediate effect if the commissioner determines that employees are exposed to grave danger from exposure from substances or agents determined to be toxic or physically harmful or from new hazards and if such emergency temporary standard is necessary to protect the employees from such danger. Such emergency standard shall cease to be effective and shall no longer be applicable after the lapse of six months following the effective date thereof unless the commissioner has initiated the procedures provided for under this chapter, for the purpose of promulgating a permanent standard as provided in subsection 1 of this section in which case the emergency temporary standard will remain in effect until the permanent standard is adopted and becomes effective. Abandonment of the procedure for such promulgation by the commissioner shall terminate the effectiveness and applicability of the emergency temporary standard.

6. *Permanent variance.* Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if the commissioner determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to the employer's employees which are as safe and healthful as those which would prevail if the employer complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which the employer must adopt and utilize to the extent that they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the commissioner on the commissioner's own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

7. *Special variance.* Where there are conflicts with standards, rules, or regulations promulgated by any federal agency other than the United States department of labor, special

variances from standards, rules, or regulations promulgated under this chapter may be granted to avoid such regulatory conflicts. Such variances shall take into consideration the safety of the employees involved. Notwithstanding any other provision of this chapter, and with respect to this subsection, any employer seeking relief under this provision must file an application with the commissioner and the commissioner shall forthwith hold a hearing at which employees or other interested persons, including representatives of the federal regulatory agencies involved, may appear and, upon the showing that such a conflict indeed exists, the commissioner may issue a special variance until the conflict is resolved.

8. *Priority for setting standards.* In determining the priorities for establishing standards under this section, the commissioner shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

9. *Product safety.* Standards promulgated under this chapter shall not be different from federal standards applying to products distributed or used in interstate commerce unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision does not apply to customized products or parts not normally available on the open market, or to optional parts or additions to products which are ordinarily available with such optional parts or additions.

10. *Judicial review before enforcement.* The provisions of the Iowa administrative procedure Act, chapter 17A, shall apply to judicial review of standards issued under this section. Notwithstanding any provision of the Iowa administrative procedure Act, chapter 17A, to the contrary, a person who is aggrieved or adversely affected by a standard issued under this section must seek judicial review of such standard prior to the sixtieth day after such standard becomes effective. All determinations of the commissioner shall be conclusive if supported by substantial evidence in the record as a whole.

11. *Railway sanitation and shelter.* A railway corporation within the state shall provide adequate sanitation and shelter for all railway employees. The commissioner shall adopt rules requiring railway corporations within the state to provide a safe and healthy workplace. The commissioner shall enforce the requirements of this subsection upon the receipt of a written complaint.

[C66, 71, §88A.11 – 88A.13; C73, 75, 77, 79, 81, §88.5]

86 Acts, ch 1245, §521; 88 Acts, ch 1042, §1; 93 Acts, ch 180, §54; 94 Acts, ch 1023, §84; 2001 Acts, ch 24, §25; 2002 Acts, ch 1119, §10; 2003 Acts, ch 44, §114; 2007 Acts, ch 36, §1; 2010 Acts, ch 1015, §1; 2011 Acts, ch 34, §18

Subsection 11 amended

### **88.19 Annual report.**

Within one hundred twenty days following the convening of each session of each general assembly, the commissioner shall prepare and submit to the governor for transmittal to the general assembly a report upon the subject matter of this chapter, the progress toward achievement of the purpose of this chapter, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports may include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this chapter, defining areas of emphasis for new criteria and standards; evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; a description of cooperative efforts undertaken between government agencies and other interested parties in the implementation of this chapter during the preceding year; a progress report on the development of an adequate supply of trained personnel in the field of occupational safety and health, including estimates of future needs and the efforts being made by government and others to meet those needs; a listing of all toxic substances in industrial usage for

which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this chapter.

[C73, 75, 77, 79, 81, §88.19]

2007 Acts, ch 16, §1; 2010 Acts, ch 1015, §2; 2011 Acts, ch 25, §10

Section amended

## CHAPTER 89

### BOILERS AND UNFIRED STEAM PRESSURE VESSELS

#### 89.3 Inspection made.

1. It shall be the duty of the commissioner, to inspect or cause to be inspected internally and externally, at least once every twelve months, except as otherwise provided in this section, in order to determine whether all such equipment is in a safe and satisfactory condition, and properly constructed and maintained for the purpose for which it is used, all boilers and unfired steam pressure vessels operating in excess of fifteen pounds per square inch, all low pressure heating boilers and unfired steam pressure vessels located in places of public assembly and other appurtenances used in this state for generating or transmitting steam for power, or for using steam under pressure for heating or steaming purposes.

2. The commissioner may enter any building or structure, public or private, for the purpose of inspecting any equipment covered by this chapter or gathering information with reference thereto.

3. The commissioner may inspect boilers and tanks and other equipment stamped with the American society of mechanical engineers code symbol for other than steam pressure, manufactured in Iowa, when requested by the manufacturer.

4. *a.* An object that meets all of the following criteria shall be inspected at least once every two years internally and externally while not under pressure, and at least once every two years externally while under pressure, unless the commissioner determines that an earlier inspection is warranted.

(1) The object is a boiler with one hundred thousand pounds per hour or more capacity, or the object is an unfired steam pressure vessel or a regulated appurtenance that is part of the same system as a boiler with one hundred thousand pounds per hour or more capacity.

(2) The object contains only water subject to internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water.

(3) The water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors.

*b.* The owner or user of an object meeting the criteria in paragraph “*a*” shall do the following:

(1) At any time the commissioner, a special inspector, or the supervisor of water treatment deems a hydrostatic test is necessary to determine the safety of an object, conduct the test under the supervision of the commissioner.

(2) Keep available for examination by the commissioner accurate records showing the date and actual time the object is out of service and the reason it is out of service.

(3) Keep available for examination by the commissioner chemical physical laboratory analyses of samples of the object water taken at regular intervals of not more than forty-eight hours of operation as will adequately show the condition of the water and any elements or characteristics of the water which are capable of producing corrosion or other deterioration of the object or its parts.

5. *a.* An object that meets all of the following criteria shall be inspected at least once each year externally while under pressure and at least once every four years internally while not under pressure, unless the commissioner determines an earlier inspection is warranted:

(1) The object is a boiler with one hundred thousand pounds per hour or more capacity, or the object is an unfired steam pressure vessel or a regulated appurtenance that is part of the same system as a boiler with one hundred thousand pounds per hour or more capacity.

(2) The object contains only water subject to internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water.

(3) The water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors.

(4) The owner or user is a participant in good standing in the Iowa occupational safety and health voluntary protection program and has achieved star status within the program, which is administered by the division of labor in the department of workforce development.

b. The owner or user of an object that meets the criteria in paragraph "a" shall do the following:

(1) At any time the commissioner, a special inspector, or the supervisor of the water treatment deems a hydrostatic test necessary to determine the safety of an object, conduct the test under the supervision of the commissioner.

(2) Keep available for examination by the commissioner accurate records showing the date and actual time the object is out of service and the reason it is out of service.

(3) Arrange for an internal inspection of the object during each planned outage by a special inspector or the commissioner.

(4) Keep for examination by the commissioner accurate records showing the chemical physical laboratory analyses of samples of the object's water taken at regular intervals of not more than forty-eight hours of operation adequate to show the condition of the water and any elements or characteristics of the water that are capable of producing corrosion or other deterioration of the object or its parts.

6. Internal inspections of cast aluminum steam, cast aluminum hot water heating, sectional cast iron steam, and cast iron hot water heating boilers shall be conducted only as deemed necessary by the commissioner. External operating inspections shall be conducted annually.

7. Internal inspections of steel hot water boilers shall be conducted once every six years. External operating inspections shall be conducted annually.

8. Internal inspections of unfired steam pressure vessels operating in excess of fifteen pounds per square inch shall be conducted once every two years. External inspections shall be conducted annually. An internal inspection of an unfired steam pressure vessel may be required at any time by the commissioner upon the observation by an inspector of conditions, enumerated by the commissioner through rules, warranting an internal inspection.

9. An internal inspection shall not be required on an unfired steam pressure vessel that was manufactured without an inspection opening.

10. An exhibition boiler does not require an annual inspection certificate but special inspections may be requested by the owner or an event's management to be performed by the commissioner. Upon the completion of an exhibition boiler inspection a written condition report shall be prepared by the commissioner regarding the condition of the exhibition boiler's boiler or pressure vessel. This report will be issued to the owner and the management of all events at which the exhibition boiler is to be operated. The event's management is responsible for the decision on whether the exhibition boiler should be operated and shall inform the division of labor of the event's management's decision. The event's management is responsible for any injuries which result from the operation of any exhibition boiler approved for use at the event by the event's management. A repair symbol, known as the "R" stamp, is not required for repairs made to exhibition boilers pursuant to the rules regarding inspections and repair of exhibition boilers as adopted by the commissioner, pursuant to chapter 17A.

11. An inspection report created pursuant to this chapter that requires modification,

alteration, or change shall be in writing and shall cite the state law or rule or the ASME code section allegedly violated.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.2; C79, 81, §89.3]

85 Acts, ch 105, §1; 89 Acts, ch 321, §27; 97 Acts, ch 27, § 1; 2004 Acts, ch 1107, §3, 30; 2007 Acts, ch 135, §1 – 3; 2009 Acts, ch 94, §2; 2009 Acts, ch 179, §34; 2010 Acts, ch 1015, §3; 2011 Acts, ch 34, §19

Subsection 5, paragraph a, unnumbered paragraph 1 amended

### **89.5 Rules — records.**

1. The commissioner shall investigate and record the cause of any boiler explosion that may occur in the state, the loss of life, injuries sustained, and estimated loss of property, if any; and such other data as may be of benefit in preventing a recurrence of similar explosions.

2. The commissioner shall keep a complete and accurate record of the name of the owner or user of each steam boiler or other equipment subject to this chapter, giving a full description of the equipment, including the type, dimensions, age, condition, the amount of pressure allowed, and the date when last inspected.

3. A rule adopted pursuant to this chapter which adopts standards by reference to another publication shall be exempt from the requirements of section 17A.6, subsection 2, if the following conditions exist:

a. The cost of the publication is an unreasonable expense when compared to the anticipated usage of the publication.

b. A copy of the publication is available from an entity located within the state capitol complex.

c. The rule identifies the location where the publication is available.

d. The administrative rules coordinator approves the exemption.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.4; C79, 81, §89.5]

96 Acts, ch 1149, §1; 2004 Acts, ch 1107, §4, 5, 30; 2010 Acts, ch 1031, §54; 2011 Acts, ch 34, §20

See §256.53

Subsection 3, unnumbered paragraph 1 amended

### **89.6 Notice to commissioner.**

1. Before any equipment included under the provisions of this chapter is installed by any owner, user, or lessee thereof, a ten days' written notice of intention to install the equipment shall be given to the commissioner. The notice shall designate the proposed place of installation, the type and capacity of the equipment, the use to be made thereof, the name of the company which manufactured the equipment, and whether the equipment is new or used.

2. Before any power boiler is converted to a low pressure boiler, the owner or user shall give to the commissioner ten days' written notice of intent to convert the boiler. The notice shall designate the boiler location, the uses of the building, and other information specified by rule by the board.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.5; C79, 81, §89.6]

2010 Acts, ch 1015, §5; 2011 Acts, ch 25, §11

Subsection 2 amended

## **CHAPTER 89A**

### **ELEVATORS**

#### **89A.3 Rules.**

1. The safety board may adopt rules governing maintenance, construction, alteration, and installation of conveyances, and the inspection and testing of new and existing installations as necessary to provide for the public safety, and to protect the public welfare.

2. The safety board shall adopt, amend, or repeal rules pursuant to chapter 17A as it deems

necessary for the administration of this chapter, which shall include but not be limited to rules providing for:

- a. Classifications of types of conveyances.
- b. Maintenance, inspection, testing, and operation of the various classes of conveyances.
- c. Construction of new conveyances.
- d. Alteration of existing conveyances.
- e. Minimum safety requirements for all existing conveyances.
- f. Control or prevention of access to conveyances or dormant conveyances.
- g. The reporting of accidents and injuries arising from the use of conveyances.
- h. The adoption of procedures for the issuance of variances.
- i. The amount of fees charged and collected for inspection, permits, and commissions.

Fees shall be set at an amount sufficient to cover costs as determined from consideration of the reasonable time required to conduct an inspection, reasonable hourly wages paid to inspectors, and reasonable transportation and similar expenses.

j. Submission of information such as plans, drawings, and measurements concerning new installations and alterations.

3. The safety board shall adopt rules for conveyances according to the applicable provisions of the American society of mechanical engineers safety codes for elevators and escalators, A17.1 and A17.3, as the safety board deems necessary. In adopting rules the safety board may adopt the American society of mechanical engineers safety codes, or any part of the codes, by reference.

4. The safety board may adopt rules permitting existing passenger and freight elevators to be modified into material lift elevators.

5. A rule adopted pursuant to this section which adopts standards by reference to another publication shall be exempt from the requirements of section 17A.6, subsection 2, if the following conditions exist:

a. The cost of the publication is an unreasonable expense when compared to the anticipated usage of the publication.

b. A copy of the publication is available from an entity located within the state capitol complex.

c. The rule identifies the location where the publication is available.

d. The administrative rules coordinator approves the exemption.

6. The commissioner shall furnish copies of the rules adopted pursuant to this chapter to any person who requests them, without charge, or upon payment of a charge not to exceed the actual cost of printing of the rules.

7. The safety board may adopt rules permitting inclined or vertical wheelchair lifts in churches and houses of worship to service more than one floor.

8. The commissioner may adopt rules pursuant to chapter 17A relating to the denial, issuance, revocation, and suspension of special inspector commissions.

[C24, 27, 31, 35, 39, §1678; C46, 50, 54, 58, 62, 66, 71, 73, §104.1; C75, 77, 79, 81, §104.3]

84 Acts, ch 1094, §2; 86 Acts, ch 1157, §3

C87, §89A.3

88 Acts, ch 1042, §4; 99 Acts, ch 68, §5, 6; 2004 Acts, ch 1107, §13 – 17, 30; 2007 Acts, ch 16, §4; 2009 Acts, ch 85, §2; 2010 Acts, ch 1031, §55; 2011 Acts, ch 34, §21

See §256.53

Subsection 5, unnumbered paragraph 1 amended

## CHAPTER 90A

### BOXING, MIXED MARTIAL ARTS, AND WRESTLING

#### **90A.11 License penalties — cease and desist order.**

1. A person who acts as a promoter without first obtaining a license commits a serious

misdeemeanor and shall be liable to the state for the taxes and penalties pursuant to section 90A.9.

2. *a.* Notwithstanding the procedural requirements of chapter 17A, the commissioner may issue an order to cease and desist a match or event if the criteria of this subsection are met. The county sheriff shall assist with service and enforcement of the commissioner's order to cease and desist if requested by the commissioner. The provisions of chapter 17A shall apply after enforcement of the order to cease and desist.

*b.* The commissioner may issue an order to cease and desist a match or event if all of the following have occurred:

(1) The commissioner conducted an investigation and determined a promoter is organizing, advertising, holding, or conducting an event or match that is within the scope of section 90A.2.

(2) The promoter has not applied for or has been denied a license.

(3) The deadline to file a timely license application has passed.

3. *a.* A person who acts as a promoter without first obtaining a license is subject to a civil penalty of not more than ten thousand dollars for each violation.

*b.* The commissioner shall notify the unlicensed promoter of a proposed civil penalty by service in the same manner as an original notice or by certified mail. If within fifteen business days from the receipt of the notice, the unlicensed promoter fails to file a notice of contest in accordance with rules adopted by the commissioner pursuant to chapter 17A, the penalty as proposed shall be deemed final agency action for purposes of judicial review.

*c.* The commissioner shall notify the department of revenue upon final agency action regarding the assessment of a civil penalty against an unlicensed promoter. Interest shall be calculated on the penalty from the date of final agency action.

*d.* Judicial review of final agency action pursuant to this section may be sought in accordance with the terms of section 17A.19. If no petition for judicial review is filed within sixty days after service of the final agency action of the commissioner, the commissioner's findings of fact and final agency action shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of the sixty-day period. The clerk of court, unless otherwise ordered by the court, shall enter a decree enforcing the final agency action and shall transmit a copy of the decree to the commissioner and the unlicensed promoter named in the petition.

*e.* Civil penalties recovered pursuant to this subsection shall be remitted by the commissioner to the treasurer of state for deposit in the general fund of the state.

97 Acts, ch 29, §11; 2010 Acts, ch 1122, §10; 2011 Acts, ch 34, §22

Subsection 3, paragraph e amended

## CHAPTER 91

### LABOR SERVICES DIVISION

#### 91.4 Duties and powers.

1. The duties of said commissioner shall be:

*a.* To safely keep all records, papers, documents, correspondence, and other property pertaining to or coming into the commissioner's hands by virtue of the office, and deliver the same to the commissioner's successor, except as otherwise provided.

*b.* To collect, assort, and systematize statistical details relating to programs of the division of labor services.

*c.* To issue from time to time bulletins containing information of importance to the industries of the state and to the safety of wage earners.

*d.* To conduct and to cooperate with other interested persons and organizations in conducting educational programs and projects on employment safety.

*e.* To serve as an ex officio member of the state fire service and emergency response

council, or appoint a designee to serve as an ex officio member of such council, to assist the council in the development of rules relating to fire fighting training standards and any other issues relating to occupational safety and health standards for fire fighters.

2. The director of the department of workforce development, in consultation with the labor commissioner, shall, at the time provided by law, make an annual report to the governor setting forth in appropriate form the business and expense of the division of labor services for the preceding year, the number of remedial actions taken under chapter 89A, the number of disputes or violations processed by the division and the disposition of the disputes or violations, and other matters pertaining to the division which are of public interest, together with recommendations for change or amendment of the laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 92, and 94A, and section 85.68, and the recommendations, if any, shall be transmitted by the governor to the first general assembly in session after the report is filed.

3. The commissioner, with the assistance of the office of the attorney general if requested by the commissioner, may commence a civil action in any court of competent jurisdiction to enforce the statutes under the commissioner's jurisdiction.

4. The division of labor services may sell documents printed by the division at cost according to rules established by the labor commissioner pursuant to chapter 17A. Receipts from the sale shall be deposited to the credit of the division and may be used by the division for administrative expenses.

5. Except as provided in chapter 91A, the commissioner may recover interest, court costs, and any attorney fees incurred in recovering any amounts due. The recovery shall only take place after final agency action is taken under chapter 17A, or upon judicial review, after final disposition of the case by the court. Attorney fees recovered in an action brought under the jurisdiction of the commissioner shall be deposited in the general fund of the state. The commissioner is exempt from the payment of any filing fee or other court costs including but not limited to fees paid to county sheriffs.

6. The commissioner may establish rules pursuant to chapter 17A to assess and collect interest on fees, penalties, and other amounts due the division. The commissioner may delay or, following written notice, deny the issuance of a license, commission, registration, certificate, or permit authorized under chapter 88A, 89, 89A, 90A, 91C, or 94A if the applicant for the license, commission, registration, certificate, or permit owes a liquidated debt to the commissioner.

[C97, §2469, 2470; S13, §2469, 2470; C24, 27, 31, 35, 39, §1513; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.4]

86 Acts, ch 1244, §15; 86 Acts, ch 1245, §920; 91 Acts, ch 136, §3; 92 Acts, ch 1098, §6; 93 Acts, ch 180, §58; 96 Acts, ch 1186, §23; 99 Acts, ch 68, §14, 15; 99 Acts, ch 130, §8; 2000 Acts, ch 1117, §7; 2006 Acts, ch 1053, §1; 2006 Acts, ch 1185, §117; 2007 Acts, ch 211, §34; 2010 Acts, ch 1015, §7; 2011 Acts, ch 34, §23

Section amended

## CHAPTER 96

### EMPLOYMENT SECURITY — UNEMPLOYMENT COMPENSATION

#### 96.13 Funds.

1. *Special fund.* There is hereby created in the state treasury a special fund to be known as the "Employment Security Administration Fund". All moneys which are deposited or paid into this fund are hereby appropriated and made available to the department. All moneys in this fund, except money received pursuant to section 96.9, subsection 4, which are received from the federal government or any agency thereof or which are appropriated by the state for the purposes described in section 96.12 shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration

of this chapter. This fund shall consist of all moneys appropriated by this state, and all moneys received from the United States, or any agency thereof, including the department of labor, the railroad retirement board, the United States employment service, established under the Wagner-Peyser Act, or from any other source for such purpose. Moneys received from the railroad retirement board, or any other agency, as compensation for services or facilities supplied to said board or agency shall be paid to the department, and the department shall allocate said moneys to the employment security administration fund. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the department for expenditure consistent with this chapter. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the employment security administration fund in an amount and with such sureties as shall be fixed and approved by the governor. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 96.9, shall be paid from the moneys in the employment security administration fund. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 96.9, subsection 4, paragraph "b", shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in section 96.9, subsection 4.

2. *Replenishment of lost funds.* If any moneys received after June 30, 1941, from the social security board under Tit. III of the Social Security Act, or any unencumbered balances in the unemployment compensation administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the social security board, because of any action or contingency, to have been lost or been expended for purposes other than or in amounts in excess of, those found necessary by the social security board for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in subsection 1 of this section. Upon receipt of notice of such a finding by the social security board, the department shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Tit. III of the Social Security Act.

3. *Special employment security contingency fund.*

a. (1) There is created in the state treasury a special fund to be known as the special employment security contingency fund. All interest, fines, and penalties, regardless of when they become payable, collected from employers under section 96.14 shall be paid into the fund. The moneys shall not be expended or available for expenditure in any manner which would permit their substitution for federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the department. However, the moneys may be used as a revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to the charging of the expenditures against the funds when received. The moneys may be used for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds, received for the department. The moneys in the fund are specifically made available to replace, within a reasonable time, any moneys received by this state in the form of grants from the federal government for administrative expenses which because of any action or contingency have been expended for purposes other than, or in excess of, those necessary for the proper administration of the department. All moneys in the fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the state treasury. Interest earned upon moneys in the fund shall be deposited in and credited to the fund.

(2) The treasurer of state shall be the custodian of the fund and shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the fund in an amount and with sureties as shall be fixed and approved by the governor. The premium for the bond shall be paid from the moneys in the fund. All sums recovered on the bond for losses sustained by the fund shall be deposited in the fund. Refunds of interest and penalties shall be paid only from the fund.

(3) Balances to the credit of the fund shall not lapse at any time but shall continuously be available to the department for expenditures consistent with this subsection. Moneys remaining in the fund at the end of each fiscal year shall not revert to any fund and shall remain in the fund.

b. The department shall annually report to the joint economic development appropriations subcommittee on its plans for expenditures during the next state fiscal year from the special employment security contingency fund. The report shall describe the specific expenditures and explain why the expenditures are to be made from the fund and not from federal administrative funds.

c. The department may appear before the executive council and request authorization of moneys to meet unanticipated emergencies as an expense from the appropriations addressed in section 7D.29.

[C39, §1551.19; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.13; 82 Acts, ch 1126, §2] 84 Acts, ch 1204, §1 – 3; 86 Acts, ch 1209, §2; 91 Acts, ch 45, §10; 92 Acts, ch 1242, §19; 96 Acts, ch 1186, §23; 98 Acts, ch 1074, §10; 2008 Acts, ch 1032, §201; 2011 Acts, ch 131, §24, 158  
Subsection 3, paragraph c amended

## CHAPTER 97A

### PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

#### 97A.7 Management of funds.

1. The board of trustees shall be the trustees of the retirement fund created by this chapter as provided in section 97A.8 and shall have full power to invest and reinvest funds subject to the terms, conditions, limitations, and restrictions imposed by subsection 2 of this section and chapters 12F and 12H, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments of the retirement fund which have been invested, as well as of the proceeds of said investments and any moneys belonging to the retirement fund. The board of trustees may authorize the treasurer of state to exercise any of the duties of this section. When so authorized the treasurer of state shall report any transactions to the board of trustees at its next monthly meeting.

2. The retirement fund created by this chapter may be invested in any investments authorized for the Iowa public employees' retirement system in section 97B.7A.

3. The treasurer of state shall be the custodian of the retirement fund. All payments from the retirement fund shall be made by the treasurer only upon vouchers signed by two persons designated by the board of trustees. A duly attested copy of the resolution of the board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer of state as the treasurer's authority for making payments on such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the board of trustees.

4. A member of the board of trustees or an employee of the department of public safety shall not have a direct interest in the gains or profits of any investment made by the board of trustees. A trustee shall not receive any pay or emolument for the trustee's services. A trustee or employee of the department of public safety shall not directly or indirectly use the assets of the system except to make current and necessary payments as authorized by the

board of trustees, nor shall a trustee or employee of the department of public safety become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board of trustees.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.7]

86 Acts, ch 1245, §248; 96 Acts, ch 1187, §92; 97 Acts, ch 23, §9; 2001 Acts, ch 68, §6, 24; 2003 Acts, ch 145, §169; 2007 Acts, ch 39, §9; 2008 Acts, ch 1171, §10; 2011 Acts, ch 82, §9  
Subsection 1 amended

## CHAPTER 97B

### IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

Ch 97, Code 1950, repealed by 53 Acts, ch 71, with certain rights preserved; see §97.50 through 97.53

#### 97B.1A Definitions.

When used in this chapter:

1. "*Abolished system*" means the Iowa old-age and survivors' insurance system repealed by sections 97.50 to 97.53.

2. "*Accumulated contributions*" means the total obtained as of any date, by accumulating each individual contribution by the member with interest plus interest dividends as provided in section 97B.70, for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70.

2A. "*Accumulated employer contributions*" means an amount equal to the total obtained as of any date, by accumulating each individual contribution by the employer for the member with interest plus interest dividends as provided in section 97B.70, for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70.

3. "*Active member*" during a calendar year means a member who made contributions to the retirement system at any time during the calendar year and who:

a. Had not received or applied for a refund of the member's accumulated contributions for withdrawal or death, and

b. Had not commenced receiving a retirement allowance.

4. "*Actuarial equivalent*" means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the system.

5. "*Beneficiary*" means the person or persons who are entitled to receive any benefits payable under this chapter at the death of a member, if the person or persons have been designated on a form provided by the system and filed with the system. If no such designation is in effect at the time of death of the member or if no person so designated is living at that time, then the beneficiary is the estate of the member.

6. "*Bona fide retirement*" means a retirement by a vested member which meets the requirements of section 97B.52A and in which the member is eligible to receive benefits under this chapter.

7. "*Contributions*" means the payments to the fund required herein, by the employer and by the members, to provide the benefits of the retirement system.

8. "*Employee*" means an individual who is employed as defined in this chapter for whom coverage under this chapter is mandatory.

a. "*Employee*" shall also include any of the following individuals who do not elect out of coverage under this chapter pursuant to section 97B.42A:

(1) Elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions. An elective official covered under this section may terminate membership under this chapter by informing the system in writing of

the expiration of the member's term of office or by informing the system of the member's intent to terminate membership for employment as an elective official and establishing that the member has a bona fide termination of employment from all employment covered under this chapter other than as an elective official and that the member has filed a completed application for benefits form with the system. A county attorney is an employee for purposes of this chapter whether that county attorney is employed on a full-time or part-time basis.

(2) Members of the general assembly of Iowa and temporary employees of the general assembly of Iowa.

(a) A member of the general assembly covered under this chapter may terminate membership under this chapter by informing the system in writing of the member's intent to terminate membership.

(b) Temporary employees of the general assembly covered under this chapter may terminate membership by sending written notification to the system of their separation from service.

(3) Nonvested employees of drainage and levee districts.

(4) Employees of a community action program determined to be an instrumentality of the state or a political subdivision.

(5) Magistrates.

(6) Members of the ministry, rabbinate, or other religious order who have taken the vow of poverty.

(7) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in chapter 372 or chapter 420.

(8) Members of the state transportation commission, the board of parole, and the state health facilities council.

(9) Employees appointed by the state board of regents who do not elect coverage in a retirement system qualified by the state board of regents that meets the criteria of section 97B.2.

(10) Persons employed by the board of trustees for the statewide fire and police retirement system established in section 411.36.

(11) Persons employed by a municipal water utility or waterworks that has established a pension and annuity retirement system for its employees pursuant to chapter 412.

(12) Persons employed by the economic development authority on or after July 1, 2011.

b. "Employee" does not mean the following individuals:

(1) Individuals who are enrolled as students and whose primary occupations are as students who are incidentally employed by employers.

(2) Graduate medical students while serving as interns or resident doctors in training at any hospital, or county medical examiners and deputy county medical examiners under chapter 331, division V, part 8, who are not full-time county employees.

(3) Employees hired for temporary employment of less than six consecutive months or one thousand forty hours in a calendar year. An employee who works for an employer for six or more consecutive months or who works for an employer for more than one thousand forty hours in a calendar year is not a temporary employee under this subparagraph. Adjunct instructors are temporary employees for the purposes of this chapter. As used in this section, unless the context otherwise requires, "adjunct instructors" means instructors employed by a community college or a university governed by the state board of regents without a continuing contract, whose teaching load does not exceed one-half time for two full semesters or three full quarters per calendar year.

(4) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants, and specialists in their field of specialized knowledge or skill.

(5) Employees of the Iowa dairy industry commission established under chapter 179, the Iowa beef cattle producers association established under chapter 181, the Iowa pork producers council established under chapter 183A, the Iowa turkey marketing council established under chapter 184A, the Iowa soybean association as provided in chapter 185, the Iowa corn promotion board established under chapter 185C, and the Iowa egg council established under chapter 184.

(6) Judicial hospitalization referees appointed under section 229.21.

(7) Employees of an area agency on aging, if as of July 1, 1994, the agency provides for participation by all of its employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code.

(8) Persons employed through any program described in section 84A.7 and provided by the Iowa conservation corps.

(9) Persons employed by the Iowa student loan liquidity corporation.

9. “Employer” means the state of Iowa, the counties, municipalities, agencies, public school districts, all political subdivisions, and all of their departments and instrumentalities, including area agencies on aging, other than those employing persons as specified in subsection 8, paragraph “b”, subparagraph (7), and joint planning commissions created under chapter 28E or 28I.

If an interstate agency is established under chapter 28E and similar enabling legislation in an adjoining state, and an employer had made contributions to the retirement system for employees performing functions which are transferred to the interstate agency, the employees of the interstate agency who perform those functions shall be considered to be employees of the employer for the sole purpose of membership in the retirement system, although the employer contributions for those employees are made by the interstate agency.

10. “Employment for any calendar quarter” means any service performed under an employer-employee relationship under this chapter for which wages are reported in the calendar quarter. For the purposes of this chapter, elected officials are deemed to be in employment for all quarters of the elected officials’ respective terms of office, even if the elected officials have selected a method of payment of wages which results in the elected officials not being credited with wages every quarter of a year.

10A. “Final average covered wage” means the greater of the following:

a. (1) The member’s covered wages averaged for the highest five years of the member’s regular service, except as otherwise provided in this paragraph. The highest five years of a member’s covered wages shall be determined using calendar years. However, if a member’s final quarter of a year of employment does not occur at the end of a calendar year, the system may determine the wages for the fifth year by computing the average quarter of all quarters from the member’s highest calendar year of covered wages not being used in the selection of the four highest years and using the computed average quarter for each quarter in the fifth year in which no wages have been reported in combination with the final quarter or quarters of the member’s service to create a full calendar year. However, the system shall not use the member’s final quarter of wages if using that quarter would reduce the member’s final average covered wage. If the five-year average covered wage of a member exceeds the highest maximum covered wages in effect for a calendar year during the member’s period of service, the five-year average covered wage of the member shall be reduced to the highest maximum covered wages in effect during the member’s period of service. Notwithstanding any other provision of this subparagraph to the contrary, a member’s wages for the fifth year as computed under this subparagraph shall not exceed, by more than three percent, the member’s highest actual calendar year of covered wages.

(2) Notwithstanding any other provisions of this paragraph “a” to the contrary, the member’s five-year average covered wage shall be the lesser of the five-year average covered wage as calculated pursuant to subparagraph (1) and the adjusted covered wage amount. For purposes of this subparagraph (2), the covered wage amount shall be an amount equal to one hundred thirty-four percent of the member’s applicable calendar year wages. The member’s applicable calendar year wages shall be the member’s highest calendar year of covered wages not used in the calculation of the member’s five-year average covered wage pursuant to subparagraph (1), or such other calendar year of covered wages selected by the system pursuant to rules adopted by the system.

b. If the member was vested as of June 30, 2012, the member’s three-year average covered wage as of June 30, 2012.

11. “First month of entitlement” means the first month for which a member is qualified to receive retirement benefits under this chapter. Effective January 1, 1995, a member who meets all of the following requirements is qualified to receive retirement benefits under this chapter:

- a. Has attained the minimum age for receipt of a retirement allowance under this chapter.
- b. If the member has not attained seventy years of age, has terminated all employment covered under this chapter or formerly covered under this chapter pursuant to section 97B.42 in the month prior to the member's first month of entitlement.
- c. Has filed a completed application for benefits with the system setting forth the member's intended first month of entitlement.
- d. Has survived into the month for which the member's first retirement allowance is payable by the retirement system.

11A. "*Fully funded*" means a funded ratio of at least one hundred percent using the most recent actuarial valuation. For purposes of this subsection, "*funded ratio*" means the ratio produced by dividing the lesser of the actuarial value of the system's assets or the market value of the system's assets, by the system's actuarial liabilities, using the actuarial method adopted by the investment board pursuant to section 97B.8A, subsection 3.

12. "*Inactive member*" with respect to future service means a member who at the end of a year had not made any contributions during the current year and who has not received a refund of the member's accumulated contributions.

13. "*Internal Revenue Code*" means the Internal Revenue Code as defined in section 422.3.

14. "*Member*" means an employee or a former employee who maintains the employee's or former employee's accumulated contributions in the retirement system. The former employee is not a member if the former employee has received a refund of the former employee's accumulated contributions.

14A. "*Member account*" means the account established for each member and includes the member's accumulated contributions and the member's share of the accumulated employer contributions as provided in section 97B.53. "*Member account*" does not mean the supplemental account for active members.

15. "*Membership service*" means service rendered by a member after July 4, 1953. Years of membership service shall be counted to the complete quarter calendar year. However, membership service for a calendar year shall not include more than four quarters. In determining a member's period of membership service, the system shall combine all periods of service for which the member has made contributions.

16. "*Prior service*" means any service by an employee rendered at any time prior to July 4, 1953.

17. "*Regular service*" means service for an employer other than special service.

18. "*Retired member*" means a member who has applied for the member's retirement allowance and has survived into at least the first day of the member's first month of entitlement.

19. "*Retirement*" means that period of time beginning when a member who has filed an approved application for a retirement allowance has survived into at least the first day of the member's first month of entitlement and ending when the member dies.

19A. "*Retirement system*" means the retirement plan as contained in this chapter or as duly amended.

20. "*Service*" means service under this chapter by an employee, except an elected official, for which the employee is paid covered wages. Service shall also mean the following:

a. Service in the armed forces of the United States, if the employee was employed by a covered employer immediately prior to entry into the armed forces, and if any of the following requirements are met:

(1) The employee was released from service and returns to covered employment with an employer within twelve months of the date on which the employee has the right of release from service or within a longer period as required by the applicable laws of the United States.

(2) The employee, while serving on active duty in the armed forces of the United States in an area designated by the president of the United States or the United States Congress as a combat zone or as a qualified hazardous duty area, or deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the United States secretary of defense as a contingency operation as defined in 10 U.S.C. § 101(a)(13), or which became such a contingency operation by the operation of law, dies, or suffers an injury or acquires a disease resulting in death, so long as the

death from the injury or disease occurs within a two-year period from the date the employee suffered the active duty injury or disease and the active duty injury or disease prevented the employee from returning to covered employment as provided in subparagraph (1).

b. Leave of absence authorized by the employer prior to July 1, 1998, for a period not exceeding twelve months and ending no later than July 1, 1999.

c. A leave of absence authorized pursuant to the requirements of the federal Family and Medical Leave Act of 1993, or other similar leave authorized by the employer for a period not to exceed twelve weeks in any calendar year.

d. Temporary or seasonal interruptions in service for employees of a school corporation or educational institution when the temporary suspension of service does not terminate the period of employment of the employee and the employee returns to service at a school corporation or educational institution upon the end of the temporary or seasonal interruption. However, effective July 1, 2004, “service” does not mean service for which an employee receives remuneration from an employer for temporary employment during any quarter in which the employee is on an otherwise unpaid leave of absence that is not authorized under the federal Family and Medical Leave Act of 1993 or other similar leave. Remuneration paid by the employer for the temporary employment shall not be treated by the system as covered wages.

e. Employment with an employer prior to January 1, 1946, if the member is not receiving a retirement allowance based upon that employment.

21. “Service” for an elected official means the period of membership service for which contributions are made beginning on the date an elected official assumes office and ending on the expiration date of the last term the elected official serves, excluding all the intervening periods during which the elected official is not an elected official.

22. “Special service” means service for an employer while employed in a protection occupation as provided in section 97B.49B, and as a county sheriff or deputy sheriff as provided in section 97B.49C.

22A. “Supplemental account for active members” or “supplemental account” means the account established for each active member under section 97B.49H.

23. Reserved.

24. a. “Three-year average covered wage” means a member’s covered wages averaged for the highest three years of the member’s service, except as otherwise provided in this subsection. The highest three years of a member’s covered wages shall be determined using calendar years. However, if a member’s final quarter of a year of employment does not occur at the end of a calendar year, the system may determine the wages for the third year by computing the average quarter of all quarters from the member’s highest calendar year of covered wages not being used in the selection of the two highest years and using the computed average quarter for each quarter in the third year in which no wages have been reported in combination with the final quarter or quarters of the member’s service to create a full year. However, the system shall not use the member’s final quarter of wages if using that quarter would reduce the member’s three-year average covered wage. If the three-year average covered wage of a member exceeds the highest maximum covered wages in effect for a calendar year during the member’s period of service, the three-year average covered wage of the member shall be reduced to the highest maximum covered wages in effect during the member’s period of service. Notwithstanding any other provision of this paragraph to the contrary, a member’s wages for the third year as computed by this paragraph shall not exceed, by more than three percent, the member’s highest actual calendar year of covered wages for a member whose first month of entitlement is January 1999 or later.

b. (1) Notwithstanding any other provisions of this subsection to the contrary, the three-year average covered wage shall be computed as follows for the following members:

(a) For a member who retires during the calendar year beginning January 1, 1997, and whose three-year average covered wage at the time of retirement exceeds forty-eight thousand dollars, the member’s covered wages averaged for the highest four years of the member’s service or forty-eight thousand dollars, whichever is greater.

(b) For a member who retires during the calendar year beginning January 1, 1998, and whose three-year average covered wage at the time of retirement exceeds fifty-two thousand

dollars, the member's covered wages averaged for the highest five years of the member's service or fifty-two thousand dollars, whichever is greater.

(c) For a member who retires during the calendar year beginning January 1, 1999, and whose three-year average covered wage at the time of retirement exceeds fifty-five thousand dollars, the member's covered wages averaged for the highest six years of the member's service or fifty-five thousand dollars, whichever is greater.

(d) For a member who retires on or after January 1, 2000, but before January 1, 2001, and whose three-year average covered wage at the time of retirement exceeds sixty-five thousand dollars, the member's covered wages averaged for the highest six years of the member's service or sixty-five thousand dollars, whichever is greater.

(e) For a member who retires on or after January 1, 2001, but before January 1, 2002, and whose three-year average covered wage at the time of retirement exceeds seventy-five thousand dollars, the member's covered wages averaged for the highest six years of the member's service or seventy-five thousand dollars, whichever is greater.

(2) For purposes of this paragraph, the highest years of the member's service shall be determined using calendar years and may be determined using one computed year calculated in the manner and subject to the restrictions provided in paragraph "a".

c. Notwithstanding any other provisions of this subsection to the contrary, for a member who retires on or after July 1, 2007, the member's three-year average covered wage shall be the lesser of the three-year average covered wage as calculated pursuant to paragraph "a" and the adjusted covered wage amount. For purposes of this paragraph, the adjusted covered wage amount shall be the greater of the member's three-year average covered wage calculated pursuant to paragraph "a" as of July 1, 2007, and an amount equal to one hundred twenty-one percent of the member's applicable calendar year wages. The member's applicable calendar year wages shall be the member's highest calendar year of covered wages not used in the calculation of the member's three-year average covered wage pursuant to paragraph "a", or such other calendar year of covered wages selected by the system pursuant to rules adopted by the system.

25. a. "Vested member" means a member who has attained through age or sufficient years of service eligibility to receive monthly retirement benefits upon the member's retirement. A vested member must meet one of the following requirements:

- (1) Is vested by service.
- (2) Prior to July 1, 2005, has attained the age of fifty-five.
- (3) Between July 1, 2005, and June 30, 2012, has attained the age of fifty-five or greater while in covered employment.

(4) On and after July 1, 2012, meets one of the following requirements:

(a) For a member in special service, has attained the age of fifty-five or greater while in covered employment.

(b) For a member in regular service, has attained the age of sixty-five or greater while in covered employment.

b. "Active vested member" means an active member who has attained sufficient membership service to achieve vested status.

c. "Inactive vested member" means an inactive member who was a vested member at the time of termination of employment.

d. "Vested by service" means a member who meets one of the following requirements:

(1) Prior to July 1, 1965, had attained the age of forty-eight and completed at least eight years of service.

(2) Between July 1, 1965, and June 30, 1973, had completed at least eight years of service.

(3) Between July 1, 1973, and June 30, 2012, had completed at least four years of service.

(4) On and after July 1, 2012, meets one of the following requirements:

(a) For a member in special service, has completed at least four years of special service.

(b) For a member in regular service, has completed at least seven years of service.

(5) On or after July 1, 1988, an inactive member who had accumulated, as of the date of the member's last termination of employment, years of membership service equal to or exceeding the years of membership service specified in this paragraph "d" for qualifying as vested by service on that date of termination.

26. a. (1) “Wages” means all remuneration for employment, including but not limited to any of the following:

(a) The cash value of wage equivalents not necessitated by the convenience of the employer. The fair market value of such wage equivalents shall be reported to the system by the employer.

(b) The remuneration paid to an employee before employee-paid contributions are made to plans qualified under sections 125, 129, 401, 403, 408, and 457 of the Internal Revenue Code. In addition, “wages” includes amounts that can be received in cash in lieu of employer-paid contributions to such plans, if the election is uniformly available and is not limited to highly compensated employees, as defined in section 414(q) of the Internal Revenue Code.

(c) For an elected official, other than a member of the general assembly, the total compensation received by the elected official, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances.

(d) For a member of the general assembly, the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances paid to a member of the general assembly except as otherwise provided in this subparagraph division. Wages includes per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages also includes daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly, but does not include the portion of the daily allowance which exceeds the maximum established by law for members from Polk county.

(e) Payments for compensatory time earned that are received in lieu of taking regular work hours off and when paid as a lump sum. However, “wages” does not include payments made in a lump sum for compensatory time earned in excess of two hundred forty hours per year.

(f) Employee contributions required under section 97B.11 and picked up by the employer under section 97B.11A.

(2) “Wages” does not include any of the following:

(a) The cash value of wage equivalents necessitated by the convenience of the employer.

(b) Payments made for accrued sick leave or accrued vacation leave that are not being used to replace regular work hours, whether paid in a lump sum or in installments.

(c) Payments made as an incentive for early retirement or as payment made upon dismissal or severance from employment, or a special bonus payment intended as an early retirement incentive, whether paid in a lump sum or in installments.

(d) Employer-paid contributions that cannot be received by the employee in cash and that are made to, and any distributions from, plans, programs, or arrangements qualified under section 117, 120, 125, 129, 401, 403, 408, or 457 of the Internal Revenue Code.

(e) Employer-paid contributions for coverage under, or distributions from, an accident, health, or life insurance plan, program, or arrangement.

(f) Workers’ compensation and unemployment compensation payments.

(g) Disability payments.

(h) Reimbursements of employee business expenses except for those expenses included as wages for a member of the general assembly.

(i) Payments for allowances except for those allowances included as wages for a member of the general assembly.

(j) Payments of damages, attorney fees, interest, and penalties made to satisfy a grievance, wage claim, or employment dispute.

(k) Payments for services as an independent contractor.

(l) Payments made by an entity that is not an employer under this chapter.

(m) Payments made in lieu of any employer-paid group insurance coverage.

(n) Bonuses of any type, whether paid in a lump sum or in installments.

b. (1) “Covered wages” means wages of a member during the periods of membership service as follows:

(a) For the period from July 4, 1953, through December 31, 1953, and each calendar year

from January 1, 1954, through December 31, 1963, wages not in excess of four thousand dollars.

(b) For each calendar year from January 1, 1964, through December 31, 1967, wages not in excess of four thousand eight hundred dollars.

(c) For each calendar year from January 1, 1968, through December 31, 1970, wages not in excess of seven thousand dollars, for each calendar year from January 1, 1971, through December 31, 1972, wages not in excess of seven thousand eight hundred dollars, and for each calendar year from January 1, 1973, through December 31, 1975, wages not in excess of ten thousand eight hundred dollars.

(d) For each calendar year from January 1, 1976, through December 31, 1983, wages not in excess of twenty thousand dollars.

(e) For each calendar year from January 1, 1984, through December 31, 1985, wages not in excess of twenty-one thousand dollars per year.

(f) For the calendar year from January 1, 1986, through December 31, 1986, wages not in excess of twenty-two thousand dollars.

(g) For the calendar year from January 1, 1987, through December 31, 1987, wages not in excess of twenty-three thousand dollars.

(h) For the calendar year beginning January 1, 1988, and ending December 31, 1988, wages not in excess of twenty-four thousand dollars.

(i) For the calendar year beginning January 1, 1989, and ending December 31, 1989, wages not in excess of twenty-six thousand dollars.

(j) For the calendar year beginning January 1, 1990, and ending December 31, 1990, wages not in excess of twenty-eight thousand dollars.

(k) For the calendar year beginning January 1, 1991, wages not in excess of thirty-one thousand dollars.

(l) For the calendar year beginning January 1, 1992, wages not in excess of thirty-four thousand dollars.

(m) For the calendar year beginning January 1, 1993, wages not in excess of thirty-five thousand dollars.

(n) For the calendar year beginning January 1, 1994, wages not in excess of thirty-eight thousand dollars.

(o) For the calendar year beginning January 1, 1995, wages not in excess of forty-one thousand dollars.

(p) For the calendar year beginning January 1, 1996, wages not in excess of forty-four thousand dollars.

(q) Commencing with the calendar year beginning January 1, 1997, and for each subsequent calendar year, wages not in excess of the amount permitted for that year under section 401(a)(17) of the Internal Revenue Code.

(2) Notwithstanding any other provision of this chapter providing for the payment of the benefits provided in section 97B.49B, 97B.49C, 97B.49D, or 97B.49G, the system shall establish the covered wages limitation which applies to members covered under section 97B.49B, 97B.49C, 97B.49D, or 97B.49G, at the same level as is established under this subparagraph for other members of the retirement system.

(3) Effective July 1, 1992, "covered wages" does not include wages to a member on or after the effective date of the member's retirement, except as otherwise permitted by the system's administrative rules, unless the member is reemployed, as provided under section 97B.48A.

(4) If a member is employed by more than one employer during a calendar year, the total amount of wages paid to the member by the several employers shall be included in determining the limitation on covered wages as provided in this lettered paragraph. If the amount of wages paid to a member by the member's several employers during a calendar year exceeds the covered wage limit, the amount of such excess shall not be subject to the contributions required by section 97B.11.

27. "Years of prior service" means the total of all periods of prior service of a member. In computing credit for prior service, service of less than a full quarter shall be rounded up to a full quarter. Where a member had prior service as a teacher, a full year of service

shall be granted that member if the member had three quarters of service and a contract for employment for the following school year.

[C46, 50, §97.1 – 97.5, 97.7 – 97.9, 97.12, 97.14, 97.18, 97.23, 97.45, 97.48; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.41; 82 Acts, ch 1261, §13 – 17]

83 Acts, ch 101, §10; 83 Acts, ch 186, §10042, 10201; 84 Acts, ch 1285, §4 – 8; 86 Acts, ch 1243, §4 – 8; 87 Acts, ch 115, §13; 87 Acts, ch 227, §18; 88 Acts, ch 1242, §21 – 30; 90 Acts, ch 1240, §16 – 23; 92 Acts, ch 1201, §24 – 35; 93 Acts, ch 44, §4; 94 Acts, ch 1183, §16 – 22, 97; 95 Acts, ch 102, §1 – 4; 96 Acts, ch 1034, §3; 96 Acts, ch 1187, §11 – 22; 98 Acts, ch 1183, §18 – 24, 77, 82

C99, §97B.1A

2000 Acts, ch 1077, §10 – 20, 76; 2001 Acts, ch 61, §15; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §7 – 11, 38; 2003 Acts, ch 145, §171, 286; 2004 Acts, ch 1103, §4 – 12; 2005 Acts, ch 3, §22; 2005 Acts, ch 179, §112; 2006 Acts, ch 1091, §1 – 3; 2006 Acts, ch 1092, §1; 2008 Acts, ch 1032, §185, 201; 2008 Acts, ch 1171, §18 – 20, 48; 2009 Acts, ch 41, §263; 2010 Acts, ch 1061, §15; 2010 Acts, ch 1167, §19 – 22; 2011 Acts, ch 118, §76, 89

Inclusion in definition of wages of certain allowable employer-paid contributions paid by eligible employers to eligible employees; 2000 Acts, ch 1171, §26

For definition of final average covered wage for 2010-2012 fiscal period, see 2010 Acts, ch 1167, §37 Subsection 8, paragraph a, NEW subparagraph (12)

#### **97B.4 Administration of chapter — powers and duties of system — immunity.**

1. *Chief executive officer.* The system, through the chief executive officer, shall administer this chapter. The chief executive officer shall also be the system's statutory designee with respect to the rulemaking power.

2. *General authority.*

a. The system may adopt, amend, waive, or rescind rules, employ persons, execute contracts with outside parties, make expenditures, require reports, make investigations, and take other action it deems necessary for the administration of the retirement system in conformity with the requirements of this chapter, the applicable provisions of the Internal Revenue Code, and all other applicable federal and state laws. The rules shall be effective upon compliance with chapter 17A.

b. The system may delegate to any person such authority as it deems reasonable and proper for the effective administration of this chapter, and may bond any person handling moneys or signing checks under this chapter.

c. The budget program for the system shall be established by the chief executive officer in consultation with the board and other staff of the system and shall be compiled and submitted by the system pursuant to section 8.23.

d. In administering this chapter, the system shall not be a participating agency for purposes of chapter 8A, subchapter II.

3. *Personnel.*

a. *Chief investment officer.* The chief executive officer, following consultation with the board, shall employ a chief investment officer who shall be appointed pursuant to chapter 8A, subchapter IV, and shall be responsible for administering the investment program for the retirement fund pursuant to the investment policies of the board.

b. *Chief benefits officer.* The chief executive officer, following consultation with the benefits advisory committee, shall employ a chief benefits officer who shall be appointed pursuant to chapter 8A, subchapter IV, and shall be responsible for administering the benefits and other services provided under the retirement system.

c. *Actuary.* The system shall employ an actuary who shall be selected by the board and shall serve at the pleasure of the board. The actuary shall be the technical advisor for the system on matters regarding the operation of the retirement fund.

d. *System employees.* Subject to other provisions of this chapter, the system may employ all other personnel as necessary for the administration of the retirement system. The maximum number of full-time equivalent employees specified by the general assembly for the system for administration of the retirement system for a fiscal year shall not be reduced by any authority other than the general assembly. The personnel of the system shall be appointed pursuant to chapter 8A, subchapter IV. The system shall not appoint or employ a

person who is an officer or committee member of a political party organization or who holds or is a candidate for a partisan elective public office.

*e. Legal advisors.* The system may employ attorneys and contract with attorneys and legal firms for the provision of legal counsel and advice in the administration of this chapter and chapter 97C.

*f. Outside advisors.* The system may execute contracts with persons outside state government, including investment advisors, consultants, and managers, in the administration of this chapter. However, a contract with an investment manager or investment consultant shall not be executed by the system pursuant to this paragraph without the prior approval by the board of the hiring of the investment manager or investment consultant.

#### 4. Reports.

*a. Annual report to governor.* Not later than the thirty-first day of December of each year, the system shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make recommendations for amendments to this chapter. The report shall include a balance sheet of the moneys in the retirement fund. The report shall also include information concerning the investment management expenses for the retirement fund for each fiscal year expressed as a percent of the market value of the retirement fund investment assets. The information provided under this paragraph shall also include information on the investment policies and investment performance of the retirement fund. In providing this information, to the extent possible, the system shall include the total investment return for the entire fund, for portions of the fund managed by investment managers, and for internally managed portions of the fund, and the cost of managing the fund per thousand dollars of assets. The performance shall be based upon market value, and shall be contrasted with relevant market indices and with performances of pension funds of similar asset size.

*b. Annual statement to members.* The system shall prepare and distribute to the members, at the expense of the retirement fund, an annual statement of the member's account and, in such a manner as the system deems appropriate, other information concerning the retirement system.

*c. Actuarial investigation.* During calendar year 2002, and every four years thereafter, the system shall cause an actuarial investigation to be made of all experience under the retirement system. Pursuant to such an investigation, the system shall, from time to time, determine upon an actuarial basis the condition of the retirement system and shall report to the general assembly its findings and recommendations.

*d. Annual valuation of assets.* The system shall cause an annual actuarial valuation to be made of the assets and liabilities of the retirement system and shall prepare an annual statement of the amounts to be contributed under this chapter, and shall publish annually such valuation of the assets and liabilities and the statement of receipts and disbursements of the retirement system. Based upon the actuarial methods and assumptions adopted by the board for the annual actuarial valuation, the system shall certify to the governor the contribution rates determined thereby as the rates necessary and sufficient for members and employers to fully fund the benefits and retirement allowances being credited. Effective with the fiscal year beginning July 1, 2008, the annual actuarial valuation required by this paragraph shall include information as required by section 97D.5 for each membership group which separately determines contribution rates under this chapter.

*5. Investments.* The system, through the chief investment officer, shall invest, subject to chapters 12F and 12H and in accordance with the investment policy and goal statement established by the board, the portion of the retirement fund which, in the judgment of the system, is not needed for current payment of benefits under this chapter subject to the requirements of section 97B.7A.

*6. Old records.* The system may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the system and are deemed by the chief executive officer to be no longer necessary to the proper administration of this chapter. The destruction or disposition shall be made only by order of the chief executive officer. Records of deceased members of the retirement system may be destroyed ten years after the later of the final payment made to a third party on behalf of the member

or the death of the member. Any moneys received from the disposition of these records shall be deposited to the credit of the retirement fund subject to rules adopted by the system.

7. *Immunity.* The system, employees of the system, the board, the members of the board, and the treasurer of state are not personally liable for actions or omissions under this chapter that do not involve malicious or wanton misconduct even if those actions or omissions violate the standards established in section 97B.7A.

[C46, 50, §97.4, 97.23; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.4]

86 Acts, ch 1245, §251; 88 Acts, ch 1242, §9, 10; 92 Acts, ch 1201, §7; 96 Acts, ch 1187, §1; 2001 Acts, ch 68, §9, 24; 2003 Acts, ch 145, §172, 173, 286; 2006 Acts, ch 1092, §3; 2007 Acts, ch 39, §10; 2008 Acts, ch 1171, §21, 22, 48; 2010 Acts, ch 1167, §23, 24; 2011 Acts, ch 82, §10

Subsection 5 amended

**97B.7A Investment and management of retirement fund — standards — immunity.**

1. *Investment and investment policy standards.* In establishing the investment policy of the retirement fund and providing for the investment of the retirement fund, the system and board shall do the following:

a. Exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital.

b. Give appropriate consideration to those facts and circumstances that the system and board know or should know are relevant to the particular investment or investment policy involved, including the role the investment plays in the total value of the retirement fund.

c. For the purposes of this subsection, appropriate consideration includes, but is not limited to, a determination that the particular investment or investment policy is reasonably designed to further the purposes of the retirement system, taking into consideration the risk of loss and the opportunity for gain or income associated with the investment or investment policy and consideration of the following factors as they relate to the retirement fund:

(1) The composition of the retirement fund with regard to diversification.

(2) The liquidity and current return of the investments in the retirement fund relative to the anticipated cash flow requirements of the retirement system.

(3) The projected return of the investments relative to the funding objectives of the retirement system.

2. *Investment acquisitions.* Within the limitations of the investment standards prescribed in this section, the system may acquire and retain every kind of property and every kind of investment which persons of prudence, discretion, and intelligence acquire or retain for their own account. Consistent with this section, investments shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state. Investments of moneys in the retirement fund are not subject to sections 73.15 through 73.21.

3. *Liability — reimbursement.* Except as provided in section 97B.4, subsection 7, if there is loss to the retirement fund, the treasurer of state, the system, the employees of the system, the members of the board severally, and the board are not personally liable, and the loss shall be charged against the retirement fund. There is appropriated from the retirement fund the amount required to cover a loss.

4. *Investment procedures.* In managing the investment of the retirement fund, the system, in accordance with the investment policy established by the board, is authorized to do the following:

a. To sell any securities or other property in the retirement fund and reinvest the proceeds when such action may be deemed advisable by the system for the protection of the retirement fund or the preservation of the value of the investment. Such sale of securities or other property of the retirement fund and reinvestment shall only be made in accordance with policies of the board in the manner and to the extent provided in this chapter.

b. To subscribe for the purchase of securities for future delivery in anticipation of future income. The securities shall be paid for by anticipated income or from funds from the sale of securities or other property held by the retirement fund.

c. To pay for securities directed to be purchased upon the receipt of the purchasing bank's paid statement or paid confirmation of purchase.

5. *Travel.* In the administration of the investment of moneys in the retirement fund, employees of the system and members of the board may travel outside the state for the purpose of meeting with investment firms and consultants and attending conferences and meetings to fulfill their fiduciary responsibilities. This travel is not subject to section 8A.512, subsection 2.\*

2001 Acts, ch 68, §11, 24; 2003 Acts, ch 145, §174, 286

\*Former subsection 2 of section 8A.512, that required executive council approval of certain out-of-state travel expenses, was stricken by 2011 Acts, ch 127, §43

Section not amended; footnote added

### **97B.49A Monthly payments of allowance — general calculation.**

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

a. "*Applicable percentage*" means sixty percent or, for each active or inactive vested member retiring on or after July 1, 1996, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of membership and prior service beyond thirty years of service, not to exceed a total of five additional percentage points.

b. "*Fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

2. *Entitlement to monthly allowance.* Each member, upon retirement on or after the member's normal retirement date, is entitled to receive a monthly retirement allowance determined under this section. For an inactive vested member the monthly retirement allowance shall be determined on the basis of this section and section 97B.50 as they are in effect on the date of the member's retirement.

3. *Calculation of monthly allowance.* For each active or inactive vested member retiring on or after July 1, 1994, who is vested by service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to the applicable percentage of the final average covered wage multiplied by a fraction of years of service. However, if benefits under this section commence on an early retirement date, the amount of the benefit shall be reduced in accordance with section 97B.50.

4. *Alternative calculations.*

a. For each active member employed before January 1, 1976, and retiring on or after January 1, 1976, and for each member who was a vested member before January 1, 1976, with four or more complete years of service, a formula benefit shall be determined equal to the larger of the benefit determined under this paragraph and paragraph "b" of this subsection, as applicable, the benefit determined under subsection 3, or the benefit determined under section 97B.49G, subsection 1. The amount of the monthly formula benefit for each such active or vested member who retired on or after January 1, 1976, shall be equal to one-twelfth of one and fifty-seven hundredths percent per year of membership service multiplied by the member's average annual covered wages. In no case shall the amount of monthly formula benefit accrued for membership service prior to July 1, 1967, be less than the monthly annuity at the normal retirement date determined by applying the sum of the member's accumulated contributions, the member's employer's accumulated contributions on or before June 30, 1967, and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the system with due regard to the benefits payable from such accumulated contributions under sections 97B.52 and 97B.53.

b. For each member employed before January 1, 1976, who has qualified for prior service credit in accordance with the first paragraph of section 97B.43, a formula benefit shall be determined equal to the larger of the benefit determined under this paragraph and paragraph "a" of this subsection, as applicable, the benefit determined under subsection 3, or the benefit determined under section 97B.49G, subsection 1. The amount of the monthly formula benefit under this paragraph shall be equal to eight-tenths of one percent per year of prior service credit multiplied by the monthly rate of the member's total remuneration not in excess of three thousand dollars annually during the twelve consecutive months of the member's prior

service for which that total remuneration was the highest. An additional three-tenths of one percent of the remuneration not in excess of three thousand dollars annually shall be payable for prior service during each year in which the accrued liability for benefit payments created by the abolished system is funded by appropriation from the Iowa public employees' retirement fund.

c. For each active and vested member retiring who cannot have a benefit determined under the formula benefit of paragraph "a" or "b" of this subsection, subsection 3, or section 97B.49G, subsection 1, a monthly annuity for membership service shall be determined by applying the member's accumulated contributions and the employer's matching accumulated contributions as of the effective retirement date and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the system according to the member's age and contingent annuitant's age, if applicable.

98 Acts, ch 1183, §35; 2001 Acts, ch 68, §21, 24; 2003 Acts, ch 145, §286; 2010 Acts, ch 1167, §26, 27; 2011 Acts, ch 34, §24

Subsection 3 amended

### **97B.49B Protection occupation.**

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

a. "*Applicable percentage*" means the greater of the following percentages:

(1) Sixty percent.

(2) For each active or inactive vested member retiring on or after July 1, 1996, but before July 1, 2000, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-five years of service for the member, not to exceed a total of five additional percentage points.

(3) For each active or inactive vested member retiring on or after July 1, 2000, but before July 1, 2001, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-four years of service for the member, not to exceed a total of six additional percentage points.

(4) For each active or inactive vested member retiring on or after July 1, 2001, but before July 1, 2002, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-three years of service for the member, not to exceed a total of seven additional percentage points.

(5) For each active or inactive vested member retiring on or after July 1, 2002, but before July 1, 2003, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service for the member, not to exceed a total of eight additional percentage points.

(6) For each active or inactive vested member retiring on or after July 1, 2003, sixty percent plus, if applicable, an additional three-eighths of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service for the member, not to exceed a total of twelve additional percentage points.

b. "*Applicable years of service*" means the following:

(1) For each active or inactive vested member retiring on or after July 1, 1996, and before July 1, 2000, twenty-five.

(2) For each active or inactive vested member retiring on or after July 1, 2000, and before July 1, 2001, twenty-four.

(3) For each active or inactive vested member retiring on or after July 1, 2001, and before July 1, 2002, twenty-three.

(4) For each active or inactive vested member retiring on or after July 1, 2002, twenty-two.

c. "*Eligible service*" means membership and prior service in a protection occupation. In addition, for a member with membership and prior service in a protection occupation described in paragraph "e", subparagraph (2), eligible service includes membership and prior service as a sheriff or deputy sheriff as defined in section 97B.49C.

d. "*Fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of eligible service in a protection occupation divided by the applicable years of service for the member.

e. "*Protection occupation*" includes all of the following:

(1) A conservation peace officer employed under section 456A.13 or as designated by a county conservation board pursuant to section 350.5.

(2) A marshal in a city not covered under chapter 400 or a fire fighter or police officer of a city not participating in the retirement systems established in chapter 410 or 411.

(3) A correctional officer or correctional supervisor employed by the Iowa department of corrections, and any other employee of that department whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline, safety, and security within a correctional facility. The Iowa department of corrections and the department of administrative services shall jointly determine which job classifications are covered under this subparagraph.

(4) An airport safety officer employed under chapter 400 by an airport commission in a city of one hundred thousand population or more.

(5) An employee of the state department of transportation who is designated as a “peace officer” by resolution under section 321.477, but only if the employee retires on or after July 1, 1990. For purposes of this subparagraph, service as a traffic weight officer employed by the highway commission prior to the creation of the state department of transportation or as a peace officer employed by the Iowa state commerce commission prior to the creation of the state department of transportation shall be included in computing the employee’s years of membership service.

(6) A fire prevention inspector peace officer employed by the department of public safety prior to July 1, 1994, who does not elect coverage under the Iowa department of public safety peace officers’ retirement, accident, and disability system, as provided in section 97B.42B.

(7) An employee covered by the merit system as provided in chapter 8A, subchapter IV, whose primary duty is providing airport security and who carries or is licensed to carry a firearm while performing those duties.

(8) An airport fire fighter employed by the military division of the department of public defense.

(9) A jailer or detention officer who performs duties as a jailer, including but not limited to the transportation of inmates, who is certified as having completed jailer training pursuant to chapter 80B, and who is employed by a county as a jailer.

(10) An employee covered by the merit system as provided in chapter 8A, subchapter IV, whose primary duty is providing security at Iowa national guard installations and facilities and who carries or is licensed to carry a firearm while performing those duties.

(11) An emergency medical care provider who provides emergency medical services, as defined in section 147A.1, and who is not a member of the retirement systems established in chapter 410 or 411.

(12) An investigator employed by a county attorney’s office who is a certified law enforcement officer and who is deputized as an investigator for the county attorney’s office by the sheriff of the applicable county.

2. *Calculation of monthly allowance.* Notwithstanding other provisions of this chapter, a member who is or has been employed in a protection occupation who retires on or after July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to section 97B.49A or 97B.49D, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in a protection occupation multiplied by a fraction of years of service, with benefits payable during the member’s lifetime.

3. *Additional contributions.*

a. For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, there is appropriated from the state fish and game protection fund to the system the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph “e”, subparagraph (1).

b. Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each applicable city shall pay to the system the amount necessary to pay the employer share of the cost of the additional benefits provided to employees of that city covered under subsection 1, paragraph “e”, subparagraphs (2) and (4).

c. For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, the department of corrections shall pay to the system from funds appropriated to the Iowa department of corrections, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph “e”, subparagraph (3).

d. For the fiscal year commencing July 1, 1990, and each succeeding fiscal year, the state department of transportation shall pay to the system, from funds appropriated to the state department of transportation from the road use tax fund and the primary road fund, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph “e”, subparagraph (5).

e. For the fiscal year commencing July 1, 1992, and each succeeding fiscal year, the department of public safety shall pay to the system from funds appropriated to the department of public safety, the amount necessary to pay the employer share of the cost of the additional benefits provided to a fire prevention inspector peace officer pursuant to subsection 1, paragraph “e”, subparagraph (6).

f. For the fiscal year commencing July 1, 1994, and each succeeding fiscal year through the fiscal year ending June 30, 1998, each judicial district department of correctional services shall pay to the system from funds appropriated to that judicial district department of correctional services, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees of a judicial district department of correctional services who are employed as a probation officer III or a parole officer III.

g. For the fiscal year commencing July 1, 2004, and each succeeding fiscal year, there is appropriated from the general fund of the state to the system, from funds not otherwise appropriated, an amount necessary to pay the employer share of the cost of the additional benefits provided to airport fire fighters under this section.

4. Notwithstanding any provision of this chapter to the contrary, the three-year average covered wage for a member retiring under this section whose years of eligible service equals or exceeds twenty-two years of eligible service for that member shall be determined by calculating the member’s eligible combined wage for each year of eligible service. For purposes of this subsection, “*eligible combined wage*” means the wages earned by the member for each quarter year period from eligible service and from covered employment that is not eligible service if at least seventy-five percent of the wages earned was from eligible service.

98 Acts, ch 1183, §36; 98 Acts, ch 1223, §19; 2000 Acts, ch 1077, §36 – 39; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §20, 21; 2003 Acts, ch 145, §176, 177, 286; 2004 Acts, ch 1103, §31 – 33; 2008 Acts, ch 1171, §31, 32, 48, 49

2008 amendment striking subsection 3, paragraph a takes effect July 1, 2011; 2008 Acts, ch 1171, §49

Subsection 3, paragraph a stricken

Subsection 3, paragraph b, subparagraphs (1) – (7) redesignated as paragraphs a – g of subsection 3

### **97B.49C Sheriffs and deputy sheriffs.**

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

a. “*Applicable percentage*” means the greater of the following percentages:

(1) Sixty percent.

(2) For each active or inactive vested member retiring on or after July 1, 1996, and before July 1, 1998, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service, not to exceed a total of five additional percentage points.

(3) For each active or inactive vested member retiring on or after July 1, 1998, sixty percent plus, if applicable, an additional three-eighths of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service, not to exceed a total of twelve additional percentage points.

b. “*Deputy sheriff*” means a deputy sheriff appointed pursuant to section 341.1 prior to July 1, 1981, or section 331.903 on or after July 1, 1981.

c. “*Eligible service*” means membership and prior service as a sheriff or deputy sheriff under this section. In addition, eligible service includes membership and prior service as a member in a protection occupation as defined in section 97B.49B.

d. “*Fraction of years of service*” means a number, not to exceed one, equal to the sum of the years of eligible service under this section divided by twenty-two years.

e. “*Sheriff*” means a county sheriff as defined in section 39.17.

2. *Calculation of monthly allowance.*

a. Notwithstanding other provisions of this chapter, a member who retires from employment as a sheriff, deputy sheriff, or airport fire fighter on or after July 1, 1994, and before July 1, 2004, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to section 97B.49A or 97B.49D, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in eligible service multiplied by a fraction of years of service, with benefits payable during the member’s lifetime.

b. Notwithstanding other provisions of this chapter, a member who retires from employment as a sheriff or deputy sheriff on or after July 1, 2004, and at the time of retirement is either at least fifty-five years of age or is at least the applicable early retirement age with at least twenty-two years of eligible service may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to section 97B.49A or 97B.49D, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in eligible service multiplied by a fraction of years of service, with benefits payable during the member’s lifetime.

c. For purposes of this subsection, “*applicable early retirement age*” means the following:

(1) For each active or inactive vested member retiring on or after July 1, 2004, and before July 1, 2005, fifty-four years of age.

(2) For each active or inactive vested member retiring on or after July 1, 2005, and before July 1, 2006, fifty-three years of age.

(3) For each active or inactive vested member retiring on or after July 1, 2006, and before July 1, 2007, fifty-two years of age.

(4) For each active or inactive vested member retiring on or after July 1, 2007, and before July 1, 2008, fifty-one years of age.

(5) For each active or inactive vested member retiring on or after July 1, 2008, fifty years of age.

3. *Additional contributions.* Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each county shall pay to the system the amount necessary to pay the employer share of the cost of the benefits provided to sheriffs and deputy sheriffs.

4. Notwithstanding any provision of this chapter to the contrary, the three-year average covered wage for a member retiring under this section whose years of eligible service equals or exceeds twenty-two years of eligible service for that member shall be determined by calculating the member’s eligible combined wage for each quarter year of eligible service. For purposes of this subsection, “*eligible combined wage*” means the wages earned by the member for each quarter year period from eligible service and from covered employment that is not eligible service if at least seventy-five percent of the wages earned was from eligible service.

98 Acts, ch 1183, §37; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §22; 2003 Acts, ch 145, §286; 2004 Acts, ch 1103, §34 – 38; 2005 Acts, ch 19, §29; 2006 Acts, ch 1091, §6; 2006 Acts, ch 1092, §5; 2008 Acts, ch 1171, §33, 48, 49

2008 amendment striking subsection 3, paragraph a takes effect July 1, 2011; 2008 Acts, ch 1171, §49  
Subsection 3, paragraph a stricken and paragraph b redesignated as subsection 3

**97B.50A Disability benefits for special service members.**

1. *Definitions.* For purposes of this section, unless the context otherwise provides:

a. “*Member*” means a vested member who is classified as a special service member under section 97B.1A, subsection 22, at the time of the alleged disability. “*Member*” does not mean a volunteer fire fighter.

b. “*Net disability retirement allowance*” means the amount determined by subtracting the amount paid during the previous calendar year by the member for health insurance or similar

health care coverage for the member and the member's dependents from the amount of the member's disability retirement allowance, including any dividends and distributions from supplemental accounts, paid for that year pursuant to this section.

c. "*Reemployment comparison amount*" means an amount equal to the current covered wages of an active special service member at the same position on the salary scale within the rank or position the member held at the time the member received a disability retirement allowance pursuant to this section. If the rank or position held by the member at the time of retirement pursuant to this section is abolished, the amount shall be computed by the system as though the rank or position had not been abolished and salary increases had been granted on the same basis as granted to other ranks or positions by the former employer of the member. The reemployment comparison amount shall not be less than the three-year average covered wage of the member, based on all regular and special service covered under this chapter.

2. *In-service disability retirement allowance.*

a. A member who is injured in the performance of the member's duties, and otherwise meets the requirements of this subsection, shall receive an in-service disability retirement allowance under this subsection, in lieu of a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

b. Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation as the natural and proximate result of an injury, disease, or exposure occurring or aggravated while in the actual performance of duty at some definite place and time shall be eligible to retire under this subsection, provided that the medical board, as established by this section, shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The system shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's special service membership in the retirement system first commenced on or after July 1, 2000, the member shall not be eligible for benefits with respect to a disability which would not exist but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the system that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same or comparable special service occupation position held by the member immediately prior to the application for disability benefits.

c. (1) Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain, exposure, or the inhalation of noxious fumes, poison, or gases.

(2) Disease under this subsection shall also mean cancer or infectious disease, as defined in section 411.1, and shall be presumed to have been contracted while on active duty as a result of that duty.

(3) However, if a person's special service membership in the retirement system first commenced on or after July 1, 2000, and the heart disease, disease of the lungs or respiratory tract, cancer, or infectious disease would not exist, but for a medical condition that was known to exist on the date that special service membership commenced, the presumption established in this paragraph "c" shall not apply.

d. Upon retirement for an in-service disability as provided by this subsection, a member shall have the option to receive a monthly in-service disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable, that the member would receive if the member had attained fifty-five years of age. The monthly in-service disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of sixty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

3. *Ordinary disability retirement allowance.*

a. A member who otherwise meets the requirements of this subsection shall receive an ordinary disability retirement allowance under this subsection in lieu of a monthly retirement

allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

b. Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation shall be eligible to retire under this subsection, provided that the medical board, as established by this section, shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The system shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's special service membership in the retirement system first commenced on or after July 1, 2000, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that special service membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the system that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same or comparable special service occupation position held by the member immediately prior to the application for disability benefits.

c. Upon retirement for an ordinary disability as provided by this subsection, a member shall receive the greater of a monthly ordinary disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable. The monthly ordinary disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

4. *Waiver of allowance.* A member receiving a disability retirement allowance under this section may file an application to receive benefits pursuant to section 97B.50, subsection 2, in lieu of receiving a disability retirement allowance under this section, if the member becomes eligible for benefits under section 97B.50, subsection 2. An application to receive benefits pursuant to section 97B.50, subsection 2, shall be filed with the system within sixty days after the member becomes eligible for benefits pursuant to that section or the member shall be ineligible to elect coverage under that section. On the first of the month following the month in which a member's application is approved by the system, the member's election of coverage under section 97B.50, subsection 2, shall become effective and the member's eligibility to receive a disability retirement allowance pursuant to this section shall cease. Benefits payable pursuant to section 97B.50, subsection 2, shall be calculated using the option choice the member selected for payment of a disability retirement allowance pursuant to this section. An application to elect coverage under section 97B.50, subsection 2, is irrevocable upon approval by the system.

5. *Offset to allowance.* Notwithstanding any provisions to the contrary in state law, or any applicable contract or policy, any amounts which may be paid or payable by the employer under any workers' compensation, unemployment compensation, employer-paid disability plan, program, or policy, or other law to a member, and any disability payments the member receives pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq., shall be offset against and payable in lieu of any retirement allowance payable pursuant to this section on account of the same disability.

6. *Reexamination of members retired on account of disability.*

a. Once each year during the first five years following the retirement of a member under this section, and once in every three-year period thereafter, the system may, and upon the member's application shall, require any member receiving an in-service or ordinary disability retirement allowance who has not yet attained the age of fifty-five years to undergo a medical examination as arranged by the medical board as established by this section. The examination shall be made by the medical board or by an additional physician or physicians designated by the medical board. If any member receiving an in-service or ordinary disability retirement allowance who has not attained the age of fifty-five years refuses to submit to the medical examination, the allowance may be discontinued until the member's withdrawal of

the refusal, and should the member's refusal continue for one year, all rights in and to the member's disability retirement allowance shall be revoked by the system.

b. If a member is determined under paragraph "a" to be no longer eligible for in-service or ordinary disability benefits, all benefits paid under this section shall cease. The member shall be eligible to receive benefits calculated under section 97B.49B or 97B.49C, as applicable, when the member reaches age fifty-five.

7. *Reemployment.*

a. If a member receiving a disability retirement allowance is returned to covered employment, the member's disability retirement allowance shall cease, the member shall again become an active member, and shall contribute thereafter at the same rate payable by similarly classified members. If a member receiving a disability retirement allowance returns to special service employment, then the period of time the member received a disability retirement allowance shall constitute eligible service as defined in section 97B.49B, subsection 1, or section 97B.49C, subsection 1, as applicable. Upon subsequent retirement, the member's retirement allowance shall be calculated as provided in section 97B.48A.

b. (1) If a member receiving a disability retirement allowance is engaged in a gainful occupation that is not covered employment, the member's disability retirement allowance shall be reduced, if applicable, as provided in this paragraph.

(2) If the member is engaged in a gainful occupation paying more than the difference between the member's net disability retirement allowance and one and one-half times the reemployment comparison amount for that member, then the amount of the member's disability retirement allowance shall be reduced to an amount such that the member's net disability retirement allowance plus the amount earned by the member shall equal one and one-half times the reemployment comparison amount for that member.

(3) The member shall submit sufficient documentation to the system to permit the system to determine the member's net disability retirement allowance and earnings from a gainful occupation that is not covered employment for the applicable year.

(4) This paragraph does not apply to a member who is at least fifty-five years of age and would have completed a sufficient number of years of service if the member had remained in active special service employment. For purposes of this subparagraph, a sufficient number of years of service shall be the applicable years of service for a special service member as described in section 97B.49B or twenty-two for a special service member as described in section 97B.49C.

8. *Death benefits.* A member who is receiving an in-service or ordinary disability retirement allowance under this section shall be treated as having elected a lifetime monthly retirement allowance with death benefits payable under section 97B.52, subsection 3, unless the member elects an optional form of benefit provided under section 97B.51, which shall be actuarially equivalent to the lifetime monthly retirement allowance provided under this section.

9. *Medical board.* The system shall designate a medical board to be composed of three physicians from the university of Iowa hospitals and clinics who shall arrange for and pass upon the medical examinations required under this section and shall report in writing to the system the conclusions and recommendations upon all matters duly referred to the medical board. Each report of a medical examination under this section shall include the medical board's findings as to the extent of the member's physical or mental impairment. Except as required by this section, each report shall be confidential and shall be maintained in accordance with the federal Americans With Disabilities Act, and any other state or federal law containing requirements for confidentiality of medical records.

10. *Liability of third parties — subrogation.*

a. If a member receives an injury for which benefits are payable under this section, and if the injury is caused under circumstances creating a legal liability for damages against a third party other than the system, the member or the member's legal representative may maintain an action for damages against the third party. If a member or a member's legal representative commences such an action, the plaintiff member or representative shall serve a copy of the original notice upon the system not less than ten days before the trial of the action, but a

failure to serve the notice does not prejudice the rights of the system, and the following rights and duties ensue:

(1) The system shall be indemnified out of the recovery of damages to the extent of benefit payments made by the retirement system, with legal interest, except that the plaintiff member's attorney fees may be first allowed by the district court.

(2) The system has a lien on the damage claim against the third party and on any judgment on the damage claim for benefits for which the retirement system is liable. In order to continue and preserve the lien, the system shall file a notice of the lien within thirty days after receiving a copy of the original notice in the office of the clerk of the district court in which the action is filed.

b. If a member fails to bring an action for damages against a third party within thirty days after the system requests the member in writing to do so, the system is subrogated to the rights of the member and may maintain the action against the third party, and may recover damages for the injury to the same extent that the member may recover damages for the injury. If the system recovers damages in the action, the court shall enter judgment for distribution of the recovery as follows:

(1) A sum sufficient to repay the system for the amount of such benefits actually paid by the retirement system up to the time of the entering of the judgment.

(2) A sum sufficient to pay the system the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of such benefits for which the retirement system is liable, but the sum is not a final adjudication of the future payment which the member is entitled to receive.

(3) Any balance shall be paid to the member.

c. Before a settlement is effective between the system and a third party who is liable for any injury, the member must consent in writing to the settlement; and if the settlement is between the member and a third party, the system must consent in writing to the settlement; or on refusal to consent, in either case, the district court in the county in which either the employer of the member or the system is located must consent in writing to the settlement.

d. For purposes of subrogation under this section, a payment made to an injured member or the member's legal representative, by or on behalf of a third party or the third party's principal or agent, who is liable for, connected with, or involved in causing the injury to the member, shall be considered paid as damages because the injury was caused under circumstances creating a legal liability against the third party, whether the payment is made under a covenant not to sue, compromise settlement, denial of liability, or is otherwise made.

11. *Document submissions.* A member retired under this section, in order to be eligible for continued receipt of retirement benefits, shall submit to the system any documentation the system may reasonably request which will provide information needed to determine payments to the member under this section.

12. *Contributions.* The expenses incurred in the administration of this section by the system shall be paid through contributions as determined pursuant to section 97B.11.

13. *Applicability — retroactivity.*

a. This section applies to a member who becomes disabled on or after July 1, 2000, and also applies to a member who becomes disabled prior to July 1, 2000, if the member has not terminated special service employment as of June 30, 2000.

b. To qualify for benefits under this section, a member must file a completed application with the system within one year of the member's termination of employment. A member eligible for a disability retirement allowance under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the completed application for receipt of a disability retirement allowance under this section is approved.

14. *Rules.* The system shall adopt rules pursuant to chapter 17A specifying the application procedure for members pursuant to this section.

2000 Acts, ch 1077, §51; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1119, §126; 2002 Acts, ch 1135, §24; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §17, 18; 2004 Acts, ch 1103, §41; 2006 Acts, ch 1091, §9; 2008 Acts, ch 1171, §37, 48, 49; 2010 Acts, ch 1167, §31

2008 amendment to subsection 12 takes effect July 1, 2011; 2008 Acts, ch 1171, §49  
Subsection 12 amended

**97B.65 Revision rights reserved — limitation on increase of benefits — rates of contribution.**

1. The right is reserved to the general assembly to alter, amend, or repeal any provision of this chapter or any application thereof to any person, provided, however, that to the extent of the funds in the retirement system the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to any member of the retirement system shall not be repudiated, provided further, however, that the amount of benefits accrued on account of prior service shall be adjusted to the extent of any unfunded accrued liability then outstanding.

2. An increase in the benefits or retirement allowances provided under this chapter shall not be enacted until after the system's actuary determines that the system is fully funded and will continue to be fully funded immediately following enactment of the increase and the increase can be absorbed within the contribution rates otherwise established for the membership group authorized to receive the increase. However, an increase in the benefits or retirement allowances provided under this chapter may be enacted if the statutory change providing for the increase is accompanied by an adjustment in the required contribution rate of the membership group affected that is necessary to support such increase as determined by the system's actuary.

[C46, 50, §97.11, 97.13; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.65]

2003 Acts, ch 145, §286; 2006 Acts, ch 1091, §10; 2008 Acts, ch 1171, §40, 48, 49

2008 amendment to this section takes effect July 1, 2011; 2008 Acts, ch 1171, §49  
Section amended

## CHAPTER 97C

### FEDERAL SOCIAL SECURITY ENABLING ACT

**97C.2 Definitions.**

For the purposes of this chapter:

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

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

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

be included in an agreement between the state and the federal security administrator entered into under this chapter.

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

5. The term “*federal security administrator*” means the administrator of the federal security agency (or the administrator’s successor in function), and includes any individual to whom the federal security administrator has delegated any of the administrator’s functions under the Social Security Act, Tit. II, with respect to coverage under such Act of employees of states and their political subdivisions.

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

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

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

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

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

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

Subsections 3 and 6 amended

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

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

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

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

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

made after May 3, 1953, and prior to January 1, 1954, such agreement or modification of the agreement shall be made effective with respect to any such services performed on or after January 1, 1951.

4. All services which constitute employment as defined in section 97C.2, and are performed in the employ of the state, or any political subdivision, by employees of the state, or of any political subdivision, shall be covered by the agreement.

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

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

Subsections 1 – 3 amended

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

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

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

2011 Acts, ch 25, §13

Section amended

## CHAPTER 99B

### GAMES OF SKILL OR CHANCE, AND RAFFLES

#### DIVISION II

#### GAMES OR LOCATIONS FOR WHICH A LICENSE IS REQUIRED

##### **99B.5A Bingo conducted at a fair or community festival.**

1. For purposes of this section:

a. “*Community festival*” means a festival of no more than six consecutive days in length held by a community group.

b. “*Community group*” means an Iowa nonprofit, tax-exempt organization which is open to the general public and established for the promotion and development of the arts, history, culture, ethnicity, historic preservation, tourism, economic development, festivals, or municipal libraries. “*Community group*” does not include a school, college, university, political party, labor union, state or federal government agency, fraternal organization, church, convention or association of churches, or organizations operated primarily for religious purposes, or which are operated, supervised, controlled, or principally supported by a church, convention, or association of churches.

2. Bingo may lawfully be conducted at a fair or a community festival if all the following conditions are met:

a. Bingo is conducted by the sponsor of the fair or community festival or a qualified organization licensed under section 99B.7 that has received permission from the sponsor of the fair or community festival to conduct bingo.

b. The sponsor of the fair or community festival or the qualified organization has submitted a license application and a fee of fifty dollars to the department, has been issued

a license, and prominently displays the license at the area where the bingo occasion is being held. A license shall only be valid for the duration of the fair or community festival indicated on the application.

c. The number of bingo occasions shall be limited to one for each day of the duration of the fair or community festival.

d. The rules for the bingo occasion are posted.

e. Except as provided in this section, the provisions of sections 99B.2 and 99B.7 related to bingo shall apply.

3. An individual other than a person conducting the bingo occasion may participate in the bingo occasion conducted at a fair or community festival, whether or not conducted in compliance with this section.

4. Bingo occasions held under a license under this section shall not be counted in determining whether a qualified organization has conducted more than fourteen bingo occasions per month. In addition, bingo occasions held under this license shall not be limited to four consecutive hours.

2009 Acts, ch 181, §42; 2011 Acts, ch 34, §26; 2011 Acts, ch 40, §1, 3

Subsection 1, paragraph a amended

Subsection 2, unnumbered paragraph 1 amended

#### **99B.6 Games where liquor or beer is sold.**

1. Except as provided in subsections 5, 6, 7, 8, and 9, gambling is unlawful on premises for which a class "A", class "B", class "C", or class "D" liquor control license, or class "B" beer permit has been issued pursuant to chapter 123 unless all of the following are complied with:

a. The holder of the liquor control license or beer permit has submitted an application for a license and an application fee of one hundred fifty dollars, and has been issued a license, and prominently displays the license on the premises.

b. The holder of the liquor control license or beer permit or any agent or employee of the license or permit holder does not participate in, sponsor, conduct or promote, or act as cashier or banker for any gambling activities, except as a participant while playing on the same basis as every other participant.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

f. No person receives or has any fixed or contingent right to receive, directly or indirectly, any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

g. No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

h. No participant wins or loses more than a total of fifty dollars or more consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

i. No participant is participating as an agent of another person.

j. A representative of the department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

k. A person under the age of twenty-one years shall not participate in the gambling except pursuant to sections 99B.3, 99B.4, 99B.5, and 99B.7. Any licensee knowingly allowing a person under the age of twenty-one to participate in the gambling prohibited by this paragraph or any person knowingly participating in gambling with a person under the age of twenty-one, is guilty of a simple misdemeanor.

2. The holder of a license issued pursuant to this section is strictly accountable for complying with subsection 1. Proof of an act constituting a violation is grounds for revocation of the license issued pursuant to this section if the holder of the license permitted the violation to occur when the licensee knew or had reasonable cause to know of the act constituting the violation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits or engages in acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

5. Lottery tickets or shares authorized pursuant to chapter 99G may be sold on the premises of an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3.

6. A qualified organization may conduct games of skill, games of chance, or raffles pursuant to section 99B.7 in an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the games or raffles are conducted pursuant to this chapter or rules adopted pursuant to this chapter.

7. The holder of a liquor control license or beer permit may conduct a sports betting pool if the game is publicly displayed and the rules of the game, including the cost per participant and the amount of the winning is conspicuously displayed on or near the pool. No participant may wager more than five dollars and the maximum winnings to all participants from the pool shall not exceed five hundred dollars. The provisions of subsection 1, except paragraphs "c" and "h" and the prohibition of the use of concealed numbers in paragraph "d", are applicable to pools conducted under this subsection. If a pool permitted by this subsection involves the use of concealed numbers, the numbers shall be selected by a random method and no person shall be aware of the numbers at the time wagers are made in the pool. All moneys wagered shall be awarded to participants. For purposes of this subsection, "pool" means a game in which the participants select a square on a grid corresponding to numbers on two intersecting sides of the grid and winners are determined by whether the square selected corresponds to numbers relating to an athletic event in the manner prescribed by the rules of the game.

8. Gambling games authorized under chapter 99F may be conducted on an excursion gambling boat or gambling structure which is licensed as an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the gambling games are conducted pursuant to chapter 99F and rules adopted under chapter 99F. Notwithstanding section 123.3, subsection 34, paragraph "b", a person holding a federal gambling permit and licensed to conduct gambling games pursuant to chapter 99F may hold a liquor license.

9. Pari-mutuel wagering authorized under chapter 99D may be conducted within a racetrack enclosure which is licensed as an establishment that serves or sells alcoholic beverages as defined in section 123.3 if the pari-mutuel wagering is conducted pursuant to chapter 99D and rules adopted under chapter 99D.

[C77, 79, 81, §99B.6; 81 Acts, ch 44, §7]

86 Acts, ch 1201, §4 – 6; 86 Acts, ch 1002, §1, 2; 87 Acts, ch 184, §3, 4; 88 Acts, ch 1274, §32; 89 Acts, ch 67, §20, 21; 89 Acts, ch 231, §17; 90 Acts, ch 1175, §3, 4; 94 Acts, ch 1021, §1; 2003 Acts, ch 178, §103, 121; 2003 Acts, ch 179, §142; 2007 Acts, ch 188, §3

Section not amended; internal reference change applied

**99B.7 Games conducted by qualified organizations — penalties.**

1. Except as otherwise provided in section 99B.8, games of skill, games of chance and raffles lawfully may be conducted at a specified location meeting the requirements of subsection 2 of this section, but only if all of the following are complied with:

a. The person conducting the game or raffle has been issued a license pursuant to subsection 3 of this section and prominently displays that license in the playing area of the games.

b. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or related to a game of skill, game of chance, or raffle, except any amount which the person may win as a participant on the same basis as the other participants. A person conducting a game or raffle shall not be a participant in the game or raffle.

c. (1) Cash or merchandise prizes may be awarded in the game of bingo and, except as otherwise provided in this paragraph, shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo, but the actual retail value of the prize, or if the prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts, shall not exceed the maximum provided by this paragraph. Bingo games allowing for a trade-in of a bingo card during a bingo game for not more than fifty cents a trade-in may be conducted. A jackpot bingo game may be conducted twice during any twenty-four-hour period in which the prize may begin at not more than three hundred dollars in cash or actual retail value of merchandise prizes and may be increased by not more than two hundred dollars after each bingo occasion to a maximum prize of one thousand dollars for the first jackpot bingo game and two thousand five hundred dollars for the second jackpot bingo game. However, the cost of play in a jackpot bingo game shall not be increased. A jackpot bingo game is not prohibited by paragraph "h". A bingo occasion shall not last for longer than four consecutive hours. A qualified organization shall not hold more than fourteen bingo occasions per month. Bingo occasions held under a limited license shall not be counted in determining whether a qualified organization has conducted more than fourteen bingo occasions per month, nor shall bingo occasions held under a limited license be limited to four consecutive hours. With the exception of a limited license bingo, no more than three bingo occasions per week shall be held within a structure or building and only one person licensed to conduct games under this section may hold bingo occasions within a structure or building. A licensed qualified organization shall not conduct free games.

(2) However, a qualified organization, which is a senior citizens' center or a residents' council at a senior citizen housing project or a group home, may hold more than fourteen bingo occasions per month and more than three bingo occasions per week within the same structure or building, and bingo occasions conducted by such a qualified organization may last for longer than four consecutive hours, if the majority of the patrons of the qualified organization's bingo occasions also participate in other activities of the senior citizens' center or are residents of the housing project. At the conclusion of each bingo occasion, the person conducting the game shall announce both the gross receipts received from the bingo occasion and the use permitted under subsection 3, paragraph "b", to which the net receipts of the bingo occasion will be dedicated and distributed.

d. (1) Cash prizes shall not be awarded in games other than bingo and raffles. The value of a prize shall not exceed ten thousand dollars and merchandise prizes shall not be repurchased. If a prize consists of more than one item, unit, or part, the aggregate value of all items, units, or parts shall not exceed ten thousand dollars. However, one raffle may be conducted per calendar year at which real property or one or more merchandise prizes having a combined value of more than ten thousand dollars may be awarded or cash prizes of up to a total of two hundred thousand dollars may be awarded.

(2) If a raffle licensee holds a statewide raffle license, the licensee may hold not more than eight raffles per calendar year at which real property or one or more merchandise prizes having a combined value of more than ten thousand dollars may be awarded or cash prizes of up to a total of two hundred thousand dollars may be awarded. Each such raffle held under a statewide license shall be held in a separate county.

(3) If a prize is merchandise, its value shall be determined by the purchase price paid by

the organization or donor. If a prize is real property or is cash and the combined value of the prize or the cash prize exceeds one hundred thousand dollars, the department shall conduct a special audit to verify compliance with the appropriate requirements of this chapter including all of the following applicable requirements:

(a) The licensee has submitted a real property or cash raffle license application and a fee of one hundred dollars to the department, has been issued a license, and prominently displays the license at the drawing area of the raffle.

(b) The real property was acquired by gift or donation or has been owned by the licensee for a period of at least five years.

(c) All other requirements of this section and section 99B.2 are met.

(d) Receipts from the raffle are kept in a separate financial account.

(e) A cumulative report for the raffle on a form determined by the department and one percent of gross receipts are submitted to the department within sixty days of the raffle drawing. The one percent of the gross receipts shall be retained by the department to pay for the cost of the special audit.

e. The ticket price including any discounts for each game or raffle shall be the same for each participant.

f. No prize is displayed which cannot be won.

g. Merchandise prizes are not repurchased.

h. A game or raffle shall not be operated on a build-up or pyramid basis.

i. Concealed numbers or conversion charts shall not be used to play any game and a game or raffle shall not be adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.

j. The game must be conducted in a fair and honest manner.

k. Each game or raffle shall be posted.

l. During the entire time that games permitted by this section are being engaged in, both of the following are observed:

(1) No other gambling is engaged in at the same location, except that lottery tickets or shares issued by the Iowa lottery authority may be sold pursuant to chapter 99G.

(2) A ticket, coupon, or card shall not be used as a door prize or given to a participant of a raffle, game of bingo, or game of chance if the use of the ticket, coupon, or card would change the odds of winning for participants of the raffle, game of bingo, or game of chance.

m. (1) The organization conducting the game can show to the satisfaction of the department that all of the following requirements are met:

(a) The organization is exempt from federal income taxes under section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code as defined in section 422.3, the organization is an agency or instrumentality of the United States government, this state, or a political subdivision of this state, or, in lieu of an exemption from federal income taxes, the organization is a parent-teacher organization or booster club that is recognized as a fund-raiser and supporter for a school district organized pursuant to chapter 274 or for a school within the school district, in a notarized letter signed by the president of the board of directors, the superintendent of the school district, or a principal of a school within that school district.

(b) The organization has an active membership of not less than twelve persons.

(c) The organization does not have a self-perpetuating governing body and officers.

(2) This lettered paragraph "m" does not apply to a political party, as defined in section 43.2, to a nonparty political organization that has qualified to place a candidate as its nominee for statewide office pursuant to chapter 44, or to a candidate's committee as defined in section 68A.102.

n. The person conducting the game does none of the following:

(1) Hold, currently, another license issued under this section.

(2) Own or control, directly or indirectly, any class of stock of another person who has been issued a license to conduct games under this section.

(3) Have, directly or indirectly, an interest in the ownership or profits of another person who has been issued a license to conduct games under this section.

o. A person shall not conduct, promote, administer, or assist in the conducting, promoting, or administering of a bingo occasion, unless the person regularly participates in activities of the qualified organization other than conducting bingo occasions or participates in an educational, civic, public, charitable, patriotic, or religious organization to which the net receipts are dedicated by the qualified organization.

p. A licensee shall keep records of all persons who serve as manager or cashier, or who are responsible for carrying out duties with respect to a bingo account. A licensee is subject to license revocation if it knowingly permits a person to serve in one of these capacities if the person was a manager, cashier, or responsible for carrying out duties with respect to a bingo account for another licensee at the time of one or more violations leading to revocation of the other licensee's license, and if the license is still revoked at the time of the subsequent service.

2. a. Games of skill, games of chance, and raffles may be conducted on premises owned or leased by the licensee, but shall not be conducted on rented premises unless the premises are rented from a person licensed under this section, and unless the net rent received is dedicated to one or more of the uses permitted under subsection 3 for dedication of net receipts. This subsection shall not apply where the rented premises are those upon which a qualified organization usually carries out a lawful business other than operating games of skill, games of chance or raffles. However, a qualified organization may rent premises other than from a licensed qualified organization to be used for the conduct of games of skill, games of chance and raffles, and the person from whom the premises are rented may impose and collect rent for such use of those premises, but only if all of the following are complied with:

(1) The rent imposed and collected shall not be a percentage of or otherwise related to the amount of the receipts of the game or raffle.

(2) The qualified organization shall have the right to terminate any rental agreement at any time without penalty and without forfeiture of any sum.

(3) Except for purposes of bingo, the person from whom the premises are rented shall not be a liquor control licensee or beer permittee with respect to those premises or with respect to adjacent premises.

b. The board of directors of a school district may authorize that public schools within that district, and the policymaking body of a nonpublic school, may authorize that games of skill, games of chance, bingo and raffles may be held at bona fide school functions, such as carnivals, fall festivals, bazaars and similar events. Each school shall obtain a license pursuant to this section prior to permitting the games or activities on the premises. However, the board of directors of a public school district may also be issued a license under this section. However, a board of directors of a public school shall not spend or authorize the expenditure of public funds for the purpose of purchasing a license. The department of inspections and appeals shall provide by rule a short form application for a license issued to a board of directors. Upon written approval by the board of directors, the license may be used by any school group or parent support group in the district to conduct activities authorized by this section. The board of directors shall not authorize a school group or parent support group to use the license more than twice in twelve months.

3. a. A person wishing to conduct games and raffles pursuant to this section as a qualified organization shall submit an application and a license fee of one hundred fifty dollars. The annual license fee for a statewide raffle license shall be one hundred fifty dollars. However, upon submission of an application accompanied by a license fee of fifteen dollars, a person may be issued a limited license to conduct all games and raffles pursuant to this section at a specified location and during a specified period of fourteen consecutive calendar days, except that a bingo occasion may only be conducted once per each seven consecutive calendar days of the specified period. In addition, a qualified organization may be issued a limited license to conduct raffles pursuant to this section for a period of ninety days for a license fee of forty dollars or for a period of one hundred eighty days for a license fee of seventy-five dollars. For the purposes of this paragraph, a limited license is deemed to be issued on the first day of the period for which the license is issued.

b. (1) A person or the agent of a person submitting application to conduct games pursuant to this section as a qualified organization shall certify that the receipts of all games, less reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, either will be distributed as prizes to participants or will be dedicated and distributed to educational, civic, public, charitable, patriotic, or religious uses in this state and that the amount dedicated and distributed will equal at least seventy-five percent of the net receipts.

(2) (a) “*Educational, civic, public, charitable, patriotic, or religious uses*” means uses benefiting a society for the prevention of cruelty to animals or animal rescue league, or uses benefiting an indefinite number of persons either by bringing them under the influence of education or religion or relieving them from disease, suffering, or constraint, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government, or uses benefiting any bona fide nationally chartered fraternal or military veterans’ corporation or organization which operates in Iowa a clubroom, post, dining room, or dance hall, but does not include the erection, acquisition, improvement, maintenance, or repair of real, personal or mixed property unless it is used for one or more of the uses stated.

(b) “*Public uses*” specifically includes dedication of net receipts to political parties as defined in section 43.2.

(c) “*Charitable uses*” includes uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm when the loss is uncompensated by insurance, and uses benefiting a definite number of persons suffering from a seriously disabling disease or injury, causing severe loss of income or incurring extraordinary medical expense when the loss is uncompensated by insurance.

(3) Proceeds given to another charitable organization to satisfy the seventy-five percent dedication requirement shall not be used by the donee to pay any expenses in connection with the conducting of bingo by the donor organization, or for any cause, deed, or activity that would not constitute a valid dedication under this section.

c. (1) A qualified organization shall distribute amounts awarded as prizes on the day they are won. A qualified organization shall dedicate and distribute the balance of the net receipts received within a quarter and remaining after deduction of reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, before the quarterly report required for that quarter under section 99B.2, subsection 4, is due. The amount dedicated and distributed must equal at least seventy-five percent of the net receipts. A person desiring to hold the net receipts for a period longer than permitted under this paragraph shall apply to the department for special permission and upon good cause shown the department may grant the request.

(2) If permission is granted to hold the net receipts, the person shall, as a part of the quarterly report required by section 99B.2, report the amount of money currently being held and all expenditures of the funds. This report shall be filed even if the person no longer holds a gambling license.

4. If a licensee derives ninety percent or more of its total income from conducting bingo, raffles, or small games of chance, at least seventy-five percent of the licensee’s net receipts shall be distributed to an unrelated entity for an educational, civic, public, charitable, patriotic, or religious use.

5. It is lawful for an individual other than a person conducting games or raffles to participate in games or raffles conducted by a qualified organization, whether or not there is compliance with subsections 2 and 3: However, it is unlawful for the individual to participate where the individual has knowledge of or reason to know facts which constitute a failure to comply with subsection 1.

6. A political party or a political party organization is a qualified organization within the meaning of this chapter. Political parties or party organizations may contract with other qualified organizations to conduct the games of skill, games of chance, and raffles which may lawfully be conducted by the political party or party organization. A licensed qualified organization may promote the games of skill, games of chance, and raffles which it may lawfully conduct.

7. a. Proceeds coming into the possession of a person under this section are deemed to be held in trust for payment of expenses and dedication to charitable purposes as required by this section.

b. A licensee or agent who willfully fails to dedicate the required amount of proceeds to charitable purposes as required by this section commits a fraudulent practice.

8. a. A qualified organization licensed under this section shall purchase bingo equipment and supplies only from a manufacturer or a distributor licensed by the department.

b. A qualified organization may also lease electronic bingo equipment from a manufacturer or distributor licensed by the department for the purposes of aiding disabled individuals during a bingo occasion. “*Electronic bingo equipment*” for the purposes of this paragraph means an electronic device that aids in the use of a bingo card during a bingo game. Such electronic bingo equipment shall only be permitted for use by disabled individuals.

[C75, 77, 79, 81, §99B.7; 81 Acts, ch 44, §8 – 12; 82 Acts, ch 1189, §2]

83 Acts, ch 85, §1; 83 Acts, ch 164, §1, 2; 84 Acts, ch 1220, §5 – 11; 84 Acts, ch 1305, §22; 85 Acts, ch 150, §1 – 3; 86 Acts, ch 1042, §2; 86 Acts, ch 1201, §7 – 9; 87 Acts, ch 184, §5, 6; 88 Acts, ch 1134, §21; 88 Acts, ch 1274, §33; 89 Acts, ch 231, §18 – 21; 91 Acts, ch 175, §1; 94 Acts, ch 1062, §3 – 5; 96 Acts, ch 1143, §3, 4; 98 Acts, ch 1198, §1, 2; 2000 Acts, ch 1130, §2, 3; 2002 Acts, ch 1068, §3 – 10; 2003 Acts, ch 44, §32; 2003 Acts, ch 178, §104, 121; 2003 Acts, ch 179, §142; 2003 Acts, 1st Ex, ch 2, §38, 209; 2004 Acts, ch 1058, §1 – 5; 2005 Acts, ch 19, §30; 2005 Acts, ch 106, §5, 11; 2008 Acts, ch 1032, §188, 201; 2011 Acts, ch 40, §2

Fraudulent practice, see §714.8  
Subsection 8 amended

## CHAPTER 99D

### PARI-MUTUEL WAGERING

#### 99D.7 Powers.

The commission shall have full jurisdiction over and shall supervise all race meetings governed by this chapter. The commission shall have the following powers and shall adopt rules pursuant to chapter 17A to implement this chapter:

1. To investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.

2. To identify occupations within the racing industry which require licensing and adopt standards for licensing the occupations including establishing fees for the occupational licenses. The fees shall be paid to the commission and used as required in section 99D.17.

3. To adopt standards regarding the duration of thoroughbred and quarter horse racing seasons, so that a thoroughbred racing season shall not be less than sixty-seven days, and so that a quarter horse racing season shall not be less than twenty-six days. The thoroughbred and quarter horse racing seasons shall be run independently unless mutually agreed upon by the associations representing the thoroughbred and quarter horse owners and the licensee of the horse racetrack located in Polk county.

4. To adopt standards under which all race meetings shall be held and standards for the facilities within which the race meetings shall be held.

5. a. To regulate the purse structure for race meetings including establishing a minimum purse.

b. The commission shall, beginning January 1, 2012, regulate the purse structure for all horse racing so that seventy-six percent is designated for thoroughbred racing, fifteen and one-quarter percent is designated for quarter horse racing, and eight and three-quarter percent is designated for standardbred racing. The purse moneys designated for standardbred racing may only be used to support standardbred harness racing purses at the state fair, county fairs, or other harness racing tracks approved by the commission, or for the maintenance or repair of harness racing tracks at the fairgrounds for such fairs or other harness racing tracks approved by the commission. The horse racetrack in Polk

county shall not provide funding to support standardbred racing at such county fairs that is not otherwise provided for in this paragraph.

c. (1) The purse moneys designated for standardbred racing shall be payable to a nonprofit corporation operated exclusively for those purposes allowed an exempt organization under section 501(c)(4) of the Internal Revenue Code, as defined in section 422.3, which was organized under the laws of this state on or before January 1, 2008, which exists for the promotion of the sport of harness racing in this state, and which received supplemental payments from the horse racetrack in Polk county for the conduct of harness racing during the 2010 calendar year. The nonprofit corporation receiving such purse moneys shall complete and provide to the commission an annual audit and accounting of the allocation of such moneys.

(2) Of the purse moneys designated for thoroughbred racing, two percent shall be distributed to an organization representing owners of thoroughbred race horses for the purpose of paying the annual operating expenses of the organization and for the promotion and marketing of Iowa-bred horses. The organization receiving such purse moneys shall complete and provide to the commission an annual audit and accounting of the allocation of such moneys.

(3) Of the purse moneys designated for quarter horse racing, two percent shall be distributed to an organization representing owners of quarter horse race horses for the purpose of paying the annual operating expenses of the organization and for the promotion and marketing of Iowa-bred horses. The organization receiving such purse moneys shall complete and provide to the commission an annual audit and accounting of the allocation of such moneys.

6. To cooperate with the department of agriculture and land stewardship to establish and operate, or contract for, a laboratory and related facilities to conduct saliva, urine, and other tests on animals that are to run or that have run in races governed by this chapter.

7. To establish and provide for the disposition of fees for the testing of animals sufficient to cover the costs of the tests and to purchase the necessary equipment for the testing.

8. To enter the office, racetrack, facilities, or other places of business of a licensee to determine compliance with this chapter.

9. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for the violation, or institute appropriate legal action for enforcement, or both. Information gathered during an investigation is confidential during the pendency of the investigation. Decisions by the commission are final agency actions pursuant to chapter 17A.

10. To authorize stewards, starters, and other racing officials to impose fines or other sanctions upon a person violating a provision of this chapter or the commission rules, orders, or final orders, including authorization to expel a tout, bookmaker, or other person deemed to be undesirable from the racetrack facilities.

11. To require the removal of a racing official, an employee of a licensee, or a holder of an occupational license, or employee of a holder of an occupational license for a violation of this chapter or a commission rule or engaging in a fraudulent practice.

12. To prevent an animal from racing if the commission or commission employees with cause believe the animal or its owner, trainer, or an employee of the owner or trainer is in violation of this chapter or commission rules.

13. To withhold payment of a purse if the outcome of a race is disputed or until tests are performed on the animals to determine if they were illegally drugged.

14. To provide for immediate determination of the disposition of a challenge by a racing official or representative of the commission by establishing procedures for informal hearings before a panel of stewards at a racetrack.

15. To require a licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's racing activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the racing activities of each licensee.

16. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for

the production of books, records and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the racing and gaming commission, it is necessary to enforce this chapter or the commission rules.

17. To keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

18. To require all licensees to use a computerized totalizator system for calculating odds and payouts from the pari-mutuel wagering pool and to establish standards to insure the security of the totalizator system.

19. To revoke or suspend licenses and impose fines not to exceed one thousand dollars.

20. To require licensees to indicate in their racing programs those horses which are treated with the legal medication furosemide or phenylbutazone. The program shall also indicate if it is the first or subsequent time that a horse is racing with furosemide, or if the horse has previously raced with furosemide and the present race is the first race for the horse without furosemide following its use.

21. Notwithstanding any contrary provision in this chapter, to provide for interstate combined wagering pools related to simulcasting horse or dog races and all related interstate pari-mutuel wagering activities.

22. To cooperate with the gambling treatment program administered by the Iowa department of public health to incorporate information regarding the gambling treatment program and its toll-free telephone number in printed materials distributed by the commission. The commission may require licensees to have the information available in a conspicuous place as a condition of licensure.

23. To require licensees to establish a process to allow a person to be voluntarily excluded for life from a racetrack enclosure and all other licensed facilities under this chapter and chapter 99F. The process established shall require that a licensee disseminate information regarding persons voluntarily excluded to all licensees under this chapter and chapter 99F. The state and any licensee under this chapter or chapter 99F shall not be liable to any person for any claim which may arise from this process. In addition to any other penalty provided by law, any money or thing of value that has been obtained by, or is owed to, a voluntarily excluded person by a licensee as a result of wagers made by the person after the person has been voluntarily excluded shall not be paid to the person but shall be credited to the general fund of the state.

24. To require licensees to establish a process with the state for licensees to have electronic access to names and social security numbers of debtors of claimant agencies through a secured interactive website maintained by the state.

25. To take any other action as may be reasonable or appropriate to enforce this chapter and the commission rules.

83 Acts, ch 187, §7; 84 Acts, ch 1265, §3; 84 Acts, ch 1266, §6; 88 Acts, ch 1137, §1; 89 Acts, ch 231, §32; 91 Acts, ch 166, §1; 91 Acts, ch 260, §1205; 94 Acts, ch 1100, §1; 95 Acts, ch 205, §34; 96 Acts, ch 1212, §11; 2004 Acts, ch 1136, §6 – 8; 2008 Acts, ch 1172, §2; 2009 Acts, ch 182, §101; 2011 Acts, ch 111, §1, 2

NEW subsection 3 and former subsections 3 – 24 renumbered as 4 – 25  
Subsection 5 amended

### **99D.9 Licenses — terms and conditions — revocation.**

1. If the commission is satisfied that its rules and sections 99D.8 through 99D.25 applicable to licensees have been or will be complied with, it may issue a license for a period of not more than three years. The commission may decide which types of racing it will permit. The commission may permit dog racing, horse racing of various types, or both dog and horse racing. However, only quarter horse and thoroughbred racing shall be allowed to be conducted at the horse racetrack located in Polk county. The commission shall decide the number, location, and type of all racetracks licensed under this chapter. The license shall set forth the name of the licensee, the type of license granted, the place where the race meeting is to be held, and the time and number of days during which racing may be conducted by the licensee. The commission shall not approve a license application if any part of the

racetrack is to be constructed on prime farmland outside the city limits of an incorporated city. As used in this subsection, “*prime farmland*” means as defined by the United States department of agriculture in 7 C.F.R. § 657.5(a). A license is not transferable or assignable. The commission may revoke any license issued for good cause upon reasonable notice and hearing. The commission shall conduct a neighborhood impact study to determine the impact of granting a license on the quality of life in neighborhoods adjacent to the proposed racetrack facility. The applicant for the license shall reimburse the commission for the costs incurred in making the study. A copy of the study shall be retained on file with the commission and shall be a public record. The study shall be completed before the commission may issue a license for the proposed facility.

2. A license shall only be granted to a nonprofit corporation or association upon the express condition that the nonprofit corporation or association shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of a race meeting licensed under this section or of the pari-mutuel system of wagering described in section 99D.11. This section does not prohibit a management contract approved by the commission.

3. A license shall not be granted to a nonprofit corporation if there is substantial evidence that the applicant for a license:

a. Has been suspended or ruled off a recognized course in another jurisdiction by the racing board or commission of that jurisdiction.

b. Has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed.

c. Is not the true owner of the enterprise proposed.

d. Is not the sole owner, and other persons have ownership in the enterprise which fact has not been disclosed.

e. Is a corporation and ten percent of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is issued unless the contract or option was disclosed to the commission and the commission approved the sale or transfer during the period of the license.

f. Has knowingly made a false statement of a material fact to the commission.

g. Has failed to meet any monetary obligation in connection with a race meeting held in this state.

4. A license shall not be granted to a nonprofit corporation if there is substantial evidence that stockholders or officers of the nonprofit corporation are not of good repute and moral character.

5. A license shall not be granted to a licensee for racing on more than one racetrack at the same time.

6. a. A licensee shall not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any race.

b. A licensee shall not permit a financial institution, vendor, or other person to dispense cash or credit through an electronic or mechanical device including but not limited to a satellite terminal as defined in section 527.2, that is located in the wagering area.

c. When technologically available, a licensee shall ensure that a person may voluntarily bar the person’s access to receive cash or credit from a financial institution, vendor, or other person through an electronic or mechanical device including but not limited to a satellite terminal as defined in section 527.2, that is located on the licensed premises.

7. Upon a violation of any of the conditions listed in this section, the commission shall immediately revoke the license.

8. The commission shall require that a licensee utilize Iowa resources, goods, and services in the operation of a racetrack enclosure. The commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of a racetrack enclosure emanate from and are made in Iowa and that a substantial amount of all services and entertainment are provided by Iowans.

83 Acts, ch 187, §9; 84 Acts, ch 1266, §8 – 10; 94 Acts, ch 1021, §2; 2004 Acts, ch 1136, §9 – 11; 2011 Acts, ch 111, §3

Subsection 1 amended

**99D.11 Pari-mutuel wagering — advanced deposit wagering — televising races — age restrictions.**

1. Except as permitted in this section, the licensee shall permit no form of wagering on the results of the races.

2. Licensees shall only permit the pari-mutuel or certificate method of wagering, or the advanced deposit method of wagering, as defined in this section.

3. The licensee may receive wagers of money only from a person present in a licensed racetrack enclosure on a horse or dog in the race selected by the person making the wager to finish first in the race or from a person engaging in advanced deposit wagering as defined in this section. The person wagering shall acquire an interest in the total money wagered on all horses or dogs in the race as first winners in proportion to the amount of money wagered by the person.

4. The licensee shall issue to each person wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse or dog selected as first winner.

5. As each race is run the licensee shall deduct sixteen percent from the total sum wagered on all horses or dogs as first winners. However, the commission shall authorize at the request of the licensee a deduction of a higher or lower percentage of the total sum wagered not to exceed eighteen percent and the additional deduction shall be retained by the licensee. The balance, after deducting breakage, shall be paid to the holders of certificates on the winning horse or dog in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses or dogs in the race as first winners. The licensee may pay a larger amount if approved by the commission. The licensee shall likewise receive other wagers on horses or dogs in places or combinations the commission may authorize. The method, procedure, and the authority and right of the licensee, as well as the deduction allowed to the licensee, shall be as specified with respect to wagers upon horses or dogs selected to run first. However, the commission shall authorize at the request of the licensee a deduction of a higher or lower percent of the total sum wagered not to exceed twenty-four percent on multiple or exotic wagering involving not more than two horses or dogs. The deduction authorized above twenty percent on the multiple or exotic wagering involving not more than two dogs or horses shall be retained by the licensee. For exotic wagering involving three or more horses or dogs, the commission shall authorize at the request of the licensee a deduction of a higher or lower percent of the total sum wagered not to exceed twenty-five percent on the exotic wagers. The additional deduction authorized above twenty-two percent on the multiple or exotic wagers involving more than two horses or dogs shall be retained by the licensee. One percent of the exotic wagers on three or more horses or dogs shall be distributed as provided in section 99D.12.

6. *a.* All wagering shall be conducted within the racetrack enclosure where the licensed race is held, except as provided in paragraphs “*b*” and “*c*”.

*b.* The commission may authorize the licensee to simultaneously telecast within the racetrack enclosure, for the purpose of pari-mutuel wagering, a horse or dog race licensed by the racing authority of another state. It is the responsibility of each licensee to obtain the consent of appropriate racing officials in other states as required by the federal Interstate Horseracing Act of 1978, 15 U.S.C. § 3001 – 3007, to televise races for the purpose of conducting pari-mutuel wagering. A licensee may also obtain the permission of a person licensed by the commission to conduct horse or dog races in this state to televise races conducted by that person for the purpose of conducting pari-mutuel racing. However, arrangements made by a licensee to televise any race for the purpose of conducting pari-mutuel wagering are subject to the approval of the commission, and the commission shall select the races to be televised. The races selected by the commission shall be the same for all licensees approved by the commission to televise races for the purpose of conducting pari-mutuel wagering. The commission shall not authorize the simultaneous telecast or televising of and a licensee shall not simultaneously telecast or televise any horse or dog race for the purpose of conducting pari-mutuel wagering unless the simultaneous telecast or televising is done at the racetrack of a licensee that schedules no less than sixty performances of nine live races each day of the season. For purposes of the taxes imposed

under this chapter, races televised by a licensee for purposes of pari-mutuel wagering shall be treated as if the races were held at the racetrack of the licensee. Notwithstanding any contrary provision in this chapter, the commission may allow a licensee to adopt the same deductions as those of the pari-mutuel racetrack from which the races are being simultaneously telecast.

c. (1) The commission shall authorize the licensee of the horse racetrack located in Polk county to conduct advanced deposit wagering. An advanced deposit wager may be placed in person at a licensed racetrack enclosure, or from any other location via a telephone-type device or any other electronic means. The commission may also issue an advanced deposit wagering operator license to an entity who complies with subparagraph (3) and section 99D.8A.

(2) For the purposes of this section, “*advanced deposit wagering*” means a method of pari-mutuel wagering in which an individual may establish an account, deposit money into the account, and use the account balance to pay for pari-mutuel wagering. Of the net revenue, less all taxes paid and expenses directly related to account deposit wagering incurred by the licensee of the horse racetrack located in Polk county, received through advanced deposit wagering, fifty percent shall be designated for the horse purses created pursuant to section 99D.7, subsection 5, and fifty percent shall be designated for the licensee for the pari-mutuel horse racetrack located in Polk county.

(3) Before granting an advanced deposit wagering operator license to an entity other than the licensee of the horse racetrack located in Polk county, the commission shall enter into an agreement with the licensee of the horse racetrack located in Polk county, the Iowa horsemen’s benevolent and protective association, and the prospective advanced deposit wagering operator for the purpose of determining the payment of statewide source market fees and the host fees to be paid on all races subject to advanced deposit wagering. The commission shall establish the term of such an advanced deposit wagering operator license. Such an advanced deposit wagering operator licensee shall accept wagers on live races conducted at the horse racetrack in Polk county from all of its account holders if it accepts wagers from any residents of this state.

(4) An unlicensed advanced deposit wagering operator or an individual taking or receiving wagers from residents of this state on races conducted at the horse racetrack located in Polk county is guilty of a class “D” felony.

(5) For the purposes of this paragraph “c”, “*advanced deposit wagering operator*” means an advanced deposit wagering operator licensed by the commission who has entered into an agreement with the licensee of the horse racetrack in Polk county and the Iowa horsemen’s benevolent and protective association to provide advanced deposit wagering.

7. A person under the age of twenty-one years shall not make or attempt to make a pari-mutuel wager. A person who violates this subsection commits a scheduled violation under section 805.8C, subsection 5, paragraph “a”.

83 Acts, ch 187, §11; 84 Acts, ch 1266, §11 – 13; 89 Acts, ch 216, §1; 90 Acts, ch 1175, §5; 90 Acts, ch 1261, §31; 91 Acts, ch 166, §2, 3; 92 Acts, ch 1163, §23; 92 Acts, ch 1203, §3, 4; 92 Acts, ch 1207, §1; 94 Acts, ch 1021, §3, 4; 96 Acts, ch 1211, §32; 2004 Acts, ch 1136, §12; 2005 Acts, ch 3, §25; 2009 Acts, ch 88, §1; 2011 Acts, ch 111, §4 – 7

Subsections 2 and 3 amended

Subsection 6, paragraph a amended

Subsection 6, NEW paragraph c

#### **99D.14 Race meetings — tax — fees — tax exemption.**

1. A licensee under section 99D.9 shall pay the tax imposed by section 99D.15.

2. a. A licensee shall pay a regulatory fee to be charged as provided in this section. In determining the regulatory fee to be charged as provided under this section, the commission shall use the amount appropriated to the commission plus the cost of salaries for no more than two special agents for each racetrack that has not been issued a table games license under chapter 99F or no more than three special agents for each racetrack that has been issued a table games license under chapter 99F, plus any direct and indirect support costs for the agents, for the division of criminal investigation’s racetrack activities, as the basis for determining the amount of revenue to be raised from the regulatory fee.

b. Notwithstanding sections 8.60 and 99D.17, the portion of the fee paid pursuant to paragraph “a” relating to the costs of special agents plus any direct and indirect support costs for the agents, for the division of criminal investigation’s racetrack activities, shall not be deposited in the general fund of the state but instead shall be deposited into the gaming enforcement revolving fund established in section 80.43.

c. Notwithstanding sections 8.60 and 99D.17, the portion of the fee paid pursuant to paragraph “a” relating to the costs of the commission shall not be deposited in the general fund of the state but instead shall be deposited into the gaming regulatory revolving fund established in section 99F.20.

3. The licensee shall also pay to the commission a licensee fee of two hundred dollars for each racing day of each horse-race or dog-race meeting for which a license has been issued.

4. No other license tax, permit tax, occupation tax, or racing fee, shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

5. No other excise tax shall be levied, assessed, or collected from the licensee on horse racing, dog racing, pari-mutuel wagering or admission charges by the state or by a political subdivision, except as provided in this chapter.

6. Real property used in the operation of a racetrack or racetrack enclosure which is exempt from property taxation under another provision of the law, including being exempt because it is owned by a city, county, state, or charitable or nonprofit entity, may be subject to real property taxation by any taxing district in which the real property used in the operation of the racetrack or racetrack enclosure is located. To subject such real property to taxation, the taxing authority of the taxing district shall pass a resolution imposing the tax and, if the resolution is passed prior to September 1, 1997, shall notify the local assessor and the owner of record of the real property by September 1, 1997, preceding the fiscal year in which the real property taxes are due and payable. The assessed value shall be determined and notice of the assessed value shall be provided to the county auditor by the local assessor by October 15, 1997, and the owner may protest the assessed value to the local board of review by December 1, 1997. For resolutions passed on or after September 1, 1997, the taxing authority shall notify the local assessor and owner of record prior to the next assessment year and the valuation and appeal shall be done in the manner and time as for other valuations. Property taxes due as a result of this subsection shall be paid to the county treasurer in the manner and time as other property taxes. The county treasurer shall remit the tax revenue to those taxing authorities imposing the property tax under this subsection. Real property subject to tax as provided in this subsection shall continue to be taxed until such time as the taxing authority of the taxing district repeals the resolution subjecting the property to taxation.

83 Acts, ch 187, §14; 84 Acts, ch 1266, §15, 16; 89 Acts, ch 216, §6; 97 Acts, ch 9, §2; 97 Acts, ch 158, §47; 2000 Acts, ch 1229, §17; 2004 Acts, ch 1136, §13, 14; 2010 Acts, ch 1190, §24; 2011 Acts, ch 127, §46, 89

Subsection 2, NEW paragraph c

#### **99D.22 Native horses or dogs.**

1. a. A licensee shall hold at least one race on each racing day limited to Iowa-foaled horses or Iowa-whelped dogs as defined by the department of agriculture and land stewardship using standards consistent with this section. However, if sufficient competition cannot be had among that class of horses or dogs on any day, another race for the day may be substituted.

b. A sum equal to twelve percent of the purse won by an Iowa-foaled horse or Iowa-whelped dog shall be used to promote the horse and dog breeding industries. The twelve percent shall be withheld by the licensee from the breakage and shall be paid at the end of the race meeting to the state department of agriculture and land stewardship which in turn shall deposit it in a special fund to be known as the Iowa horse and dog breeders fund. The department shall pay the amount deposited in the fund that is withheld from the purse won by an Iowa-foaled horse to the breeder of the winning Iowa-foaled horse by December 31 of each calendar year. The department shall pay the amount deposited in the fund that is withheld from the purse won by an Iowa-whelped dog to the breeder of the

winning Iowa-whelped dog by March 31 of each calendar year. For the purposes of this section, the breeder of a horse shall be considered to be the owner of the brood mare at the time the foal is dropped.

c. No less than twenty percent of all net purse moneys distributed to each breed, as described in section 99D.7, subsection 5, paragraph “b”, shall be designated for registered Iowa-bred foals in the form of breeder’s awards or purse supplement awards to enhance and foster the growth of the horse breeding industry.

2. For the purposes of this chapter, the following shall be considered in determining if a horse is an Iowa-foaled thoroughbred horse, quarter horse, or standardbred horse:

a. All thoroughbred horses, quarter horses, or standardbred horses foaled in Iowa prior to January 1, 1985, which are registered by the jockey club, American quarter horse association, or United States trotting association as Iowa foaled shall be considered to be Iowa foaled.

b. After January 1, 1985, eligibility for brood mare residence shall be achieved by meeting at least one of the following rules:

(1) Thirty days residency until the foal is inspected, if in foal to a registered Iowa stallion.

(2) Thirty days residency until the foal is inspected for brood mares which are bred back to registered Iowa stallions.

(3) Continuous residency from December 31 until the foal is inspected if the mare was bred by other than an Iowa registered stallion and is not bred back to an Iowa registered stallion.

c. To be eligible for registration as an Iowa thoroughbred, quarter horse, or standardbred stallion, the following requirements shall be met:

(1) Stallion residency from January 1 through July 31 for the year of registration. However, horses going to stud for the first year shall be eligible upon registration with residency to continue through July 31.

(2) At least fifty-one percent of an Iowa registered stallion shall be owned by bona fide Iowa residents.

d. State residency shall not be required for owners of brood mares.

3. To facilitate the implementation of this section, the department of agriculture and land stewardship shall do all of the following:

a. Adopt standards to qualify thoroughbred, quarter horse, or standardbred stallions for Iowa breeding. A stallion shall stand for service in the state at the time of the foal’s conception and shall not stand for service at any place outside the state during the calendar year in which the foal is conceived.

b. Provide for the registration of Iowa-foaled horses and that a horse shall not compete in a race limited to Iowa-foaled horses unless the horse is registered with the department of agriculture and land stewardship. The department may prescribe such forms as necessary to determine the eligibility of a horse.

c. The secretary of agriculture shall appoint investigators to determine the eligibility for registration of Iowa-foaled horses.

d. Establish a registration fee imposed on each horse which is a thoroughbred, quarter horse, or standardbred which shall be paid by the breeder of the horse. The department shall not impose the registration fee more than once on each horse. The amount of the registration fee shall not exceed thirty dollars. The moneys paid to the department from registration fees shall be considered repayment receipts as defined in section 8.2, and shall be used for the administration and enforcement of this subsection.

4. a. The department of agriculture and land stewardship shall adopt rules establishing a schedule of registration fees to be imposed on owners of dogs that are whelped and raised for the first six months of their lives in Iowa for purposes of promoting native dogs as provided in this chapter, including section 99D.12 and this section. The amount of the registration fees shall be imposed as follows:

(1) An owner of a dam registering the dam, twenty-five dollars.

(2) An owner of a litter registering the litter, ten dollars.

(3) An owner of a dog registering the dog, five dollars.

b. The moneys paid to the department from registration fees as provided in paragraph

“a” shall be considered repayment receipts as defined in section 8.2, and shall be used for the administration and enforcement of programs for the promotion of native dogs.

5. To qualify for the Iowa horse and dog breeders fund, a dog shall have been whelped in Iowa and raised for the first six months of its life in Iowa in a state inspected licensed facility. In addition, the owner of the dog shall have been a resident of the state for at least two years prior to the whelping. The department of agriculture and land stewardship shall adopt rules and prescribe forms to bring Iowa breeders into compliance with residency requirements of dogs and breeders in this subsection.

83 Acts, ch 187, §22; 84 Acts, ch 1266, §20, 21; 85 Acts, ch 67, §12; 95 Acts, ch 133, §1 – 7; 2001 Acts, ch 129, §2; 2005 Acts, ch 172, §19, 20; 2007 Acts, ch 211, §35; 2011 Acts, ch 111, §8  
Subsection 1 amended

#### **99D.28 Setoff.**

1. A licensee or a person acting on behalf of a licensee shall be provided electronic access to the names of the persons indebted to a claimant agency pursuant to the process established pursuant to section 99D.7, subsection 24. The electronic access provided by the claimant agency shall include access to the names of the debtors, their social security numbers, and any other information that assists the licensee in identifying the debtors. If the name of a debtor provided to the licensee through electronic access is retrieved by the licensee and the winnings are equal to or greater than one thousand two hundred dollars per occurrence, the retrieval of such a name shall constitute a valid lien upon and claim of lien against the winnings of the debtor whose name is electronically retrieved from the claimant agency. If a debtor's winnings are equal to or greater than one thousand two hundred dollars per occurrence, the full amount of the debt shall be collectible from any winnings due the debtor without regard to limitations on the amounts that may be collectible in increments through setoff or other proceedings.

2. The licensee is authorized and directed to withhold any winnings of a debtor which are paid out directly by the licensee subject to the lien created by this section and provide notice of such withholding to the winner when the winner appears and claims winnings in person. The licensee shall pay the funds over to the collection entity which administers the setoff program pursuant to section 8A.504.

3. Notwithstanding any other provision of law to the contrary, the licensee may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this section, and likewise the claimant agency may provide all information necessary to accomplish and effectuate the intent of this section.

4. The information obtained by a claimant agency from the licensee in accordance with this section shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices. An employee or prior employee of a claimant agency who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of the claimant agency.

5. The information obtained by a licensee from a claimant agency in accordance with this section shall retain its confidentiality and only be used by the licensee in the pursuit of debt collection duties and practices. An employee or prior employee of a licensee who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of the licensee.

6. Except as otherwise provided in this chapter, attachments, setoffs, or executions authorized and issued pursuant to law shall be withheld if timely served upon the licensee.

7. A claimant agency or licensee, acting in good faith, shall not be liable to any person for actions taken pursuant to this section.

2008 Acts, ch 1172, §3; 2010 Acts, ch 1031, §171, 172  
Section not amended; internal reference change applied

## CHAPTER 99F

### GAMBLING BOAT, GAMBLING STRUCTURE, AND RACETRACK REGULATION

#### **99F.4A Gambling games at pari-mutuel racetracks — fees and taxes.**

1. Upon application, the commission shall license the licensee of a pari-mutuel dog or horse racetrack to operate gambling games at a pari-mutuel racetrack enclosure subject to the provisions of this chapter and rules adopted pursuant to this chapter relating to gambling except as otherwise provided in this section.

2. A license to operate gambling games shall be issued only to a licensee holding a valid license to conduct pari-mutuel dog or horse racing pursuant to chapter 99D on January 1, 1994.

3. A person holding a valid license pursuant to chapter 99D to conduct pari-mutuel wagering at a dog or horse racetrack is exempt from further investigation and examination for licensing to operate a gambling game pursuant to this chapter. However, the commission may order future investigations or examinations as the commission finds appropriate.

4. The regulatory fee imposed in section 99D.14, subsection 2, shall be collected from a licensee of a racetrack enclosure where gambling games are licensed to operate in lieu of the regulatory fee imposed in section 99F.10.

5. In lieu of the annual license fee specified in section 99F.5, the annual license fee for operating gambling games at a pari-mutuel racetrack shall be one thousand dollars.

6. The adjusted gross receipts received from gambling games shall be taxed at the same rates and the proceeds distributed in the same manner as provided in section 99F.11.

7. A licensee shall keep its books and records regarding the operation of gambling games in compliance with section 99F.12, as applicable.

8. *a.* The commission shall, upon the immediate payment of the applicable table games license fee and submission to the commission by June 1, 2005, of an application by a licensee of a pari-mutuel dog or horse racetrack licensed to conduct gambling games at a pari-mutuel racetrack enclosure, issue a license to the licensee to conduct table games of chance, including video machines that simulate table games of chance, at the pari-mutuel racetrack enclosure subject to the requirements of this subsection. However, a table games license may only be issued to a licensee required to pay a table games license fee of three million dollars under this subsection if the licensee, and all other licensees of an excursion gambling boat in that county, file an agreement with the commission authorizing the granting of a table games license under this subsection and permitting all licensees of an excursion gambling boat to operate a moored barge as of a specific date. The licensee shall be granted a table games license by the commission upon payment of the applicable license fee to the commission which table games license fee may be offset by the licensee against taxes imposed on the licensee by section 99F.11, to the extent of twenty percent of the table games license fee paid pursuant to this subsection for each of five consecutive fiscal years beginning with the fiscal year beginning July 1, 2008. Fees paid pursuant to this subsection are not refundable to the licensee. A licensee shall not be required to pay a fee to renew a table games license issued pursuant to this subsection. Moneys collected by the commission from a table games license fee paid under this subsection shall be deposited in the rebuild Iowa infrastructure fund created in section 8.57.

*b.* For purposes of this subsection, the applicable license fee for a licensee shall be three million dollars if the adjusted gross receipts from gambling games for the licensee in the previous fiscal year was less than one hundred million dollars, and shall be ten million dollars if the adjusted gross receipts from gambling games for the licensee in the previous fiscal year was one hundred million dollars or more.

94 Acts, ch 1021, §13; 2000 Acts, ch 1229, §19; 2002 Acts, 2nd Ex, ch 1003, §168, 172; 2004 Acts, ch 1136, §36, 37, 65; 2008 Acts, ch 1032, §201; 2011 Acts, ch 111, §10, 13, 14

Subsection 8, paragraph a amended

#### **99F.6 Requirements of applicant — fee — penalty.**

1. A person shall not be issued a license to conduct gambling games on an excursion

gambling boat or a license to operate an excursion gambling boat under this chapter, an occupational license, a distributor license, or a manufacturer license unless the person has completed and signed an application on the form prescribed and published by the commission. The application shall include the full name, residence, date of birth and other personal identifying information of the applicant that the commission deems necessary. The application shall also indicate whether the applicant has any of the following:

- a. A record of conviction of a felony.
- b. An addiction to alcohol or a controlled substance.
- c. A history of mental illness.

2. An applicant shall submit pictures, fingerprints, and descriptions of physical characteristics to the commission in the manner prescribed on the application forms. The fingerprints may be submitted to the federal bureau of investigation by the department of public safety through the state criminal history repository for the purpose of a national criminal history check.

3. The commission shall charge the applicant a fee set by the department of public safety, division of criminal investigation, to defray the costs associated with the search and classification of fingerprints required in subsection 2 and background investigations conducted by agents of the division of criminal investigation. This fee is in addition to any other license fee charged by the commission.

4. a. (1) Before a license is granted, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the applicant for a license to operate a gambling game operation on an excursion gambling boat. The applicant shall provide information on a form as required by the division of criminal investigation.

(2) A qualified sponsoring organization licensed to operate gambling games under this chapter shall distribute the receipts of all gambling games, less reasonable expenses, charges, taxes, fees, and deductions allowed under this chapter, as winnings to players or participants or shall distribute the receipts for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b". However, a licensee to conduct gambling games under this chapter shall, unless an operating agreement for an excursion gambling boat otherwise provides, distribute at least three percent of the adjusted gross receipts for each license year for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b". However, if a licensee who is also licensed to conduct pari-mutuel wagering at a horse racetrack has unpaid debt from the pari-mutuel racetrack operations, the first receipts of the gambling games operated within the racetrack enclosure less reasonable operating expenses, taxes, and fees allowed under this chapter shall be first used to pay the annual indebtedness.

(3) The commission shall authorize, subject to the debt payments for horse racetracks and the provisions of paragraph "b" for dog racetracks, a licensee who is also licensed to conduct pari-mutuel dog or horse racing to use receipts from gambling games within the racetrack enclosure to supplement purses for races particularly for Iowa-bred horses pursuant to an agreement which shall be negotiated between the licensee and representatives of the dog or horse owners. For agreements subject to commission approval concerning purses for horse racing beginning on or after January 1, 2006, the agreements shall provide that total annual purses for all horse racing shall be no less than eleven percent of the first two hundred million dollars of net receipts, and six percent of net receipts above two hundred million dollars. In addition, live standardbred horse racing shall not be conducted at the horse racetrack in Polk county, but the purse moneys designated for standardbred racing pursuant to section 99D.7, subsection 5, paragraph "b", shall be included in calculating the total annual purses required to be paid pursuant to this subsection. Agreements that are subject to commission approval concerning horse purses for a period of time beginning on or after January 1, 2006, shall be jointly submitted to the commission for approval.

(4) A qualified sponsoring organization shall not make a contribution to a candidate, political committee, candidate's committee, state statutory political committee, county statutory political committee, national political party, or fund-raising event as these terms

are defined in section 68A.102. The membership of the board of directors of a qualified sponsoring organization shall represent a broad interest of the communities.

(5) For purposes of this paragraph, “*net receipts*” means the annual adjusted gross receipts from all gambling games less the annual amount of money pledged by the owner of the facility to fund a project approved to receive vision Iowa funds as of July 1, 2004.

*b.* The commission shall authorize the licensees of pari-mutuel dog racetracks located in Dubuque county and Black Hawk county to conduct gambling games as provided in section 99F.4A if the licensees schedule at least one hundred thirty performances of twelve live races each day during a season of twenty-five weeks. For the pari-mutuel dog racetrack located in Pottawattamie county, the commission shall authorize the licensee to conduct gambling games as provided in section 99F.4A if the licensee schedules at least two hundred ninety performances of twelve live races each day during a season of fifty weeks. The commission shall approve an annual contract to be negotiated between the annual recipient of the dog racing promotion fund and each dog racetrack licensee to specify the percentage or amount of gambling game proceeds which shall be dedicated to supplement the purses of live dog races. The parties shall agree to a negotiation timetable to insure no interruption of business activity. If the parties fail to agree, the commission shall impose a timetable. If the two parties cannot reach agreement, each party shall select a representative and the two representatives shall select a third person to assist in negotiating an agreement. The two representatives may select the commission or one of its members to serve as the third party. Alternately, each party shall submit the name of the proposed third person to the commission who shall then select one of the two persons to serve as the third party. All parties to the negotiations, including the commission, shall consider that the dog racetracks were built to facilitate the development and promotion of Iowa greyhound racing dogs in this state and shall negotiate and decide accordingly.

5. Before a license is granted, an operator of an excursion gambling boat shall work with the economic development authority to promote tourism throughout Iowa. Tourism information from local civic and private persons may be submitted for dissemination.

6. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

7. For the purposes of this section, applicant includes each member of the board of directors of a qualified sponsoring organization.

8. *a.* The licensee or a holder of an occupational license shall consent to the search, without a warrant, by agents of the division of criminal investigation of the department of public safety or commission employees designated by the administrator of the commission, of the licensee’s or holder’s person, personal property, and effects, and premises which are located on the excursion gambling boat or adjacent facilities under control of the licensee, in order to inspect or investigate for violations of this chapter or rules adopted by the commission pursuant to this chapter. The department or commission may also obtain administrative search warrants under section 808.14.

*b.* However, this subsection shall not be construed to permit a warrantless inspection of living quarters or sleeping rooms on the riverboat if all of the following are true:

(1) The licensee has specifically identified those areas which are to be used as living quarters or sleeping rooms in writing to the commission.

(2) Gaming is not permitted in the living quarters or sleeping rooms, and devices, records, or other items relating to the licensee’s gaming operations are not stored, kept, or maintained in the living quarters or sleeping rooms.

(3) Alcoholic beverages are not stored, kept, or maintained in the living quarters or sleeping rooms except those legally possessed by the individual occupying the quarters or room.

*c.* The commission shall adopt rules to enforce this subsection.

89 Acts, ch 67, §6; 89 Acts, ch 231, §33; 94 Acts, ch 1021, §15; 95 Acts, ch 176, §3; 2002 Acts, ch 1044, §10, 11; 2003 Acts, ch 108, §32; 2004 Acts, ch 1136, §40; 2005 Acts, ch 35, §31; 2007 Acts, ch 48, §6, 7; 2011 Acts, ch 111, §9; 2011 Acts, ch 118, §85, 89

Code editor directive applied

Subsection 4, paragraph a amended

**99F.7 Licenses — terms and conditions — revocation.**

1. If the commission is satisfied that this chapter and its rules adopted under this chapter applicable to licensees have been or will be complied with, the commission shall issue a license for a period of not more than three years to an applicant to own a gambling game operation, to an applicant to operate a gambling structure, and to an applicant to operate an excursion gambling boat. The commission shall decide which of the gambling games authorized under this chapter the commission will permit. The commission shall decide the number, location, and type of gambling structures and excursion gambling boats licensed under this chapter. The commission shall allow the operation of an excursion boat or moored barge on or within one thousand feet of the high water marks of the rivers, lakes, and reservoirs of this state as established by the commission in consultation with the United States army corps of engineers, the department of natural resources, or other appropriate regulatory agency. The license shall set forth, as applicable, the name of the licensee, the type of license granted, the location of the gambling structure or the place where the excursion gambling boats will operate and dock, and the time and number of days during the excursion season and the off season when gambling may be conducted by the licensee.

2. *a.* An applicant for a license to conduct gambling games on an excursion gambling boat, and each licensee by June 30 of each year thereafter, shall indicate and have noted on the license whether the applicant or licensee will operate a moored barge, an excursion boat that will cruise, or an excursion boat that will not cruise subject to the requirements of this subsection. If the applicant or licensee will operate a moored barge or an excursion boat that will not cruise, the requirements of this chapter concerning cruising shall not apply. If the applicant's or licensee's excursion boat will cruise, the applicant or licensee shall comply with the cruising requirements of this chapter and the commission shall not allow such a licensee to conduct gambling games on an excursion gambling boat while docked during the off season if the licensee does not operate gambling excursions for a minimum number of days during the excursion season. The commission may delay the commencement of the excursion season at the request of a licensee.

*b.* However, an applicant or licensee of an excursion gambling boat that is located in the same county as a racetrack enclosure conducting gambling games shall not be allowed to operate a moored barge unless either of the following applies:

(1) If the licensee is located in the same county as a racetrack enclosure conducting gambling games that had less than one hundred million dollars in adjusted gross receipts from gambling games for the fiscal year beginning July 1, 2003, the licensee of an excursion gambling boat is authorized to operate a moored barge if the licensee, the licensee of the racetrack enclosure, and all other licensees of an excursion gambling boat in that county file an agreement with the commission agreeing to the granting of a table games license under this chapter and permitting all licensees of an excursion gambling boat in the county to operate a moored barge as of a specific date.

(2) If the licensee is located in the same county as a racetrack enclosure conducting gambling games that had one hundred million dollars or more in adjusted gross receipts from gambling games for the fiscal year beginning July 1, 2003, the licensee of an excursion gambling boat is authorized to operate a moored barge the earlier of July 1, 2007, or the date any form of gambling games, as defined in this chapter, is operational in any state that is contiguous to the county where the licensee is located.

*c.* A person awarded a new license to conduct gambling games on an excursion gambling boat or gambling structure in the same county as another licensed excursion gambling boat or gambling structure shall only be licensed to operate an excursion gambling boat or gambling structure that is located at a similarly situated site and operated as a substantially similar facility as any other excursion gambling boat or gambling structure in the county.

3. A license shall only be granted to an applicant upon the express conditions that:

*a.* The applicant shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of an excursion gambling boat licensed under this section or of the system of wagering described in section 99F.9. This section does not prohibit a management contract approved by the commission.

*b.* The applicant shall not in any manner permit a person other than the licensee to have

a share, percentage, or proportion of the money received for admissions to the excursion gambling boat.

4. The commission shall require, as a condition of granting a license, that an applicant to operate an excursion gambling boat develop and, as nearly as practicable, re-create boats or moored barges that resemble Iowa's riverboat history.

5. The commission shall require that an applicant utilize Iowa resources, goods and services in the operation of an excursion gambling boat. The commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of an excursion gambling boat emanate from and are made in Iowa and that a substantial amount of all services and entertainment are provided by Iowans.

6. The commission shall, as a condition of granting a license, require an applicant to provide written documentation that, on each excursion gambling boat:

a. An applicant shall make every effort to ensure that a substantial number of the staff and entertainers employed are residents of Iowa.

b. A section is reserved for promotion and sale of arts, crafts, and gifts native to and made in Iowa.

7. It is the intent of the general assembly that employees be paid at least twenty-five percent above the federal minimum wage level.

8. A license shall not be granted if there is substantial evidence that any of the following apply:

a. The applicant has been suspended from operating a game of chance or gambling operation in another jurisdiction by a board or commission of that jurisdiction.

b. The applicant has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed.

c. The applicant is not the true owner of the enterprise proposed.

d. The applicant is not the sole owner, and other persons have ownership in the enterprise, which fact has not been disclosed.

e. The applicant is a corporation and ten percent of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is to be issued unless the contract or option was disclosed to the commission and the commission approved the sale or transfer during the period of the license.

f. The applicant has knowingly made a false statement of a material fact to the commission.

g. The applicant has failed to meet a monetary obligation in connection with an excursion gambling boat.

9. A license shall not be granted if there is substantial evidence that the applicant is not of good repute and moral character or if the applicant has pled guilty to, or has been convicted of, a felony.

10. a. A licensee shall not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any game of chance.

b. A licensee shall not permit a financial institution, vendor, or other person to dispense cash or credit through an electronic or mechanical device including but not limited to a satellite terminal, as defined in section 527.2, that is located on the gaming floor.

c. When technologically available, a licensee shall ensure that a person may voluntarily bar the person's access to receive cash or credit from a financial institution, vendor, or other person through an electronic or mechanical device including but not limited to a satellite terminal as defined in section 527.2 that is located on the licensed premises.

11. a. A license to conduct gambling games in a county shall be issued only if the county electorate approves the conduct of the gambling games as provided in this subsection. The board of supervisors, upon receipt of a valid petition meeting the requirements of section 331.306, and subject to the requirements of paragraph "e", shall direct the commissioner of elections to submit to the registered voters of the county a proposition to approve or disapprove the conduct of gambling games in the county. The proposition shall be submitted at an election held on a date specified in section 39.2, subsection 4, paragraph "a". To be submitted at a general election, the petition must be received by the board of supervisors at least five working days before the last day for candidates for county offices to file nomination

papers for the general election pursuant to section 44.4. If a majority of the county voters voting on the proposition favor the conduct of gambling games, the commission may issue one or more licenses as provided in this chapter. If a majority of the county voters voting on the proposition do not favor the conduct of gambling games, a license to conduct gambling games in the county shall not be issued.

b. If a license to conduct gambling games is in effect pursuant to a referendum as set forth in this section and is subsequently disapproved by a referendum of the county electorate, the license issued by the commission after a referendum approving gambling games shall remain valid and is subject to renewal for a total of nine years from the date of original issue or one year from the date of the referendum disapproving the conduct of gambling games, whichever is later, unless the commission revokes a license at an earlier date as provided in this chapter.

c. If a licensee of a pari-mutuel racetrack who held a valid license issued under chapter 99D as of January 1, 1994, requests a license to operate gambling games as provided in this chapter, the board of supervisors of a county in which the licensee of a pari-mutuel racetrack requests a license to operate gambling games shall submit to the county electorate a proposition to approve or disapprove the operation of gambling games at pari-mutuel racetracks at an election held on a date specified in section 39.2, subsection 4, paragraph "a". If the operation of gambling games at the pari-mutuel racetrack is not approved by a majority of the county electorate voting on the proposition at the election, the commission shall not issue a license to operate gambling games at the racetrack.

d. If the proposition to operate gambling games is approved by a majority of the county electorate voting on the proposition, the board of supervisors shall submit a proposition requiring the approval or defeat of gambling games to the county electorate as provided in paragraph "e", unless the operation of gambling games is terminated earlier as provided in this chapter or chapter 99D. However, if a proposition to operate gambling games is approved by a majority of the county electorate voting on the proposition in two successive elections, a subsequent submission and approval of a proposition under this subsection shall not thereafter be required to authorize the conduct of gambling games pursuant to this chapter.

e. After a referendum has been held which approved or defeated a proposal to conduct gambling games as provided in this section, another referendum on a proposal to conduct gambling games shall not be held until the eighth calendar year thereafter.

12. If a docking fee is charged by a city or a county, a licensee operating an excursion gambling boat shall pay the docking fee one year in advance.

13. A licensee shall not be delinquent in the payment of property taxes or other taxes or fees or in the payment of any other contractual obligation or debt due or owed to a city or county.

14. When applicable, an excursion gambling boat operated on inland waters of this state or an excursion boat that has been removed from navigation and is designated as a permanently moored vessel by the United States coast guard shall be subject to the exclusive jurisdiction of the department of natural resources and meet all of the requirements of chapter 462A and is further subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by the department of natural resources or a license is issued or renewed under this chapter.

15. If a licensed excursion boat stops at more than one harbor and travels past a county without stopping at any port in that county, the commission shall require the excursion boat operator to develop a schedule for ports of call that have the necessary facilities to handle the boat. The commission may limit the schedule to only one port of call per county.

16. Upon a violation of any of the conditions listed in this section, the commission shall immediately revoke the license.

17. The commission shall require each licensee operating gambling games to post in conspicuous locations specified by the commission the average percentage payout from the gambling machines.

89 Acts, ch 67, §7; 89 Acts, ch 139, §2 – 5; 92 Acts, ch 1203, §15, 16; 93 Acts, ch 143, §42; 94 Acts, ch 1021, §16 – 18; 95 Acts, ch 49, §2; 95 Acts, ch 176, §4, 5; 2004 Acts, ch 1136, §41 –

47, 65; 2004 Acts, ch 1175, §328; 2007 Acts, ch 188, §11, 12; 2008 Acts, ch 1115, §30, 71; 2011 Acts, ch 111, §11 – 14

2011 amendments to subsection 11 take effect May 26, 2011, and apply retroactively to elections occurring on or after January 1, 1994; 2011 Acts, ch 111, §13, 14

Subsection 11, paragraphs a, b, d, and e amended

Subsection 15 amended

**99F.10 Regulatory fee — local fees — initial license fee.**

1. A qualified sponsoring organization conducting gambling games on an excursion gambling boat or gambling structure licensed under section 99F.7 shall pay the tax imposed by section 99F.11.

2. An excursion gambling boat or gambling structure licensee shall pay to the commission a regulatory fee to be charged as provided in this section.

3. Subject to approval of excursion gambling boat docking by the voters, a city may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked within the city, or a county may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked outside the boundaries of a city. The admission revenue received by a city or a county shall be credited to the city general fund or county general fund as applicable.

4. *a.* In determining the license fees and state regulatory fees to be charged as provided under section 99F.4 and this section, the commission shall use as the basis for determining the amount of revenue to be raised from the license fees and regulatory fees the amount appropriated to the commission plus the cost of salaries for no more than two special agents for each excursion gambling boat or gambling structure and no more than four gaming enforcement officers for each excursion gambling boat or gambling structure with a patron capacity of less than two thousand persons or no more than five gaming enforcement officers for each excursion gambling boat or gambling structure with a patron capacity of at least two thousand persons, plus any direct and indirect support costs for the agents and officers, for the division of criminal investigation's excursion gambling boat or gambling structure activities.

*b.* Notwithstanding sections 8.60 and 99F.4, the portion of the fee paid pursuant to paragraph "a" relating to the costs of special agents and officers plus any direct and indirect support costs for the agents and officers, for the division of criminal investigation's excursion gambling boat or gambling structure activities, shall not be deposited in the general fund of the state but instead shall be deposited into the gaming enforcement revolving fund established in section 80.43.

*c.* Notwithstanding sections 8.60 and 99F.4, the portion of the fee paid pursuant to paragraph "a" relating to the costs of the commission shall not be deposited in the general fund of the state but instead shall be deposited into the gaming regulatory revolving fund established in section 99F.20.

5. No other license tax, permit tax, occupation tax, excursion fee, or taxes on fees shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

6. No other excise tax shall be levied, assessed, or collected from the licensee relating to gambling excursions or admission charges by the state or by a political subdivision, except as provided in this chapter.

7. In addition to any other fees required by this chapter, a person awarded a new license to conduct gambling games pursuant to section 99F.7 on or after January 1, 2004, shall pay the applicable initial license fee to the commission as provided by this subsection. A person awarded a new license shall pay one-fifth of the applicable initial license fee immediately upon the granting of the license, one-fifth of the applicable initial license fee within one year of the granting of the license, one-fifth of the applicable initial license fee within two years of the granting of the license, one-fifth of the applicable initial license fee within three years of the granting of the license, and the remaining one-fifth of the applicable initial license fee within four years of the granting of the license. However, the license fee provided for in this subsection shall not apply when a licensed facility is sold and a new license is issued to the purchaser. Fees paid pursuant to this subsection are not refundable to the licensee. For

purposes of this subsection, the applicable initial license fee shall be five million dollars if the population of the county where the licensee shall conduct gambling games is fifteen thousand or less based upon the most recent federal decennial census, shall be ten million dollars if the population of the county where the licensee shall conduct gambling games is more than fifteen thousand and less than one hundred thousand based upon the most recent federal decennial census, and shall be twenty million dollars if the population of the county where the licensee shall conduct gambling games is one hundred thousand or more based upon the most recent federal decennial census. Moneys collected by the commission from an initial license fee paid under this subsection shall be deposited in the rebuild Iowa infrastructure fund created in section 8.57.

89 Acts, ch 67, §10; 91 Acts, ch 267, §605; 95 Acts, ch 207, §22; 2000 Acts, ch 1229, §18; 2004 Acts, ch 1136, §49; 2005 Acts, ch 48, §1; 2007 Acts, ch 188, §14; 2010 Acts, ch 1190, §25; 2011 Acts, ch 127, §47, 89

Subsection 4, NEW paragraph c

### **99F.11 Wagering tax — rate — allocations.**

1. A tax is imposed on the adjusted gross receipts received each fiscal year from gambling games authorized under this chapter at the rate of five percent on the first one million dollars of adjusted gross receipts and at the rate of ten percent on the next two million dollars of adjusted gross receipts.

2. The tax rate imposed each fiscal year on any amount of adjusted gross receipts over three million dollars shall be as follows:

a. If the licensee is an excursion gambling boat or gambling structure, twenty-two percent.

b. If the licensee is a racetrack enclosure conducting gambling games and another licensee that is an excursion gambling boat or gambling structure is located in the same county, then the following rate, as applicable:

(1) If the licensee of the racetrack enclosure has not been issued a table games license during the fiscal year or if the adjusted gross receipts from gambling games of the licensee in the prior fiscal year were less than one hundred million dollars, twenty-two percent.

(2) If the licensee of the racetrack enclosure has been issued a table games license during the fiscal year or prior fiscal year and the adjusted gross receipts from gambling games of the licensee in the prior fiscal year were one hundred million dollars or more, twenty-two percent on adjusted gross receipts received prior to the operational date and twenty-four percent on adjusted gross receipts received on or after the operational date. For purposes of this subparagraph, the operational date is the date the commission determines table games became operational at the racetrack enclosure.

c. If the licensee is a racetrack enclosure conducting gambling games and no licensee that is an excursion gambling boat or gambling structure is located in the same county, twenty-four percent.

3. The taxes imposed by this section shall be paid by the licensee to the treasurer of state within ten days after the close of the day when the wagers were made and shall be distributed as follows:

a. If the gambling excursion originated at a dock located in a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the city in which the dock is located and shall be deposited in the general fund of the city. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county.

b. If the gambling excursion originated at a dock located in a part of the county outside a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the Iowa city nearest to where the dock is located and shall be deposited in the general fund of the city.

c. Eight-tenths of one percent of the adjusted gross receipts tax shall be deposited in the county endowment fund created in section 15E.311.

d. Two-tenths of one percent of the adjusted gross receipts tax shall be allocated each fiscal year as follows:

(1) Five hundred twenty thousand dollars is appropriated each fiscal year to the department of cultural affairs with one-half of the moneys allocated for operational support grants and the remaining one-half allocated for the community cultural grants program established under section 303.3.

(2) One-half of the moneys remaining after the appropriation in subparagraph (1) is appropriated to the community development division of the economic development authority for the purposes of regional tourism marketing. The moneys appropriated in this subparagraph shall be disbursed to the authority in quarterly allotments. However, none of the moneys appropriated under this subparagraph shall be used for administrative purposes.

(3) One-half of the moneys remaining after the appropriation in subparagraph (1) shall be credited, on a quarterly basis, to the general fund of the state for the purpose of funding the endow Iowa tax credit provided in section 15E.305.

e. The remaining amount of the adjusted gross receipts tax shall be credited to the general fund of the state.

89 Acts, ch 67, §11; 89 Acts, ch 139, §7; 94 Acts, ch 1021, §25; 94 Acts, ch 1186, §33; 98 Acts, ch 1221, §11; 2003 Acts, ch 178, §107, 121; 2003 Acts, ch 179, §142; 2004 Acts, ch 1136, §50; 2006 Acts, ch 1151, §6, 8; 2007 Acts, ch 100, §1; 2007 Acts, ch 188, §15; 2007 Acts, ch 215, §87; 2009 Acts, ch 182, §104; 2011 Acts, ch 118, §85, 89

For provisions relating to FY 2005 and FY 2006 rebuild Iowa infrastructure assessments imposed on licensees of excursion gambling boats licensed to conduct gambling games as of January 1, 2004, see 2004 Acts, ch 1136, §64, 65

Code editor directive applied

#### **99F.20 Gaming regulatory revolving fund.**

1. A gaming regulatory revolving fund is created in the state treasury under the control of the department of inspections and appeals. The fund shall consist of fees collected and deposited into the fund paid by licensees pursuant to section 99D.14, subsection 2, paragraph “c”, and fees paid by licensees pursuant to section 99F.10, subsection 4, paragraph “c”. All costs relating to racetrack, excursion boat, and gambling structure regulation shall be paid from the fund as provided in appropriations made for this purpose by the general assembly. The department shall provide quarterly reports to the department of management and the legislative services agency specifying revenues billed and collected and expenditures from the fund in a format as determined by the department of management in consultation with the legislative services agency.

2. To meet the department’s cash flow needs, the department may temporarily use funds from the general fund of the state to pay expenses in excess of moneys available in the revolving fund if those additional expenditures are fully reimbursable and the department reimburses the general fund of the state and ensures all moneys are repaid in full by the close of the fiscal year. Notwithstanding any provision to the contrary, the department shall, to the fullest extent possible, make an estimate of billings and make such billings as early as possible in each fiscal year, so that the need for the use of general fund moneys is minimized to the lowest extent possible. Periodic billings shall be deemed sufficient to satisfy this requirement. Because any general fund moneys used shall be fully reimbursed, such temporary use of funds from the general fund of the state shall not constitute an appropriation for purposes of calculating the state general fund expenditure limitation pursuant to section 8.54.

3. Section 8.33 does not apply to any moneys credited or appropriated to the revolving fund from any other fund.

4. The establishment of the revolving fund pursuant to this section shall not be interpreted in any manner to compromise or impact the accountability of, or limit authority with respect to, the department under state law. Any provision applicable to, or responsibility of, the department shall not be altered or impacted by the existence of the fund and shall remain applicable to the same extent as if the department were receiving moneys pursuant to a general fund appropriation. The department shall comply with directions by the governor to executive branch departments regarding restrictions on out-of-state travel,

hiring justifications, association memberships, equipment purchases, consulting contracts, and any other expenditure efficiencies that the governor deems appropriate.

2011 Acts, ch 127, §48, 89

NEW section

## CHAPTER 100B

### FIRE AND EMERGENCY RESPONSE SERVICES TRAINING AND VOLUNTEER DEATH BENEFITS

#### SUBCHAPTER I

#### STATE FIRE PROTECTION SERVICES

##### **100B.1 State fire service and emergency response council.**

1. The state fire service and emergency response council is established in the division of state fire marshal of the department of public safety.

a. The council shall consist of eleven voting members and one ex officio, nonvoting member. Voting members of the state fire service and emergency response council shall be appointed by the governor.

(1) The governor shall appoint voting members of the council from a list of nominees submitted by each of the following organizations:

(a) Two members from a list submitted by the Iowa firefighters association.

(b) Two members from a list submitted by the Iowa fire chiefs' association.

(c) Two members from a list submitted by the Iowa association of professional fire fighters.

(d) Two members from a list submitted by the Iowa association of professional fire chiefs.

(e) One member from a list submitted by the Iowa emergency medical services association.

(2) A person nominated for inclusion in the voting membership on the council is not required to be a member of the organization that nominates the person.

(3) The tenth and eleventh voting members of the council shall be members of the general public appointed by the governor.

(4) The labor commissioner, or the labor commissioner's designee, shall be a nonvoting, ex officio member of the council.

b. Members of the council shall hold office commencing July 1, 2000, for four years and until their successors are appointed, except that three initial appointees shall be appointed for two years, four initial appointees for three years, and four initial appointees for four years.

c. The fire marshal or the fire marshal's designee shall attend each meeting of the council.

2. Each voting member of the council shall receive per diem compensation at the rate as specified in section 7E.6 for each day spent in the performance of the member's duties. All members of the council shall receive actual and necessary expenses incurred in the performance of their duties.

3. Six voting members of the council shall constitute a quorum. For the purpose of conducting business, a majority vote of the council shall be required. The council shall elect a chairperson from its members. The council shall meet at the call of the chairperson, or the state fire marshal, or when any six members of the council file a written request with the chairperson for a meeting.

4. If a voting member of the council is absent for fifty or more percent of council meetings during any twelve-month period, the other council members by their unanimous vote may

declare the member's position on the council vacant. A vacancy in the membership of the council shall be filled by appointment of the governor for the balance of the unexpired term.

2000 Acts, ch 1117, §8; 2000 Acts, ch 1232, §23; 2008 Acts, ch 1031, §93; 2009 Acts, ch 133, §25; 2011 Acts, ch 25, §14; 2011 Acts, ch 95, §2, 3

Subsection 1, paragraph a, subparagraph (1), subparagraph divisions (a) and (c) amended

Subsection 1, paragraph a, subparagraph (1), subparagraph division (e) stricken and former subparagraph division (f) redesignated as subparagraph division (e)

## CHAPTER 100C

### FIRE EXTINGUISHING AND ALARM SYSTEMS CONTRACTORS AND INSTALLERS

#### 100C.6 Applicability.

This chapter shall not be construed to do any of the following:

1. Relieve any person from payment of any local permit or building fee.
2. Limit the power of the state or a political subdivision of the state to regulate the quality and character of work performed by contractors or installers through a system of fees, permits, and inspections designed to ensure compliance with, and aid in the administration of, state and local building codes or to enforce other local laws for the protection of the public health and safety.
3. Apply to a person licensed as an engineer pursuant to chapter 542B who provides consultation or develops plans or other work concerning the installation or design of fire protection systems.

4. Relieve any person engaged in fire protection system installation, maintenance, repair, service, or inspection as provided in section 100D.1 from obtaining a fire protection system installer and maintenance worker license as required pursuant to chapter 100D.

2004 Acts, ch 1125, §7, 17; 2007 Acts, ch 197, §8, 50; 2008 Acts, ch 1092, §5, 32; 2008 Acts, ch 1094, §1, 18; 2008 Acts, ch 1191, §123; 2009 Acts, ch 41, §175, 264; 2010 Acts, ch 1037, §1; 2011 Acts, ch 34, §27

Subsection 4 amended

## CHAPTER 100D

### FIRE PROTECTION SYSTEM INSTALLATION AND MAINTENANCE

#### 100D.1 Definitions.

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

1. "Apprentice fire protection system installer and maintenance worker" means a person who is registered in an apprenticeship program approved by the United States department of labor who is engaged in learning the fire protection system industry trade under the direct supervision of a responsible managing employee of a certified fire extinguishing system contractor or licensed fire protection system installer and maintenance worker other than a trainee.
2. "Department" means the department of public safety.
3. "Division" means division of the state fire marshal in the department.
4. "Fire extinguishing system contractor" means a person or persons who are engaging in or representing themselves to the public as engaging in the activity or business of layout, installation, repair, service, alteration, addition, testing, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state, as defined in section 100C.1, and who is certified pursuant to chapter 100C.
5. "Fire protection system" means a sprinkler system, standpipe system, hose system,

special hazard system, dry system, foam system, or any water-based fire protection system, whether engineered or preengineered and whether manual or automatically activated, used for fire protection purposes which may include an integrated system of underground and overhead piping and which may be connected to a water source.

6. “*Fire protection system installation*” means to set up or establish for use in an indicated space a fire protection system.

7. “*Fire protection system maintenance*” means to provide repairs, including all inspections and tests, required to keep a fire protection system and its component parts in an operative condition at all times, and the replacement of the system or its component parts when they become undependable or inoperable.

8. “*Fire protection system installer and maintenance worker*” means a person who, having the necessary qualifications, training, experience, and technical knowledge, conducts fire protection system installation and maintenance, and who is licensed by the department to install or maintain the types of fire protection systems endorsed on the license.

9. “*Preengineered fire protection system*” means a fire protection system that has a predetermined flow rate, nozzle pressure, and quantity of extinguishing agent.

10. “*Responsible managing employee*” means an owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor who is certified by the national institute for certification in engineering technologies at a level three in fire protection technology, automatic sprinkler system layout, or another certification in automatic sprinkler system layout recognized by rules adopted by the fire marshal pursuant to section 100C.7 or who meets any other criteria established by rule.

11. “*Routine maintenance*” means the repair or replacement of existing fire protection system components of the same size and type for which no changes in configuration are made, including the replacement of sprinkler heads or nozzles and the temporary disabling and subsequent restarting of a system as necessary to perform such routine maintenance. “*Routine maintenance*” does not include any new installation or the expansion or extension of any existing fire protection system.

12. “*Trainee*” means a person who is engaged in learning the fire protection system industry trade under the direct supervision of a responsible managing employee of a certified fire extinguishing system contractor or licensed fire protection system installer and maintenance worker and who is not registered with the United States department of labor.

2008 Acts, ch 1094, §2, 18; 2009 Acts, ch 91, §1 – 3; 2010 Acts, ch 1037, §2, 3; 2010 Acts, ch 1061, §18; 2011 Acts, ch 65, §1, 3

Subsection 11 amended

## CHAPTER 101

### COMBUSTIBLE AND FLAMMABLE LIQUIDS AND LIQUEFIED GASES

See also chapter 455G

#### DIVISION I

#### GENERAL PROVISIONS

##### **101.1 Rules by fire marshal — definitions.**

1. The state fire marshal is hereby empowered and directed to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in this chapter, reasonable rules for the safe transportation, storage, handling, and use of combustible liquids, flammable liquids, liquefied petroleum gases, and liquefied natural gases.

2. For purposes of this chapter:

a. “*Combustible liquid*” means any liquid that has a closed-cup flash point greater than or equal to 100 degrees Fahrenheit.

b. “*Flammable liquid*” means a liquid with a closed-cup flash point below 100 degrees Fahrenheit and a Reid vapor pressure not exceeding forty p.s.i. absolute, 2026.6 mm Hg, at 100 degrees Fahrenheit.

c. “*Liquefied petroleum gas*” means material composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane) and butylenes.

d. “*Liquefied natural gas*” means a fuel in the liquid state composed predominantly of methane and which may contain minor quantities of ethane, propane, nitrogen, or other components normally found in natural gas.

e. “*Petroleum*” means petroleum as defined in section 455B.471.

[C35, §1655-g1, -g2, -g4; C39, §1655.1, 1655.2, 1655.4; C46, 50, 54, §101.1, 101.2; C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.1]

2010 Acts, ch 1014, §3; 2011 Acts, ch 34, §28

Subsection 2, NEW paragraph e

### 101.2 Scope of rules.

Except as otherwise provided in this chapter, the rules shall be in substantial compliance with the standards of the national fire protection association relating to flammable and combustible liquids, liquefied petroleum gases, and liquefied natural gases.

[C35, §1655-g2; C39, §1655.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §101.2]

98 Acts, ch 1008, §2; 2011 Acts, ch 34, §29

Section amended

### 101.3 Separate rules for liquids and gas.

The rules covering combustible and flammable liquids shall be formulated and promulgated separately from those covering liquefied petroleum gas and from those covering liquefied natural gases.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.3]

2010 Acts, ch 1014, §4; 2011 Acts, ch 34, §30

Section amended

## DIVISION II

### ABOVEGROUND STORAGE TANKS

#### 101.21 Definitions.

As used in this division unless the context otherwise requires:

1. “*Aboveground flammable or combustible liquid storage tank*” means one or a combination of tanks, including connecting pipes connected to the tanks which are used to contain an accumulation of flammable or combustible liquid and the volume of which, including the volume of the underground pipes, is more than ninety percent above the surface of the ground. Aboveground flammable or combustible liquid storage tank does not include any of the following:

a. Aboveground tanks of one thousand one hundred gallons or less capacity.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Underground storage tanks as defined by section 455B.471.

d. A flow-through process tank, or a tank containing a regulated substance, other than motor fuel used for transportation purposes, for use as part of a manufacturing process, system, or facility.

2. “*Operator*” means a person in control of, or having responsibility for, the daily operation of an aboveground flammable or combustible liquid storage tank.

3. “*Owner*” means:

a. In the case of an aboveground flammable or combustible liquid storage tank in use on

or after July 1, 1989, a person who owns the aboveground flammable or combustible liquid storage tank used for the storage, use, or dispensing of flammable or combustible liquid.

b. In the case of an aboveground flammable or combustible liquid storage tank in use before July 1, 1989, but no longer in use on or after that date, a person who owned the tank immediately before the discontinuation of its use.

4. “*Release*” means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground flammable or combustible liquid storage tank into groundwater, surface water, or subsurface soils.

5. “*State fire marshal*” means the state fire marshal or the state fire marshal’s designee.

6. “*Tank site*” means a tank or grouping of tanks within close proximity of each other located on a facility for the purpose of storing flammable or combustible liquid.

89 Acts, ch 131, §4; 90 Acts, ch 1235, §2; 2006 Acts, ch 1142, §83; 2010 Acts, ch 1014, §7; 2011 Acts, ch 34, §31

Subsection 4 stricken and former subsections 5 – 7 renumbered as 4 – 6

### **101.22 Report of existing and new tanks — registration fee — tag — penalty.**

1. Except as provided in subsection 2, the owner or operator of an aboveground flammable or combustible liquid storage tank existing on July 1, 2010, shall notify the state fire marshal in writing by October 1, 2010, of the existence of each tank and specify the age, size, type, location, and uses of the tank.

2. The owner of an aboveground flammable or combustible liquid storage tank taken out of operation on or before July 1, 2010, shall notify the state fire marshal in writing by October 1, 2010, of the existence of the tank unless the owner knows the tank has been removed from the site. The notice shall specify, to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type, and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator who brings into use an aboveground flammable or combustible liquid storage tank after July 1, 2010, shall notify the state fire marshal in writing within thirty days of the existence of the tank and specify the age, size, type, location, and uses of the tank.

4. The registration notice of the owner or operator to the state fire marshal under subsections 1 through 3 shall be accompanied by an annual fee of ten dollars for each tank included in the notice. All moneys collected shall be retained by the department of public safety and are appropriated for the use of the state fire marshal. The annual renewal fee applies to all owners or operators who file a registration notice with the state fire marshal pursuant to subsections 1 through 3.

5. A person who deposits flammable or combustible liquid in an aboveground flammable or combustible liquid storage tank shall notify the owner or operator in writing of the notification requirements of this section.

6. A person who sells or constructs a tank intended to be used as an aboveground storage tank shall notify the purchaser of the tank in writing of the notification requirements of this section applicable to the purchaser.

7. It is unlawful to deposit flammable or combustible liquid in an aboveground flammable or combustible liquid storage tank which has not been registered pursuant to subsections 1 through 4.

8. The state fire marshal shall furnish the owner or operator of an aboveground flammable or combustible liquid storage tank with a registration tag for each aboveground flammable or combustible liquid storage tank registered with the state fire marshal.

a. The owner or operator shall affix the tag to the fill pipe of each registered aboveground flammable or combustible liquid storage tank.

b. A person who conveys or deposits flammable or combustible liquid shall inspect the aboveground flammable or combustible liquid storage tank to determine the existence or absence of the registration tag. If a registration tag is not affixed to the aboveground flammable or combustible liquid storage tank fill pipe, the person conveying or depositing the flammable or combustible liquid may deposit the flammable or combustible liquid in the unregistered tank. However, only one deposit is allowed into the unregistered tank, the

person making the deposit shall provide the owner or operator of the tank with another notice as required by subsection 5, and the person shall provide the owner or operator with an aboveground flammable or combustible liquid storage tank registration form.

c. It is the owner or operator's duty to comply with registration requirements. A late registration penalty of twenty-five dollars is imposed in addition to the registration fee for a tank registered after the required date.

89 Acts, ch 131, §5; 90 Acts, ch 1235, §3; 2000 Acts, ch 1224, §23; 2002 Acts, ch 1119, §127; 2008 Acts, ch 1032, §191; 2010 Acts, ch 1014, §8; 2011 Acts, ch 34, §32

Subsection 8, paragraph b amended

## CHAPTER 101C

### IOWA PROPANE EDUCATION AND RESEARCH COUNCIL

Chapter to be repealed December 31, 2014; see §101C.14

#### **101C.3 Iowa propane education and research council established.**

1. The Iowa propane education and research council is established. The council shall consist of ten voting members, nine of whom represent retail propane marketers and one of whom shall be the administrator of the division of community action agencies of the department of human rights. Members of the council other than the administrator shall be appointed by the fire marshal from a list of nominees submitted by qualified propane industry organizations by December 15 of each year. A vacancy in the unfinished term of a council member shall be filled for the remainder of the term in the same manner as the original appointment was made. Other than the administrator, council members shall be full-time employees or owners of a propane industry business or representatives of an agricultural cooperative actively engaged in the propane industry. An employee of a qualified propane industry organization shall not serve as a member of the council. An officer of the board of directors of a qualified propane industry organization or propane industry trade association shall not serve concurrently as a member of the council. The fire marshal or a designee may serve as an ex officio, nonvoting member of the council.

2. In nominating members of the council, qualified propane industry organizations shall give due consideration to nominating council members who are representative of the propane industry, including representation of all of the following:

- a. Interstate and intrastate retail propane marketers.
- b. Large and small retail propane marketers, including agricultural cooperatives.
- c. Diverse geographic regions of the state.

3. The following persons shall be ex officio, nonvoting members of the council designated for three-year terms as follows:

- a. A professional fire fighter designated by the Iowa association of professional fire chiefs.
- b. A volunteer fire fighter designated by the Iowa firefighters association.
- c. An experienced plumber involved in plumbing training programs designated by the Iowa state building and construction trades council.
- d. A heating, ventilation, and air conditioning professional involved in heating, ventilation, and air conditioning training programs designated by the Iowa state building and construction trades council.

e. A community college instructor with experience in conducting fire safety programs designated by the Iowa association of community college presidents.

f. A representative of a property and casualty insurance company with experience in insuring sellers of propane gas designated by the Iowa insurance institute.

4. A council member shall not receive compensation for the council member's service and shall not be reimbursed for expenses relating to the council member's service. A member of the council shall not be a salaried employee of the council or of any organization or agency which receives funds from the council.

5. A council member shall serve a term of three years and shall not serve more than two

full consecutive terms. A council member filling an unexpired term may serve not more than a total of seven consecutive years. A former council member may be appointed to the council if the former member has not been a member of the council for a period of at least two years.

6. Initial appointments to the council shall be for terms of one, two, and three years that are staggered to provide for the future appointment of at least two members each year.

7. The voting members of the council shall select a chairperson and other officers as necessary from the voting members and shall adopt rules and bylaws for the conduct of business and the implementation of this chapter. The council may establish committees and subcommittees comprised of members of the council and may establish advisory committees comprised of persons other than council members. The council shall establish procedures for the solicitation of propane industry comments and recommendations regarding any significant plans, programs, or projects to be funded by the council.

8. *a.* The council shall develop programs and projects and enter into agreements for administering such programs and projects as provided in this chapter, including programs to enhance consumer and employee safety and training, provide for research and development of clean and efficient propane utilization equipment, inform and educate the public about safety and other issues associated with the use of propane, and develop programs and projects that provide assistance to persons who are eligible for the low-income home energy assistance program. The programs and projects shall be developed to attain equitable geographic distribution of their benefits to the fullest extent practicable. The costs of the programs and projects shall be paid with funds collected pursuant to section 101C.4. The council shall coordinate its programs and projects with propane industry trade associations and others as the council deems appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities. Issues concerning propane that are related to research and development, safety, education, and training shall be given priority by the council in the development of programs and projects.

*b.* The council may develop energy efficiency programs dedicated to weatherization, acquisition and installation of energy-efficient customer appliances that qualify for energy star certification, installation of low-flow faucets and showerheads, and energy efficiency education. The council may by rule establish quality standards in relation to weatherization and appliance installation.

9. At the beginning of each fiscal year, the council shall prepare a budget plan for the next fiscal year, including the probable cost of all programs, projects, and contracts to be undertaken. The council shall submit the proposed budget to the fire marshal for review and comment. The fire marshal may recommend appropriate programs, projects, and activities to be undertaken by the council.

10. The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council which are public records open to public inspection. The books and records shall indicate the geographic areas where benefits were conferred by each individual program or project in detail sufficient to reflect the degree to which each program or project attained equitable geographic distribution of its benefits. The books of the council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the council may designate. The cost of the audit shall be paid by the council. Copies of the audit shall be provided to all council members, all qualified propane industry organizations, and to other members of the propane industry upon request. In addition, a copy of the audit and a report detailing the programs and projects conducted by the council and containing information reflecting the degree to which equitable geographic distribution of the benefits of each program or project was attained shall be submitted each fiscal year to the chief clerk of the house of representatives and the secretary of the senate.

11. The council is subject to the open meetings requirements of chapter 21.

12. The council shall promulgate administrative rules pursuant to chapter 17A which shall have the same force and effect as if adopted by a state agency. Initial rules shall be promulgated on an emergency basis.

13. The council shall also perform the functions required of a state organization under the federal Propane Education and Research Act of 1996, be the repository of funds received

under that Act, and separately account for those funds. The council shall coordinate the operation of the program with the federal council as contemplated by 15 U.S.C. § 6405.

2007 Acts, ch 182, §3, 15; 2008 Acts, ch 1032, §93, 202; 2009 Acts, ch 141, §3; 2011 Acts, ch 25, §15

Subsection 3, paragraph b amended

## CHAPTER 103

### ELECTRICIANS AND ELECTRICAL CONTRACTORS

#### **103.25 Request for inspection — fees.**

1. At or before commencement of any installation required to be inspected by the board, the licensee or property owner making such installation shall submit to the state fire marshal's office a request for inspection. The board shall prescribe the methods by which the request may be submitted, which may include electronic submission or through a form prescribed by the board that can be submitted either through the mail or by a fax transmission. The board shall also prescribe methods by which inspection fees can be paid, which may include electronic methods of payment. If the board or the state fire marshal's office becomes aware that a person has failed to file a necessary request for inspection, the board shall send a written notification by certified mail that the request must be filed within fourteen days. Any person filing a late request for inspection shall pay a delinquency fee in an amount to be determined by the board. A person who fails to file a late request within fourteen days from receipt of the notification shall be subject to a civil penalty to be determined by the board by rule.

2. Notwithstanding subsection 1, the board may by rule provide for the issuance of a single permit to a licensee to request multiple inspections. The permit authorizes the licensee to perform new electrical installations specified in the permit. The board shall prescribe the methods by which the request for multiple inspections may be submitted, which may include electronic submission or through a form prescribed by the board that can be submitted either through the mail or by a fax transmission. The board shall also prescribe methods by which inspection fees can be paid, which may include electronic methods of payment. The board may perform inspections of each new electrical installation or any portion of the total number of new electrical installations made under each permit. The board shall establish fees for such permits, which shall not exceed the total inspection fees that would be required if each new electrical installation performed under the request for multiple inspections had been performed under individual requests for inspections as provided in subsection 1.

2007 Acts, ch 197, §35, 50; 2008 Acts, ch 1032, §96, 202; 2008 Acts, ch 1092, §27, 32; 2009 Acts, ch 39, §8; 2011 Acts, ch 34, §33

Subsection 1 amended

#### **103.33 Condemnation or disconnection orders — appeals — disposition of orders pending appeal.**

1. Any person aggrieved by a condemnation or disconnection order issued by the state fire marshal's office may appeal from the order by filing a written notice of appeal with the board within ten days after the date the order was served upon the property owner or within ten days after the order was filed with the board, whichever is later.

2. Upon receipt of the notice of appeal from a condemnation or disconnection order because the electrical installation is proximately dangerous to health or property, the order appealed from shall not be stayed unless countermanded by the board.

3. Upon receipt of notice of appeal from a condemnation or disconnection order because the electrical installation is not in compliance with accepted standards of construction for health safety and property safety, except as provided in subsection 2, the order appealed from shall be stayed until final decision of the board and the board shall notify the property owner and the electrical contractor, class A master electrician, class B master electrician, fire alarm installer, special electrician, or if established by the board the residential master electrician,

making the installation. The power supplier shall also be notified in those instances in which the order has been served on such supplier.

2007 Acts, ch 197, §43, 50; 2008 Acts, ch 1032, §101, 202; 2009 Acts, ch 39, §11; 2011 Acts, ch 34, §34

Subsection 3 amended

**CHAPTER 103A**  
**STATE BUILDING CODE**  
  
**DIVISION I**  
**STATE BUILDING CODE ACT**

**103A.8 Standards.**

The state building code shall as far as practical:

1. Provide uniform standards and requirements for construction, construction materials, and equipment through the adoption by reference of applicable national codes where appropriate and providing exceptions when necessary. The rules adopted shall include provisions imposing requirements reasonably consistent with or identical to recognized and accepted standards contained in performance criteria.

2. Establish such standards and requirements in terms of performance objectives.

3. Establish as the test of acceptability, adequate performance for the intended use.

4. Permit the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction without substantially affecting reasonable requirements for the health, safety, and welfare of the occupants or users of buildings and structures.

5. Encourage the standardization of construction practices, methods, equipment, material, and techniques.

6. Eliminate restrictive, obsolete, conflicting, and unnecessary regulations and requirements which tend to unnecessarily increase construction costs or retard unnecessarily the use of new materials, or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

7. Limit the application of thermal efficiency standards for energy conservation to construction of buildings which are heated or cooled. Air exchange fans designed to provide ventilation shall not be considered a cooling system. The commissioner shall exempt any construction from any thermal efficiency standard for energy conservation if the commissioner determines that the standard is unreasonable as it would apply to a particular building or class of buildings. No standard adopted by the commissioner for energy conservation in construction shall be interpreted to require the replacement or modification of any existing equipment or feature solely to ensure compliance with requirements for energy conservation in construction. Lighting efficiency standards shall recognize variations in lighting intensities required for the various tasks performed within the building. The commissioner shall consult with the economic development authority regarding standards for energy conservation prior to the adoption of the standards. However, the standards shall be consistent with section 103A.8A.

8. Facilitate the development and use of renewable energy.

[C73, 75, 77, 79, 81, §103A.8; 81 Acts, ch 184, §12]

85 Acts, ch 147, §1; 88 Acts, ch 1134, §22; 90 Acts, ch 1267, §26; 2002 Acts, ch 1162, §33; 2008 Acts, ch 1126, §6, 33; 2009 Acts, ch 108, §6, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

**103A.8B Sustainable design or green building standards.**

The commissioner, after consulting with and receiving recommendations from the department of natural resources, shall adopt rules pursuant to chapter 17A specifying

standards and requirements for sustainable design and construction based upon or incorporating nationally recognized ratings, certifications, or classification systems, and procedures relating to documentation of compliance. The standards and requirements shall be incorporated into the state building code established in section 103A.7, but in lieu of general applicability shall apply to construction projects only if such applicability is expressly authorized by statute, or as established by another state agency by rule.

2008 Acts, ch 1126, §8, 33; 2008 Acts, ch 1173, §7; 2011 Acts, ch 118, §40, 89  
Section amended

**103A.8C Standards for safe rooms and storm shelters.**

1. The commissioner, after consulting with and receiving recommendations from the department of public defense and the department of natural resources, shall adopt rules pursuant to chapter 17A specifying standards and requirements for design and construction of safe rooms and storm shelters. In developing these standards, the commissioner shall consider nationally recognized standards. The standards and requirements shall be incorporated into the state building code established in section 103A.7, but shall not be interpreted to require the inclusion of a safe room or storm shelter in a building construction project unless such inclusion is expressly required by another statute or by a federal statute or regulation. However, if a safe room or storm shelter is included in any building construction project which reaches the design development phase on or after January 1, 2011, compliance with the standards developed pursuant to this section shall be required.

2. The commissioner may provide education and training to promote the use of best practices in the design, construction, and maintenance of buildings, safe rooms, and shelters to reduce the risk of personal injury from tornadoes or other severe weather.

2009 Acts, ch 142, §2; 2011 Acts, ch 122, §31  
Subsection 1 amended

**103A.27 Commission on energy efficiency standards and practices.** Repealed by 2011 Acts, ch 34, § 163.

With respect to proposed amendment to this section by 2011 Acts, ch 118, §50, see Code editor's note on simple harmonization

## CHAPTER 104B

### MINIMUM PLUMBING FACILITIES

**104B.1 Minimum plumbing facilities.**

1. Places of assembly for public use including but not limited to theaters, auditoriums, and convention halls, constructed on or after January 1, 1991, shall conform to the standards for minimum plumbing facilities as provided in the uniform plumbing code.

2. Restaurants, pubs, and lounges constructed on or after January 1, 1991, shall conform to the standards for minimum plumbing facilities as provided in the uniform plumbing code.

3. All toilets installed pursuant to this section shall be water efficient toilets which use three gallons or less of water per flush.

90 Acts, ch 1214, §1; 2011 Acts, ch 95, §4  
Subsection 4 stricken

## CHAPTER 105

### PLUMBERS, MECHANICAL PROFESSIONALS, AND CONTRACTORS

**105.2 Definitions.**

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

1. “*Apprentice*” means any person, other than a helper, journeyman, or master, who, as a principal occupation, is engaged in working as an employee of a plumbing, HVAC, refrigeration, or hydronic systems contractor under the supervision of either a master or a journeyman and is progressing toward completion of an apprenticeship training program registered by the office of apprenticeship of the United States department of labor while learning and assisting in the design, installation, and repair of plumbing, HVAC, refrigeration, or hydronic systems, as applicable.

2. “*Board*” means the plumbing and mechanical systems board as established pursuant to section 105.3.

3. “*Contractor*” means a person or entity that provides plumbing, HVAC, refrigeration, or hydronic systems services on a contractual basis and who is paid a predetermined amount under that contract for rendering those services.

4. “*Department*” means the Iowa department of public health.

5. “*Governmental subdivision*” means any city, county, or combination thereof.

6. “*Helper*” means a person engaged in general manual labor activities who provides assistance to an apprentice, journeyman, or master while under the supervision of a journeyman or master.

7. “*HVAC*” means heating, ventilation, air conditioning, ducted systems, or any type of refrigeration used for food processing or preservation. “*HVAC*” includes all natural, propane, liquid propane, or other gas lines associated with any component of an HVAC system.

8. “*Hydronic*” means a heating or cooling system that transfers heating or cooling by circulating fluid through a closed system, including boilers, pressure vessels, refrigerated equipment in connection with chilled water systems, all steam piping, hot or chilled water piping together with all control devices and accessories, installed as part of, or in connection with, any heating or cooling system or appliance using a liquid, water, or steam as the heating or cooling media. “*Hydronic*” includes all low-pressure and high-pressure systems and all natural, propane, liquid propane, or other gas lines associated with any component of a hydronic system.

9. “*Journeyman*” means any person, other than a master, who, as a principal occupation, is engaged as an employee of, or otherwise working under the direction of, a master in the design, installation, and repair of plumbing, HVAC, refrigeration, or hydronic systems, as applicable.

10. “*Master*” means any person who works in the planning or superintending of the design, installation, or repair of plumbing, HVAC, refrigeration, or hydronic systems and is otherwise lawfully qualified to conduct the business of plumbing, HVAC, refrigeration, or hydronic systems, and who is familiar with the laws and rules governing the same.

11. “*Mechanical professional*” means a person engaged in the HVAC, refrigeration, or hydronic industry.

12. “*Mechanical systems*” means HVAC, refrigeration, and hydronic systems.

13. “*Medical gas piping*” means a permanent fixed piping system in a health care facility which is used to convey oxygen, nitrous oxide, nitrogen, carbon dioxide, helium, medical air, and mixtures of these gases from its source to the point of use and includes the fixed piping associated with a medical, surgical, or gas scavenging vacuum system, as well as a bedside suction system.

14. “*Medical gas system installer*” means any person who installs or repairs medical gas piping, components, and vacuum systems, including brazers, who has been issued a valid certification from the national inspection testing certification (NITC) corporation, or an equivalent authority approved by the board.

15. “*Plumbing*” means all potable water building supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, and all building drains and building sewers, storm sewers, and storm drains, including their respective joints and connections, devices, receptors, and appurtenances within the property lines of the premises, and including the connection to sanitary sewer, storm sewer, and domestic water mains. “*Plumbing*” includes potable water piping, potable water treating or using equipment, medical gas piping systems, fuel gas piping, water heaters and vents, including all natural,

propane, liquid propane, or other gas lines associated with any component of a plumbing system.

16. “Refrigeration” means any system of refrigeration regardless of the level of power, if such refrigeration is intended to be used for the purpose of food processing and product preservation and is also intended to be used for comfort systems. “Refrigeration” includes all natural, propane, liquid propane, or other gas lines associated with any component of refrigeration.

17. “Routine maintenance” means the maintenance, repair, or replacement of existing fixtures or parts of plumbing, HVAC, refrigeration, or hydronic systems in which no changes in original design are made. Fixtures or parts do not include smoke and fire dampers, or water, gas, or steam piping permanent repairs except for traps or strainers. Routine maintenance shall include emergency repairs, and the board shall define the term emergency repairs to include the repair of water pipes to prevent imminent damage to property. “Routine maintenance” does not include the replacement of furnaces, boilers, cooling appliances, or water heaters more than one hundred gallons in size.

2007 Acts, ch 198, §2; 2008 Acts, ch 1032, §102, 202; 2008 Acts, ch 1089, §10, 11; 2009 Acts, ch 151, §2, 3; 2011 Acts, ch 100, §1, 2, 15

Subsections 7, 8, and 16 amended

### 105.5 Examinations.

1. Any person desiring to take an examination for a license issued pursuant to this chapter shall make application to the board in accordance with the rules of the board. The application form shall be no longer than two pages in length, plus one security page. The board may require that a recent photograph of the applicant be attached to the application.

2. Applicants who fail to pass an examination shall be allowed to retake the examination at a future scheduled time.

3. The board shall adopt rules relating to all of the following:

a. The qualifications required for applicants seeking to take examinations, which qualifications shall include a requirement that an applicant who is a contractor shall be required to provide the contractor’s state contractor registration number.

b. The denial of applicants seeking to take examinations.

2007 Acts, ch 198, §5; 2008 Acts, ch 1089, §10, 12; 2009 Acts, ch 151, §7; 2011 Acts, ch 100, §3, 15

Contractor registration, see chapter 91C  
Subsection 1 amended

### 105.9 Fees.

1. The board shall set the fees for the examination of all applicants, by rule, which fees shall be based upon the cost of administering the examinations.

2. The board shall set the license fees and renewal fees for all licenses issued pursuant to this chapter, by rule.

3. All fees collected under this chapter shall be retained by the board. The moneys retained by the board shall be used for any of the board’s duties under this chapter, including but not limited to the addition of full-time equivalent positions for program services and investigations. Revenues retained by the board pursuant to this section shall be considered repayment receipts as defined in section 8.2. Notwithstanding section 8.33, moneys retained by the board pursuant to this section are not subject to reversion to the general fund of the state.

4. Nothing in this chapter shall be interpreted to prohibit the state or any of its governmental subdivisions from charging construction permit fees or inspection fees related to work performed by plumbers and mechanical professionals.

5. a. The board shall submit a report to the general assembly within sixty days following the end of each fiscal year. The reports shall include a balance sheet projection extending no less than three years. If the revenue projection exceeds expense projections by more than ten percent, the board shall adjust their fee schedules accordingly, so that projected revenues are no more than ten percent higher than projected expenses. The revised fees shall be implemented no later than January 1, 2013, and January 1 of each subsequent year.

b. A license fee for a combined license shall be the sum total of each of the separate license fees reduced by thirty percent.

6. For calendar years 2011 and 2012 the fee for an initial apprentice and an initial journeyman license is fifty dollars.

7. For calendar years 2011 and 2012 the fee for an initial master license is one hundred twenty-five dollars.

8. The renewal fee shall be waived for all licenses renewed from January 1, 2011, through December 31, 2012. For any initial license issued in 2011 prior to April 28, 2011, the licensee shall be refunded the difference between the fee paid for such initial license and the fees specified in subsections 6 and 7. For any licenses renewed in 2011 prior to April 28, 2011, the licensee shall be refunded the entire license renewal fee paid.

9. The board may charge a fee for an application required by this chapter and submitted on paper if an internet application process is available.

10. The board shall waive all renewal fees for all licenses that have an expiration date from January 1, 2011, through December 31, 2012.

2007 Acts, ch 198, §9; 2008 Acts, ch 1089, §10, 12; 2009 Acts, ch 151, §8; 2011 Acts, ch 100, §4 – 6, 15

Subsection 2 amended  
Subsection 5 stricken and rewritten  
NEW subsections 6 through 10

### **105.11 Chapter inapplicability.**

The provisions of this chapter shall not be construed to do any of the following:

1. Apply to a person licensed as an engineer pursuant to chapter 542B, licensed as a manufactured home retailer or certified as a manufactured home installer pursuant to chapter 103A, registered as an architect pursuant to chapter 544A, or licensed as a landscape architect pursuant to chapter 544B who provides consultations or develops plans or other work concerning plumbing, HVAC, refrigeration, or hydronic work and who is exclusively engaged in the practice of the person's profession.

2. Require employees of municipal utilities, electric membership or cooperative associations, public utility corporations, rural water associations or districts, railroads, or commercial retail or industrial companies performing manufacturing, installation, service, or repair work for such employer to hold licenses while acting within the scope of their employment. This licensing exemption does not apply to employees of a rate-regulated gas or electric public utility which provides plumbing or mechanical services as part of a systematic marketing effort, as defined pursuant to section 476.80.

3. Prohibit an owner of property from performing work on the owner's principal residence, if such residence is an existing dwelling rather than new construction and is not larger than a single-family dwelling, or farm property, excluding commercial or industrial installations or installations in public use buildings or facilities, or require such owner to be licensed under this chapter. In order to qualify for inapplicability pursuant to this subsection, a residence shall qualify for the homestead tax exemption.

4. Require that any person be a member of a labor union in order to be licensed.

5. Apply to a person who is qualified pursuant to administrative rules relating to the storage and handling of liquefied petroleum gases while engaged in installing, servicing, testing, replacing, or maintaining propane gas utilization equipment, or gas piping systems of which the equipment is a part, and related or connected accessory systems or equipment necessary to the operation of the equipment.

6. Apply to a person who meets the requirements for a certified well contractor pursuant to section 455B.190A while engaged in installing, servicing, testing, replacing, or maintaining a water system, water well, well pump, or well equipment, or piping systems of which the equipment is a part, and related or connected accessory systems or equipment necessary to the operation of the water well.

7. Require a helper engaged in general manual labor activities while providing assistance to an apprentice, journeyman, or master to obtain a plumbing, HVAC, refrigeration, or hydronic license. Experience as a helper shall not be considered as practical experience for a journeyman license.

8. Apply to a person who is performing work subject to chapter 100C.

9. Apply to an employee of any unit of state or local government, including but not limited to cities, counties, or school corporations, performing work on a mechanical system or plumbing system, which serves a government-owned or government-leased facility while acting within the scope of the government employee's employment.

10. Apply to the employees of manufacturers, manufacturer representatives, or wholesale suppliers who provide consultation or develop plans concerning plumbing, HVAC, refrigeration, or hydronic work, or who assist a person licensed under this chapter in the installation of mechanical or plumbing systems.

11. Prohibit an owner or operator of a health care facility licensed pursuant to chapter 135C, assisted living center licensed pursuant to chapter 231C, hospital licensed pursuant to chapter 135B, adult day care center licensed pursuant to chapter 231D, or a retirement facility certified pursuant to chapter 523D from performing work on the facility or requiring such owner or operator to be licensed under this chapter; except for projects that exceed the dollar amount specified as the competitive bid threshold in section 26.3.

12. Apply to a person who performs the laying of pipe that originates or connects to pipe in the public right-of-way or property that is intended to become public right-of-way, even if such pipe extends under the property and up to the building. However, the person shall not make any interior pipe connections within a building under this exemption. This exemption does not restrict local jurisdictions from requiring licensure under this chapter if required by local ordinance, resolution, or by bidding specification.

13. Prohibit a rental property owner or employee of such an owner from performing routine maintenance on the rental property.

14. Apply to a person who is performing work on a volunteer, non-paid basis or assisting a property owner performing non-paid work on the owner's principal residence.

2007 Acts, ch 198, §11; 2008 Acts, ch 1032, §104, 202; 2008 Acts, ch 1089, §4, 5, 10, 12; 2009 Acts, ch 151, §11 – 13; 2011 Acts, ch 100, §7, 15

NEW subsection 14

### **105.18 Qualifications and types of licenses issued.**

1. *General qualifications.* The board shall adopt, by rule, general qualifications for licensure. The board may consider the past felony record of an applicant only if the felony conviction relates to the practice of the profession for which the applicant requests to be licensed. References may be required as part of the licensing process.

2. *Plumbing, HVAC, refrigeration, and hydronic licenses and contractor licenses.* The board shall issue separate licenses for plumbing, HVAC, refrigeration, and hydronic professionals and for contractors as follows:

a. *Apprentice license.* In order to be licensed by the board as an apprentice, a person shall do all of the following:

(1) File an application, which application shall establish that the person meets the minimum requirements adopted by the board.

(2) Certify that the person will work under the supervision of a licensed journeyman or master in the applicable discipline.

(3) Be enrolled in an applicable apprentice program which is registered with the United States department of labor office of apprenticeship.

b. *Journeyman license.*

(1) In order to be licensed by the board as a journeyman in the applicable discipline, a person shall do all of the following:

(a) File an application and pay application fees as established by the board, which application shall establish that the person meets the minimum educational and experience requirements adopted by the board.

(b) Pass the state journeyman licensing examination in the applicable discipline.

(c) Provide the board with evidence of having completed at least four years of practical experience as an apprentice. Commencing January 1, 2010, the four years of practical experience required by this subparagraph division must be an apprenticeship training program registered by the United States department of labor office of apprenticeship.

(2) A person may simultaneously hold an active journeyman license and an inactive master license.

c. *Master license.* In order to be licensed by the board as a master, a person shall do all of the following:

(1) File an application and pay application fees as established by the board, which application shall establish that the person meets the minimum educational and experience requirements adopted by the board.

(2) Pass the state master licensing examination for the applicable discipline.

(3) Provide evidence to the board that the person has previously been a licensed journeyman or master in the applicable discipline.

d. *Contractor license.* In order to be licensed by the board as a contractor, a person shall do all of the following:

(1) File an application and pay application fees as established by the board, which application shall provide the person's state contractor registration number and establish that the person meets the minimum requirements adopted by the board.

(2) Maintain a permanent place of business.

(3) Hold a master license or employ at least one person holding a master license under this chapter.

3. *Combined licenses, restricted licenses.*

a. The board may issue single or combined licenses to persons who qualify as a contractor, master, journeyman, or apprentice under any of the disciplines.

b. *Special, restricted license.* The board may by rule provide for the issuance of special plumbing and mechanical professional licenses authorizing the licensee to engage in a limited class or classes of plumbing or mechanical professional work, which class or classes shall be specified on the license. Each licensee shall have experience, acceptable to the board, in each such limited class for which the person is licensed. The board shall designate each special, restricted license to be a sublicense of either a plumbing, HVAC, refrigeration, or hydronic license. An individual holding a master or journeyman, plumbing, HVAC, refrigeration, or hydronic license shall not be required to obtain any special, restricted license which is a sublicense of the license that the individual holds. Special plumbing and mechanical professional licenses shall be issued to employees of a rate-regulated gas or electric public utility who conduct the repair of appliances. "Repair of appliances" means the repair or replacement of mechanical connections between the appliance shutoff valve and the appliance and repair of or replacement of parts to the appliance. Such special, restricted license shall require certification pursuant to industry-accredited certification standards.

c. The board shall establish a special, restricted license fee at a reduced rate, consistent with any other special, restricted license fees.

d. An individual that holds either a master or journeyman HVAC license or a master or journeyman refrigeration license shall be exempt from having to obtain a special electrician's license pursuant to chapter 103 in order to perform disconnect and reconnect of existing air conditioning and refrigeration systems.

4. *Waiver.* Notwithstanding section 17A.9A, the board shall through December 31, 2009, waive the written examination requirements and prior experience requirements in subsection 2, paragraph "b", subparagraph (1), and subsection 2, paragraph "c", for a journeyman or master license if the applicant meets either of the following requirements:

a. The applicant meets both of the following requirements:

(1) The applicant has previously passed a written examination which the board deems to be substantially similar to the licensing examination otherwise required by the board to obtain the applicable license.

(2) The applicant has completed at least eight classroom hours of continuing education in courses or seminars approved by the board within the two-year period immediately preceding the date of the applicant's license application.

b. The applicant can demonstrate to the satisfaction of the board that the applicant has five or more years of experience prior to July 1, 2008, in the plumbing, HVAC, refrigeration, or hydronic business, as applicable, which experience is of a nature that the board deems to be sufficient to demonstrate continuous professional competency consistent with that expected

of an individual who passes the applicable licensing examination which the applicant would otherwise be required to pass.

5. *Waiver for military service.* Notwithstanding section 17A.9A, the board shall waive the written examination requirements and prior experience requirements in subsection 2, paragraph “b”, subparagraph (1), and subsection 2, paragraph “c”, for a journey person or master license if the applicant meets all of the following requirements:

- a. Is an active or retired member of the United States military.
- b. Provides documentation that the applicant was deployed on active duty during any portion of the time period of July 1, 2008, through December 31, 2009.
- c. Provides documentation that shows the applicant has previously passed an examination which the board deems substantially similar to the examination for a journey person license or a master license, as applicable, issued by the board, or provides documentation that shows the applicant has previously been licensed by a state or local governmental jurisdiction in the same trade and trade level.

2007 Acts, ch 198, §18; 2008 Acts, ch 1032, §105, 202; 2008 Acts, ch 1089, §8, 10, 12; 2009 Acts, ch 151, §19; 2011 Acts, ch 100, §8 – 10, 15

Subsection 3, NEW paragraph d  
Subsection 4, unnumbered paragraph 1 amended  
NEW subsection 5

#### **105.20 Renewal and reinstatement of licenses — fees and penalties — continuing education.**

1. All licenses issued under this chapter shall be issued for a three-year period.
2. A license issued under this chapter may be renewed as provided by rule adopted by the board upon application by the licensee, without examination. Applications for renewal shall be made to the board, accompanied by the required renewal licensing fee, at least thirty days prior to the expiration date of the license.
3. The board shall notify each licensee by mail at least sixty days prior to the expiration of a license.
4. Failure to renew a license within a reasonable time after the expiration of the license shall not invalidate the license, but a reasonable penalty may be assessed as adopted by rule, in addition to the license renewal fee, to allow reinstatement of the license.
5. The board shall, by rule, establish a reinstatement process for a licensee who allows a license to lapse, including reasonable penalties.
6. a. The board shall establish continuing education requirements pursuant to section 272C.2. The basic continuing education requirement for renewal of a license shall be the completion, during the immediately preceding license term, of the number of classroom hours of instruction required by the board in courses or seminars which have been approved by the board. The board shall require at least eight classroom hours of instruction during each three-year licensing term.
- b. A licensee shall have a thirty-day grace period after expiration of the licensing term to complete all requirements necessary for license renewal without penalty.

2007 Acts, ch 198, §20; 2008 Acts, ch 1089, §9, 10, 12; 2009 Acts, ch 151, §21; 2011 Acts, ch 100, §11, 12, 15

Subsection 1 stricken and rewritten  
Subsection 6 amended

## CHAPTER 123

## ALCOHOLIC BEVERAGE CONTROL

## DIVISION I

GENERAL PROVISIONS RELATING TO  
ALCOHOLIC BEVERAGES**123.3 Definitions.**

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

1. “*Administrator*” means the administrator of the division, appointed pursuant to the provisions of this chapter, or the administrator’s designee.
2. “*Air common carrier*” means a person engaged in transporting passengers for hire in interstate or foreign commerce by aircraft and operating regularly scheduled flights under a certificate of public convenience issued by the civil aeronautics board.
3. “*Alcohol*” means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.
4. “*Alcoholic beverage*” means any beverage containing more than one-half of one percent of alcohol by volume including alcoholic liquor, wine, and beer.
5. “*Alcoholic liquor*” or “*intoxicating liquor*” means the varieties of liquor defined in subsections 3 and 43 which contain more than five percent of alcohol by weight, beverages made as described in subsection 7 which beverages contain more than five percent of alcohol by weight but which are not wine as defined in subsection 47 or high alcoholic content beer as defined in subsection 19, and every other liquid or solid, patented or not, containing spirits and every beverage obtained by the process described in subsection 47 containing more than seventeen percent alcohol by weight or twenty-one and twenty-five hundredths percent of alcohol by volume, and susceptible of being consumed by a human being, for beverage purposes. Alcohol manufactured in this state for use as fuel pursuant to an experimental distilled spirits plant permit or its equivalent issued by the federal bureau of alcohol, tobacco and firearms is not an “*alcoholic liquor*”.
6. “*Application*” means a formal written request for the issuance of a permit or license supported by a verified statement of facts.
7. “*Beer*” means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains or made by the fermentation of or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight but not including mixed drinks or cocktails mixed on the premises.
8. “*Brewer*” means any person who manufactures beer for the purpose of sale, barter, exchange, or transportation.
9. “*Broker*” means a person who represents or promotes alcoholic liquor within the state on behalf of the holder of a distiller’s certificate of compliance through an agreement with the distiller, and whose name is disclosed on a distiller’s current certificate of compliance as its representative in the state. An employee of the holder of a distiller’s certificate of compliance is not a broker.
10. “*City*” means a municipal corporation but not including a county, township, school district, or any special purpose district or authority.
11. “*Club*” means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.
12. “*Commercial establishment*” means a place of business which is at all times equipped

with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the standards and specifications of the division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The person has such financial standing and good reputation as will satisfy the administrator that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person’s operations under this chapter. However, the administrator shall not require the person to post a bond to meet the requirements of this paragraph.

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

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

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

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

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

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

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

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

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

37. “*Residence*” means the place where a person resides, permanently or temporarily.

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

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

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

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

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

43. “*Spirits*” means any beverage which contains alcohol obtained by distillation mixed

with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.

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

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

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

47. “*Wine*” means any beverage containing more than five percent of alcohol by weight but not more than seventeen percent of alcohol by weight or twenty-one and twenty-five hundredths percent of alcohol by volume obtained by the fermentation of the natural sugar contents of fruits or other agricultural products but excluding any product containing alcohol derived from malt or by the distillation process from grain, cereal, molasses, or cactus.

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

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

Former subsections 8A through 14 renumbered as 9 through 16

NEW subsections 17 and 18

Subsection 14A amended and renumbered as 19 and former subsections 15 through 22 renumbered as 20 through 27

NEW subsections 28 and 29

Former subsection 22A amended and renumbered as 30 and former subsections 23 through 26 renumbered as 31 through 34

NEW subsection 35 and former subsections 27 through 32 renumbered as 36 through 41

NEW subsection 42 and former subsections 33 through 37 renumbered as 43 through 47

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

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

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

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

Confirmation, see §2.32

Section amended

### **123.9 Commission meetings.**

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

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

2011 Acts, ch 17, §5

Section amended

**123.30 Liquor control licenses — classes.**

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

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

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

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

2. No liquor control license shall be issued for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations. Nor shall any licensee have or maintain any interior access to residential or sleeping quarters unless permission is granted by the administrator in the form of a living quarters permit.

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

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

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

*c. Class “C”.*

(1) A class “C” liquor control license may be issued to a commercial establishment but must be issued in the name of the individuals who actually own the entire business and shall authorize the holder to purchase alcoholic liquors from class “E” liquor control licensees only, wine from class “A” wine permittees or class “B” wine permittees who also hold class “E”

liquor control licenses only, and native wines from native wine manufacturers, and to sell liquors, wine, and beer to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises.

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

*d. Class “D”.*

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

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

*e. Class “E”.*

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

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

4. Notwithstanding any provision of this chapter to the contrary, a person holding a license to sell alcoholic liquors for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased and consumed a portion of the bottle of wine on the licensed premises. The licensee or the licensee’s agent shall securely reseal such bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been tampered with and provide a dated receipt for the resealed bottle of wine to the customer. A wine bottle resealed pursuant to the requirements of this subsection is subject to the requirements of sections 321.284 and 321.284A.

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

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

Subsection 3, paragraph e, subparagraph (1) amended

### 123.31 Application contents.

Verified applications for the original issuance or the renewal of liquor control licenses shall be filed at the time and in the number of copies as the administrator shall prescribe, on forms prescribed by the administrator, and shall set forth under oath the following information:

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

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

93 Acts, ch 91, §9; 2000 Acts, ch 1201, §2; 2011 Acts, ch 17, §7

Unnumbered paragraph 1 amended

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

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

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

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

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

premises, use of force and techniques for safely removing patrons, and instruction on the proper physical restraint methods used against a person who has become combative.

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

6. *Action by administrator.*

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

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

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

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

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

A liquor control licensee, wine or beer permittee, or a local authority aggrieved by a decision of the administrator may seek judicial review of the decision pursuant to chapter 17A.

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

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

Section not amended; footnote deleted

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

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

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

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

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

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

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

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

Section not amended; internal reference change applied

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

#### **123.36 Liquor fees — Sunday sales.**

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

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

beverages, wine, or beer on the premises more than one day in any week or more than a total of fifty-two days in a year.

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

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

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

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

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

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

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

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

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

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

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

a. For watercraft, one hundred fifty dollars.

b. For trains, five hundred dollars.

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

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

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

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

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

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

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case

there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail. However, if a commercial establishment is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

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

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

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

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

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

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

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

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

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

9. There is imposed a surcharge on the fee for each class "A", "B", or "C" liquor control license equal to thirty percent of the scheduled license fee. The surcharges collected under this subsection shall be deposited in the beer and liquor control fund, and notwithstanding subsection 7, no portion of the surcharges collected under this subsection shall be remitted to the local authority.

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

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

Subsection 8 amended

### **123.41 Manufacturer's license.**

1. Upon application in the prescribed form and accompanied by a fee of three hundred fifty dollars, the administrator may in accordance with this chapter grant and issue a license, valid for a one-year period after date of issuance, to a manufacturer which shall allow the manufacture, storage, and wholesale disposition and sale of alcoholic liquors to the division and to customers outside of the state.

2. As a condition precedent to the approval and granting of a manufacturer's license, an applicant shall file a statement under oath with the division that the applicant is a bona fide

manufacturer of alcoholic liquors, and that the applicant will faithfully observe and comply with all laws, rules, and regulations governing the manufacture and sale of alcoholic liquor.

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

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

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

2011 Acts, ch 30, §3

Section amended

**123.43 License conditions — bond.** Repealed by 2011 Acts, ch 30, § 10.

**123.43A Micro-distilled spirits — permit.**

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

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

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

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

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

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

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

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

Subsection 1 stricken and former subsections 2 - 7 renumbered as 1 - 6

Subsection 8 amended and renumbered as 7

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

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

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

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

c. "Peace officer" means the same as defined in section 801.4.

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

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

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

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

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

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

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

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

Subsection 1, paragraph d stricken

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

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

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

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

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

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

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

- e. Deliveries shall occur between 6:00 a.m. and 10:00 p.m. Monday through Saturday, and between 8:00 a.m. and 10:00 p.m. Sunday.
  - f. Delivery of alcoholic liquor, wine, or beer shall be made by the licensee or permittee, or the licensee's or permittee's employee, and not by a third party.
  - g. Delivery personnel shall be twenty-one years of age or older.
  - h. Deliveries shall be made in a vehicle owned, leased, or under the control of the licensee or permittee.
  - i. Valid proof of the recipient's identity and age shall be obtained at the time of delivery, and the signature of a person twenty-one years of age or older shall be obtained as a condition of delivery.
  - j. Licensees and permittees shall maintain records of deliveries which include the quantity delivered, the recipient's name and address, and the signature of the recipient of the alcoholic liquor, wine, or beer. The records shall be maintained on the licensed premises for a period of three years.
3. A violation of this section or any other provision of this chapter shall subject the licensee or permittee to the penalty provisions of section 123.39.
4. Nothing in this section shall impact the direct shipment of wine as regulated by section 123.187.

2011 Acts, ch 30, §5

NEW section

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

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.
- a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.
  - b. The general assembly declares that this subsection shall be interpreted so that the holding of *Clark v. Mincks*, 364 N.W.2d. 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.
2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club's agents or employees, shall not do any of the following:
- a. Knowingly permit any gambling, except in accordance with chapter 99B, 99D, 99F, or 99G, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.
  - b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of eight a.m. on Sunday and two a.m. on the following Monday.
  - c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests, nor to retail sales by the managing entity of a convention center, civic center, or events center.
  - d. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the division, and except mixed drinks or cocktails mixed on the premises for immediate consumption. This prohibition does not apply to common carriers holding a class "D" liquor control license.
  - e. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.

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

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

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

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

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

k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of eight a.m. on Sunday and two a.m. on the following Monday.

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

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

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

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

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

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

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

Section not amended; internal reference change applied

### 123.50 Criminal and civil penalties.

1. Any person who violates any of the provisions of section 123.49, except subsection 2, paragraph “h”, or who fails to affix upon sale, defaces, or fails to record a keg identification sticker or produce a record of keg identification stickers pursuant to section 123.138, shall be guilty of a simple misdemeanor. A person who violates section 123.49, subsection 2,

paragraph “h”, commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 2.

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

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

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

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

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

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

e. For purposes of this subsection:

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

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

(3) Notwithstanding section 123.40, revocation shall be limited to the specific license or permit found in violation and shall not disqualify a licensee or permittee from holding a license or permit at a separate location.

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

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

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

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

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

NEW subsection 5

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

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

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

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

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

2011 Acts, ch 30, §7

NEW section

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

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

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

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

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

4. The treasurer of state shall, each quarter, prepare an estimate of the gaming revenues and of the moneys to be deposited in the beer and liquor control fund that will become available during the remainder of the appropriate fiscal year for the purposes described in subsection 3. The department of management, the department of inspections and appeals,

and the department of commerce shall take appropriate actions to provide that the sum of the amount of gaming revenues available to be deposited into the revenue bonds debt service fund and the revenue bonds federal subsidy holdback fund during a fiscal year and the amount of moneys to be deposited in the beer and liquor control fund available to be deposited into the revenue bonds debt service fund and the revenue bonds federal subsidy holdback fund during such fiscal year will be sufficient to cover any anticipated deficiencies.

5. After any transfer provided for in subsection 3 is made, the department of commerce shall transfer into a special revenue account in the general fund of the state, a sum of money at least equal to seven percent of the gross amount of sales made by the division from the beer and liquor control fund on a monthly basis but not less than nine million dollars annually. Of the amounts transferred, two million dollars, plus an additional amount determined by the general assembly, shall be appropriated to the Iowa department of public health for use by the staff who administer the comprehensive substance abuse program under chapter 125 for substance abuse treatment and prevention programs. Any amounts received in excess of the amounts appropriated to the Iowa department of public health for use by the staff who administer the comprehensive substance abuse program under chapter 125 shall be considered part of the general fund balance.

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

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

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

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

Subsection 4 amended

### **123.56 Native wines.**

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

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

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

4. Notwithstanding section 123.179, subsection 1, a class “A” wine permit for a native wine

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

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

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

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

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

[C35, §1921-f56; C39, §1921.056; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.56]  
85 Acts, ch 32, §49; 85 Acts, ch 198, §1; 2003 Acts, ch 143, §4, 5, 17; 2009 Acts, ch 73, §1;  
2011 Acts, ch 17, §11; 2011 Acts, ch 30, §8

Subsections 1 – 3 amended

NEW subsection 7 and former subsection 7 renumbered as 8

#### **123.57 Examination of accounts.**

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

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

Section amended

#### **123.58 Auditing.**

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

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

Section amended

## DIVISION II BEER PROVISIONS

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

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

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

a. Submits a written application for such permit, which application shall state under

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

- b. Establishes that the person is of good moral character as defined by this chapter.
- c. Consents to inspection as required in section 123.30, subsection 1.
- d. States the number of square feet of interior floor space which comprises the retail sales area of the premises for which the permit is sought.

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

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

Subsection 1 stricken and former subsections 2 and 3 renumbered as 1 and 2

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

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

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

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

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

88 Acts, ch 1241, §19; 89 Acts, ch 221, §4; 92 Acts, ch 1003, §2; 2010 Acts, ch 1031, §93, 96  
Section not amended; internal reference change applied

**123.133 Sale on trains — bond.** Repealed by 2011 Acts, ch 17, § 16.

**123.134 Beer fees — Sunday sales.**

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

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

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

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

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

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

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

4. The annual permit fee for a class “C” permit shall be graduated on the basis of the

amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:

- a. Up to one thousand five hundred square feet, the sum of seventy-five dollars.
  - b. Over one thousand five hundred square feet and up to two thousand square feet, the sum of one hundred dollars.
  - c. Over two thousand and up to five thousand square feet, the sum of two hundred dollars.
  - d. Over five thousand square feet, the sum of three hundred dollars.
5. Any club, hotel, motel, or commercial establishment holding a class “B” beer permit, subject to the provisions of section 123.49, subsection 2, paragraph “b”, may apply for and receive permission to sell and dispense beer to patrons on Sunday for consumption on or off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday. Any class “C” beer permittee may sell beer for consumption off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday. For the privilege of selling beer on Sunday the beer permit fees of the applicant shall be increased by twenty percent of the regular fees prescribed for the permit pursuant to this section and the privilege shall be noted on the beer permit.

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

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

Subsection 5 stricken and former subsection 6 renumbered as 5

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

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

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

Section not amended; internal reference change applied

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

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

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

2011 Acts, ch 17, §14

Section amended

#### **123.142 Unlawful sale and importation.**

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

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

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

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

Unnumbered paragraph 1 amended

### **123.143 Distribution of funds.**

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

1. All retail beer permit fees collected by any local authority at the time application for the permit is made shall be retained by the local authority. A certified copy of the receipt for the permit fee shall be submitted to the division with the application and the local authority shall be notified at the time the permit is issued. Those amounts collected for the privilege authorized under section 123.134, subsection 5, shall be deposited in the beer and liquor control fund.

2. All permit fees and taxes collected by the division under this division shall accrue to the state general fund, except as otherwise provided.

3. Barrel tax revenues collected on beer manufactured in this state from a class “A” permittee which owns and operates a brewery located in Iowa shall be credited to the barrel tax fund hereby created in the office of the treasurer of state. Moneys deposited in the barrel tax fund shall not revert to the general fund of the state without a specific appropriation by the general assembly. Moneys in the barrel tax fund are appropriated to the economic development authority for purposes of section 15E.117.

[C35, §1921-f125; C39, §1921.128; C46, 50, 54, 58, 62, 66, 71, §124.33; C73, 75, 77, 79, 81, §123.143]

83 Acts, ch 123, §60, 209; 84 Acts, ch 1312, §7; 85 Acts, ch 198, §2; 87 Acts, ch 95, §1; 2010 Acts, ch 1188, §29; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## DIVISION III

### SPECIAL PROVISIONS

#### **123.150 Sunday sales before New Year’s Day.**

Notwithstanding section 123.36, subsection 5, section 123.49, subsection 2, paragraph “b”, and section 123.134, subsection 5, a holder of any class of liquor control license or the holder of a class “B” beer permit may sell or dispense alcoholic liquor, wine, or beer to patrons for consumption on the premises between the hours of eight a.m. on Sunday and two a.m. on Monday when that Monday is New Year’s Day and beer for consumption off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday when that Sunday is the day before New Year’s Day. The liquor control license fee or beer permit fee of licensees and permittees permitted to sell or dispense liquor, wine, or beer on a Sunday when that Sunday is the day before New Year’s Day shall not be increased because of this privilege.

The special privileges granted in this section are in force only during the specified times provided in this section.

[C79, 81, §123.150]

85 Acts, ch 195, §15; 86 Acts, ch 1122, §10; 91 Acts, ch 245, §5

Section not amended; internal reference change applied

## DIVISION IV

### WAREHOUSE PROJECT

**123.153 through 123.162** Repealed by 2011 Acts, ch 17, §16.

DIVISION V  
WINE PROVISIONS — CHARITY BEER  
AND WINE AUCTIONS

**123.173 Wine permits — classes — authority.**

1. Except as provided in section 123.187, permits exclusively for the sale or manufacture and sale of wine shall be divided into four classes, and shall be known as class “A”, “B”, “B” native, or “C” native wine permits.

2. A class “A” wine permit allows the holder to manufacture and sell, or sell at wholesale, in this state, wine as defined in section 123.3, subsection 47. The holder of a class “A” wine permit may manufacture in this state wine having an alcoholic content greater than seventeen percent by weight or twenty-one and twenty-five hundredths percent of alcohol by volume for shipment outside this state. All class “A” premises shall be located within the state. A class “B” or class “B” native wine permit allows the holder to sell wine at retail for consumption off the premises. A class “B” or class “B” native wine permittee who also holds a class “E” liquor control license may sell wine to class “A”, class “B”, and class “C” liquor control licensees for resale for consumption on the premises. Such wine sales shall be in quantities of less than one case of any wine brand but not more than one such sale shall be made to the same liquor control licensee in a twenty-four-hour period. A class “B” or class “B” native wine permittee shall not sell wine to other class “B”, or class “B” native wine permittees. A class “C” native wine permit allows the holder to sell wine for consumption on or off the premises.

3. A class “A” wine permittee shall be required to deliver wine to a retail wine permittee, and a retail wine permittee shall be required to accept delivery of wine from a class “A” wine permittee, only at the licensed premises of the retail wine permittee. Except as specifically permitted by the division upon good cause shown, delivery or transfer of wine from an unlicensed premises to a licensed retail wine permittee’s premises, or from one licensed retail wine permittee’s premises to another licensed retail wine permittee’s premises, even if there is common ownership of all of the premises by one retail permittee, is prohibited. A class “B” or class “B” native wine permittee who also holds a class “E” liquor control license shall keep and maintain records for each sale of wine to liquor control licensees showing the name of the establishment to which wine was sold, the date of sale, and the brands and number of bottles sold to the liquor control licensee.

4. When a class “B” or class “B” native wine permittee who also holds a class “E” liquor control license sells wine to a class “A”, class “B”, or class “C” liquor control licensee, the liquor control licensee shall sign a report attesting to the purchase. The class “B” or class “B” native wine permittee who also holds a class “E” liquor control license shall submit to the division, on forms supplied by the division, not later than the tenth of each month a report stating each sale of wine to class “A”, class “B”, and class “C” liquor control licensees during the preceding month, the date of each sale, and the brands and numbers of bottles with each sale. A class “B” permittee who holds a class “E” liquor control license may sell to class “A”, class “B”, or class “C” liquor control licensees only if the licensed premises of the liquor control licensee is located within the geographic territory of the class “A” wine permittee from which the wine was originally purchased by the class “B” wine permittee.

85 Acts, ch 32, §64; 88 Acts, ch 1241, §22; 91 Acts, ch 203, §2, 3; 2003 Acts, ch 143, §7, 17; 2006 Acts, ch 1032, §2; 2010 Acts, ch 1031, §99

Section not amended; internal reference change applied

**123.175 Application contents.**

Except as otherwise provided in this chapter, a class “A” or retail wine permit shall be issued to a person who complies with all of the following:

1. Submits a written application for the permit and states on the application under oath:
  - a. The name and place of residence of the applicant and the length of time the applicant has lived at the place of residence.
  - b. That the applicant is a citizen of the state of Iowa, or if a corporation, that the applicant is authorized to do business in Iowa.

- c. That the applicant is a person of good moral character as defined by this chapter.
  - d. The location of the premises where the applicant intends to use the permit.
  - e. The name of the owner of the premises, and if that owner is not the applicant, that the applicant is the actual lessee of the premises.
  - 2. Establishes all of the following:
    - a. That the applicant meets the test of good moral character as provided in section 123.3, subsection 34.
    - b. That the premises where the applicant intends to use the permit conform to all applicable laws, health regulations, and fire regulations, and constitute a safe and proper place or building.
    - 3. Submits, in the case of a class “A” wine permit, a bond in the amount of five thousand dollars in the form prescribed and furnished by the division with good and sufficient sureties to be approved by the division conditioned upon compliance with this chapter.
    - 4. Consents to inspection as required in section 123.30, subsection 1.
- 85 Acts, ch 32, §66; 88 Acts, ch 1241, §23; 2003 Acts, ch 143, §9, 17  
 Section not amended; internal reference change applied

### **123.183 Wine gallonage tax and related funds.**

- 1. In addition to the annual permit fee to be paid by each class “A” wine permittee, a wine gallonage tax shall be levied and collected from each class “A” wine permittee on all wine manufactured for sale and sold in this state at wholesale and on all wine imported into this state for sale at wholesale and sold in this state at wholesale. A wine gallonage tax shall also be levied and collected on the direct shipment of wine pursuant to section 123.187. The rate of the wine gallonage tax is one dollar and seventy-five cents for each wine gallon. The same rate shall apply for the fractional parts of a wine gallon. The wine gallonage tax shall not be levied or collected on wine sold by one class “A” wine permittee to another class “A” wine permittee.
    - 2. a. Revenue collected from the wine gallonage tax on wine manufactured for sale and sold in this state, and on wine subject to direct shipment as provided in section 123.187 by a wine manufacturer licensed or permitted pursuant to laws regulating alcoholic beverages in this state, shall be deposited in the wine gallonage tax fund as created in this section.
      - b. (1) A wine gallonage tax fund is created in the office of the treasurer of state.
      - (2) Moneys deposited in the fund are appropriated as follows:
        - (a) To the midwest grape and wine industry institute at Iowa state university of science and technology, one hundred twenty thousand dollars.
        - (b) To the economic development authority for purposes of section 15E.117, the balance of moneys in the fund after the appropriation in subparagraph division (a).
        - (3) Moneys in the fund and moneys appropriated from the fund pursuant to subparagraph (2) are not subject to reversion under section 8.33.
    - 3. The revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale, and on wine subject to direct shipment as provided in section 123.187 by a wine manufacturer licensed or permitted pursuant to laws regulating alcoholic beverages in another state, shall be deposited in the beer and liquor control fund created in section 123.53.
- 85 Acts, ch 32, §74; 85 Acts, ch 198, §4, 5; 86 Acts, ch 1246, §753; 87 Acts, ch 95, §2; 2001 Acts, ch 162, §1; 2002 Acts, ch 1050, §15; 2003 Acts, ch 143, §14, 17; 2005 Acts, ch 113, §1; 2007 Acts, ch 211, §41; 2010 Acts, ch 1193, §164; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 130, §29, 71

For exception to wine gallonage tax effective May 29, 2007, for wine imported into the state prior to June 1, 2007, and used for manufacturing native wine, see 2007 Acts, ch 215, §126, 129

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 2, paragraph b stricken and rewritten

## CHAPTER 124

## CONTROLLED SUBSTANCES

See §205.11 – 205.13 for additional provisions relating to administration and enforcement

See also chapter 124A, imitation controlled substances

This chapter not enacted as a part of this title; transferred from chapter 204 in Code 1993

## DIVISION II

## STANDARDS AND SCHEDULES

**124.204 Schedule I — substances included.**

1. Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- a. Acetylmethadol.
- b. Allylprodine.
- c. Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
- d. Alphameprodine.
- e. Alphamethadol.
- f. Alpha-Methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine).
- g. Benzethidine.
- h. Betacetylmethadol.
- i. Betameprodine.
- j. Betamethadol.
- k. Betaprodine.
- l. Clonitazene.
- m. Dextromoramide.
- n. Difenoxy.
- o. Diampromide.
- p. Diethylthiambutene.
- q. Dimenoxadol.
- r. Dimepheptanol.
- s. Dimethylthiambutene.
- t. Dioxaphetyl butyrate.
- u. Dipipanone.
- v. Ethylmethylthiambutene.
- w. Etonitazene.
- x. Etoxeridine.
- y. Furethidine.
- z. Hydroxypethidine.
- aa. Ketobemidone.
- ab. Levomoramide.
- ac. Levophenacetylmorphan.
- ad. Morpheridine.
- ae. Noracymethadol.
- af. Norlevorphanol.
- ag. Normethadone.
- ah. Norpipanone.
- ai. Phenadoxone.

- aj. Phenampromide.
  - ak. Phenomorphan.
  - al. Phenoperidine.
  - am. Piritramide.
  - an. Proheptazine.
  - ao. Properidine.
  - ap. Propiram.
  - aq. Racemoramide.
  - ar. Tilidine.
  - as. Trimeperidine.
  - at. Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
  - au. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
  - av. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
  - aw. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
  - ax. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide). For purposes of this opiate, "isomers" includes optical and geometric isomers.
  - ay. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
  - az. MPPP (1-methyl-4-phenyl-4-propionoxy-piperidine).
  - ba. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide).
  - bb. PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine).
  - bc. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).
3. *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
- a. Acetorphine.
  - b. Acetyldihydrocodeine.
  - c. Benzylmorphine.
  - d. Codeine methylbromide.
  - e. Codeine-N-Oxide.
  - f. Cyprenorphine.
  - g. Desomorphine.
  - h. Dihydromorphine.
  - i. Etorphine (except hydrochloride salt).
  - j. Heroin.
  - k. Hydromorphanol.
  - l. Methyldesorphine.
  - m. Methyldihydromorphine.
  - n. Morphine methylbromide.
  - o. Morphine methylsulfonate.
  - p. Morphine-N-Oxide.
  - q. Myrophine.
  - r. Nicocodeine.
  - s. Nicomorphine.
  - t. Normorphine.
  - u. Pholcodine.
  - v. Thebacon.
  - w. Drotebanol.
4. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another

schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term “*isomer*” includes the optical, position and geometric isomers):

- a. 4-bromo-2,5-dimethoxy-amphetamine.  
Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.
- b. 2,5-dimethoxyamphetamine. Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.
- c. 4-methoxyamphetamine. Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA.
- d. 5-methoxy-3,4-methylenedioxy-amphetamine.
- e. 4-methyl-2,5-dimethoxyl-amphetamine. Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; “DOM”; and “STP”.
- f. 3,4-methylenedioxy amphetamine, also known as MDA.
- g. 3,4,5-trimethoxy amphetamine.
- h. Bufotenine. Some trade or other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.
- i. Diethyltryptamine. Some trade and other names: N, N-Diethyltryptamine; DET.
- j. Dimethyltryptamine. Some trade or other names: DMT.
- k. Ibogaine. Some trade or other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga.
- l. Lysergic acid diethylamide.
- m. Marijuana, except as otherwise provided by rules of the board for medicinal purposes.
- n. Mescaline.
- o. Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d) pyran; synhexyl.
- p. Peyote, except as otherwise provided in subsection 8. Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts.
  - q. N-ethyl-3-piperidyl benzilate.
  - r. N-methyl-3-piperidyl benzilate.
  - s. Psilocybin.
  - t. Psilocyn.
  - u. Tetrahydrocannabinols, except as otherwise provided by rules of the board for medicinal purposes, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (*Cannabis* plant) as well as synthetic equivalents of the substances contained in the *Cannabis* plant, or in the resinous extractives of such plant, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:
    - (1) 1 cis or trans tetrahydrocannabinol, and their optical isomers.
    - (2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.
    - (3) 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
  - v. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
  - w. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
  - x. Thiophene analog of phencyclidine. Some trade or other names: 1-(1-(2-thienyl)-cyclohexyl)-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.
  - y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. Some other names: TCPy.

- z. 3,4-methylenedioxyamphetamine (MDMA).
- aa. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA).
- ab. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA).
- ac. 2,5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
- ad. Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; a-ethyl-1H-indole-3-ethanamine;3-(2-aminobutyl)indole; alpha-ET; and AET.
- ae. 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.
- af. 2,5-dimethoxy-4-(n)-propylthiophenethylamine. Other name: 2C-T-7.
- ag. Alpha-methyltryptamine. Other name: AMT.
- ah. 5-methoxy-N,N-diisopropyltryptamine. Other name: 5-MeO-DIPT.
- ai. (1) Mephedrone, also known as 4-methylmethcathinone, (RS)-2-methylamino-1-(4-methylphenyl)propan-1-one.
- (2) Methylene-dioxypyrovalerone (MDPV) [(1-(1,3-Benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-pentanone)].
- (3) *Salvia divinorum*.
- (4) Salvinorin A.
- (5) Any substance, compound, mixture or preparation which contains any quantity of any synthetic cannabinoid that is not approved as a pharmaceutical, including but not limited to the following:
- (a) CP 47, 497 and homologues 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol).
- (b) HU-210[(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol]).
- (c) HU-211 (dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).
- (d) JWH-018 1-Pentyl-3-(1-naphthoyl)indole.
- (e) JWH-073 1-Butyl-3-(1-naphthoyl)indole.
- (f) JWH-200[1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl]-1-naphthalenyl-methanone.
5. *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Mecloqualone.
- b. Methaqualone.
- c. Gamma-hydroxybutyric acid. Some trade or other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.
6. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- a. Fenethylamine.
- b. N-ethylamphetamine.
- c. (+-)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).
- d. N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine).
- e. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.
- f. Aminorex. Some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine.
- g. Methcathinone, its salts, optical isomers, and salts of optical isomers.

Some other names: 2-(methylamino)-propiofenone; alpha-(methylamino)propiofenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiofenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432.

*h.* N-benzylpiperazine. Some other names: BZP, 1-benzylpiperazine.

7. *Exclusions.* This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the board.

8. *Peyote.* Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.

9. *Other materials.* Any material, compound, mixture, or preparation which contains any quantity of the following substances:

*a.* N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers.

*b.* N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

[C73, 75, 77, 79, 81, §204.204; 82 Acts, ch 1044, §1, 2]

84 Acts, ch 1013, §4 – 8; 85 Acts, ch 86, §1, 2; 86 Acts, ch 1037, §1, 2; 87 Acts, ch 122, §1; 88 Acts, ch 1024, §1; 89 Acts, ch 109, §1, 2; 91 Acts, ch 8, §2

C93, §124.204

94 Acts, ch 1009, §2 – 8; 2000 Acts, ch 1140, §2 – 4; 2001 Acts, ch 58, §1; 2003 Acts, ch 53, §1 – 3; 2007 Acts, ch 8, §2 – 7; 2007 Acts, ch 10, §9 – 11; 2011 Acts, ch 131, §134 – 136; 2011 Acts, ch 134, §18, 27, 28

Criminal penalties for violations associated with substances designated as controlled substances under subsection 4, paragraph “ai”, subparagraphs (1) – (4) do not apply until 30 days after the enactment date of the subparagraphs; 2011 Acts, ch 131, §133, 136

2011 enactment of subsection 4, paragraph “ai”, subparagraphs (1) – (4) takes effect 30 days after July 29, 2011; 2011 Acts, ch 131, §134, 136; 2011 Acts, ch 134, §27

2011 amendment to subsection 4, paragraph “ai”, subparagraph (5) takes effect July 29, 2011; 2011 Acts, ch 131, §135, 136; 2011 Acts, ch 134, §28

Subsection 4, NEW paragraph ai

## DIVISION IV

### OFFENSES AND PENALTIES

#### **124.401 Prohibited acts — manufacturers — possessors — counterfeit substances — simulated controlled substances — penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

*a.* Violation of this subsection, with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class “B” felony, and notwithstanding section 902.9, subsection 2, shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars:

(1) More than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five hundred grams of a mixture or substance containing a detectable amount of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph divisions (a) through (c).

(3) More than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than one hundred grams of phencyclidine (PCP) or one kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one thousand kilograms of a mixture or substance containing a detectable amount of marijuana.

(7) More than five kilograms of a mixture or substance containing a detectable amount of any of the following:

(a) Methamphetamine, its salts, isomers, or salts of isomers.

(b) Amphetamine, its salts, isomers, and salts of isomers.

(c) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph divisions (a) and (b).

b. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and in addition to the provisions of section 902.9, subsection 2, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars:

(1) More than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than one hundred grams but not more than five hundred grams of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph divisions (a) through (c).

(3) More than ten grams but not more than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than ten grams but not more than one hundred grams of phencyclidine (PCP) or more than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) Not more than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one hundred kilograms but not more than one thousand kilograms of marijuana.

(7) More than five grams but not more than five kilograms of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.

(8) More than five grams but not more than five kilograms of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, or salts of isomers.

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

(1) One hundred grams or less of a mixture or substance containing a detectable amount of heroin.

(2) One hundred grams or less of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed.

- (b) Cocaine, its salts, optical and geometric isomers, or salts of isomers.
  - (c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers.
  - (d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph divisions (a) through (c).
  - (3) Ten grams or less of a mixture or substance described in subparagraph (2) which contains cocaine base.
  - (4) Ten grams or less of phencyclidine (PCP) or one hundred grams or less of a mixture or substance containing a detectable amount of phencyclidine (PCP).
  - (5) More than fifty kilograms but not more than one hundred kilograms of marijuana.
  - (6) Five grams or less of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.
  - (7) Five grams or less of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, or salts of isomers.
  - (8) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III, except as provided in paragraph "d".
- d. Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in section 124.204, subsection 4, paragraph "ai", or classified in schedule IV or V is an aggravated misdemeanor. However, violation of this subsection involving fifty kilograms or less of marijuana or involving flunitrazepam is a class "D" felony.
- e. A person in the immediate possession or control of a firearm while participating in a violation of this subsection shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.
- f. A person in the immediate possession or control of an offensive weapon, as defined in section 724.1, while participating in a violation of this subsection, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.
2. If the same person commits two or more acts which are in violation of subsection 1 and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan, or conspiracy, the acts may be considered a single violation and the weight of the controlled substances, counterfeit substances, or simulated controlled substances involved may be combined for purposes of charging the offender.
3. It is unlawful for any person to sell, distribute, or make available any product containing ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine, if the person knows, or should know, that the product may be used as a precursor to any illegal substance or an intermediary to any controlled substance. A person who violates this subsection commits a serious misdemeanor.
4. A person who possesses any product containing any of the following commits a class "D" felony, if the person possesses with the intent that the product be used to manufacture any controlled substance:
- a. Ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine.
  - b. Pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine.
  - c. Ethyl ether.
  - d. Anhydrous ammonia.
  - e. Red phosphorous.
  - f. Lithium.
  - g. Iodine.
  - h. Thionyl chloride.
  - i. Chloroform.
  - j. Palladium.
  - k. Perchloric acid.

- l. Tetrahydrofuran.
- m. Ammonium chloride.
- n. Magnesium sulfate.

5. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this chapter or chapter 124A, 124B, or 453B is guilty of an aggravated misdemeanor. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this chapter or chapter 124A, 124B, or 453B is guilty of a class "D" felony.

If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b". If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

All or any part of a sentence imposed pursuant to this subsection may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

If a person commits a violation of this subsection, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. If the person is not sentenced to confinement under the custody of the director of the department of corrections, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

If the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. The court may place the person on intensive probation. However, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593, 5003; S13, §2593, 2596-a; C24, 27, 31, 35, §3152, 3168, 3169; C39, **§3169.02, 3169.21**; C46, 50, 54, 58, 62, §204.2, 204.22; C66, §204.2, 204.20; C71, §204.2, 204.20, 204A.3, 204A.10; C73, 75, 77, 79, 81, §204.401; 82 Acts, ch 1147, §2]

84 Acts, ch 1013, §13, 14; 84 Acts, ch 1105, §2, 3; 89 Acts, ch 225, §11; 90 Acts, ch 1233, §7 C93, §124.401

94 Acts, ch 1107, §7; 96 Acts, ch 1164, §1 – 4; 97 Acts, ch 122, §1 – 3; 98 Acts, ch 1138, §24, 25; 99 Acts, ch 12, §2, 3; 99 Acts, ch 65, §1; 2000 Acts, ch 1144, §1; 2000 Acts, ch 1201, §4; 2003 Acts, ch 16, §1; 2003 Acts, ch 156, §1 – 7; 2004 Acts, ch 1057, §1; 2004 Acts, ch 1086, §32; 2006 Acts, ch 1030, §12; 2007 Acts, ch 8, §18; 2007 Acts, ch 126, §24; 2009 Acts, ch 41, §263; 2011 Acts, ch 134, §19, 20, 47

See §124B.9

Subsection 1, paragraph c, subparagraph (8) amended

Subsection 1, paragraph d amended

**124.401E Certain penalties for manufacturing or delivery of amphetamine or methamphetamine.**

1. If a court sentences a person for the person's first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

2. If a court sentences a person for a conviction of manufacturing of a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

3. If a court sentences a person for the person's second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by section 124.413.

99 Acts, ch 12, §5; 2000 Acts, ch 1144, §3

Continuation of drug court pilot programs; 2002 Acts, ch 1174, §1; 2002 Acts, 2nd Ex, ch 1003, §157, 171, 172; 2003 Acts, ch 183, §1; 2004 Acts, ch 1176, §1; 2005 Acts, ch 176, §1; 2006 Acts, ch 1181, §1; 2007 Acts, ch 208, §1; 2007 Acts, ch 218, §32; 2008 Acts, ch 1186, §1; 2009 Acts, ch 179, §68, 72; 2010 Acts, ch 1190, §20

Juvenile drug court programs; 2007 Acts, ch 218, §18, 57, 67; 2008 Acts, ch 1187, §16; 2009 Acts, ch 182, §16; 2010 Acts, ch 1192, §19; 2011 Acts, ch 129, §15, 128, 156

Section not amended; footnotes revised

## DIVISION VI

### DRUG PRESCRIBING AND DISPENSING — INFORMATION PROGRAM

**124.551 Information program for drug prescribing and dispensing.**

Contingent upon the receipt of funds pursuant to section 124.557 sufficient to carry out the purposes of this division, the board, in conjunction with the advisory council created in section 124.555, shall establish and maintain an information program for drug prescribing and dispensing. The program shall collect from pharmacies dispensing information for controlled substances identified pursuant to section 124.554, subsection 1, paragraph "g". The information collected shall be used by prescribing practitioners and pharmacists on a need-to-know basis for purposes of improving patient health care by facilitating early identification of patients who may be at risk for addiction, or who may be using, abusing, or diverting drugs for unlawful or otherwise unauthorized purposes at risk to themselves and others, or who may be appropriately using controlled substances lawfully prescribed for them but unknown to the practitioner. For purposes of this division, "*prescribing practitioner*" means a practitioner who has prescribed or is contemplating the authorization of a prescription for the patient about whom information is requested, and "*pharmacist*" means a practicing pharmacist who is actively engaged in and responsible for the pharmaceutical care of the patient about whom information is requested. The board shall collect, store, and disseminate program information consistent with security criteria established by rule, including use of appropriate encryption or other industry-recognized

security technology. The board shall seek any federal waiver necessary to implement the provisions of the program.

2006 Acts, ch 1147, §2, 11

2011 repeal of this section stricken by 2011 Acts, ch 58, §3, 4  
Section not amended; footnote revised

#### **124.552 Information reporting.**

1. Each licensed pharmacy that dispenses controlled substances identified pursuant to section 124.554, subsection 1, paragraph “g”, to patients in the state, and each licensed pharmacy located in the state that dispenses such controlled substances identified pursuant to section 124.554, subsection 1, paragraph “g”, to patients inside or outside the state, unless specifically excepted in this section or by rule, shall submit the following prescription information to the program:

- a. Pharmacy identification.
- b. Patient identification.
- c. Prescribing practitioner identification.
- d. The date the prescription was issued by the prescribing practitioner.
- e. The date the prescription was dispensed.
- f. An indication of whether the prescription dispensed is new or a refill.
- g. Identification of the drug dispensed.
- h. Quantity of the drug dispensed.
- i. The number of days’ supply of the drug dispensed.
- j. Serial or prescription number assigned by the pharmacy.
- k. Type of payment for the prescription.
- l. Other information identified by the board and advisory council by rule.

2. Information shall be submitted electronically in a secure format specified by the board unless the board has granted a waiver and approved an alternate secure format.

3. Information shall be timely transmitted as designated by the board and advisory council by rule, unless the board grants an extension. The board may grant an extension if either of the following occurs:

- a. The pharmacy suffers a mechanical or electronic failure, or cannot meet the deadline established by the board for other reasons beyond the pharmacy’s control.
- b. The board is unable to receive electronic submissions.

4. This section shall not apply to a prescribing practitioner furnishing, dispensing, supplying, or administering drugs to the prescribing practitioner’s patient, or to dispensing by a licensed pharmacy for the purposes of inpatient hospital care, inpatient hospice care, or long-term residential facility patient care.

2006 Acts, ch 1147, §3, 11; 2007 Acts, ch 126, §25, 26

2011 repeal of this section stricken by 2011 Acts, ch 58, §3, 4  
Section not amended; footnote revised

#### **124.553 Information access.**

1. The board may provide information from the program to the following:

a. (1) A pharmacist or prescribing practitioner who requests the information and certifies in a form specified by the board that it is for the purpose of providing medical or pharmaceutical care to a patient of the pharmacist or prescribing practitioner. A pharmacist or a prescribing practitioner may delegate program information access to another authorized individual or agent only if that individual or agent registers for program information access, pursuant to board rules, as an agent of the pharmacist or prescribing practitioner. Board rules shall identify the qualifications for a pharmacist’s or prescribing practitioner’s agent and shall limit the number of agents to whom each pharmacist or prescribing practitioner may delegate program information access.

(2) Notwithstanding subparagraph (1), a prescribing practitioner may delegate program information access to another licensed health care professional in emergency situations where the patient would be placed in greater jeopardy if the prescribing practitioner was required to access the information personally.

b. An individual who requests the individual’s own program information in accordance

with the procedure established in rules of the board and advisory council adopted under section 124.554.

c. Pursuant to an order, subpoena, or other means of legal compulsion for access to or release of program information that is issued based upon a determination of probable cause in the course of a specific investigation of a specific individual.

2. The board shall maintain a record of each person that requests information from the program. Pursuant to rules adopted by the board and advisory council under section 124.554, the board may use the records to document and report statistical information.

3. Information contained in the program and any information obtained from it, and information contained in the records of requests for information from the program, is privileged and strictly confidential information. Such information is a confidential public record pursuant to section 22.7, and is not subject to discovery, subpoena, or other means of legal compulsion for release except as provided in this division. Information from the program shall not be released, shared with an agency or institution, or made public except as provided in this division.

4. Information collected for the program shall be retained in the program for four years from the date of dispensing. The information shall then be destroyed.

5. A pharmacist or other dispenser making a report to the program reasonably and in good faith pursuant to this division is immune from any liability, civil, criminal, or administrative, which might otherwise be incurred or imposed as a result of the report.

6. Nothing in this section shall require a pharmacist or prescribing practitioner to obtain information about a patient from the program. A pharmacist or prescribing practitioner does not have a duty and shall not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or prescribing practitioner did or did not seek or obtain or use information from the program. A pharmacist or prescribing practitioner acting reasonably and in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving or using information from the program.

7. The board shall not charge a fee to a pharmacy, pharmacist, or prescribing practitioner for the establishment, maintenance, or administration of the program, including costs for forms required to submit information to or access information from the program, except that the board may charge a fee to an individual who requests the individual's own program information. A fee charged pursuant to this subsection shall not exceed the actual cost of providing the requested information and shall be considered a repayment receipt as defined in section 8.2.

2006 Acts, ch 1147, §4, 11; 2007 Acts, ch 8, §19; 2007 Acts, ch 126, §27, 28; 2011 Acts, ch 58, §1

2011 repeal of this section stricken by 2011 Acts, ch 58, §3, 4  
Subsection 1, paragraph a amended

### **124.554 Rules and reporting.**

1. The board and advisory council shall jointly adopt rules in accordance with chapter 17A to carry out the purposes of, and to enforce the provisions of, this division. The rules shall include but not be limited to the development of procedures relating to:

- a. Identifying each patient about whom information is entered into the program.
- b. An electronic format for the submission of information from pharmacies.
- c. A waiver to submit information in another format for a pharmacy unable to submit information electronically.
- d. An application by a pharmacy for an extension of time for transmitting information to the program.
- e. The submission by an authorized requestor of a request for information and a procedure for the verification of the identity of the requestor.
- f. Use by the board or advisory council of the program request records required by section 124.553, subsection 2, to document and report statistical information.
- g. Including all schedule II controlled substances and those substances in schedules III

and IV that the advisory council and board determine can be addictive or fatal if not taken under the proper care and direction of a prescribing practitioner.

*h.* Access by a pharmacist or prescribing practitioner to information in the program pursuant to a written agreement with the board and advisory council.

*i.* The correction or deletion of erroneous information in the program.

2. Beginning January 1, 2007, and annually by January 1 thereafter, the board and advisory council shall present to the general assembly and the governor a report prepared consistent with section 124.555, subsection 3, paragraph “d”, which shall include but not be limited to the following:

*a.* The cost to the state of implementing and maintaining the program.

*b.* Information from pharmacies, prescribing practitioners, the board, the advisory council, and others regarding the benefits or detriments of the program.

*c.* Information from pharmacies, prescribing practitioners, the board, the advisory council, and others regarding the board’s effectiveness in providing information from the program.

2006 Acts, ch 1147, §5, 11; 2007 Acts, ch 126, §29, 30

2011 repeal of this section stricken by 2011 Acts, ch 58, §3, 4  
Section not amended; footnote revised

#### **124.555 Advisory council established.**

An advisory council shall be established to provide oversight to the board and the program and to comanage program activities. The board and advisory council shall jointly adopt rules specifying the duties and activities of the advisory council and related matters.

1. The council shall consist of eight members appointed by the governor. The members shall include three licensed pharmacists, four physicians licensed under chapter 148, and one licensed prescribing practitioner who is not a physician. The governor shall solicit recommendations for council members from Iowa health professional licensing boards, associations, and societies. The license of each member appointed to and serving on the advisory council shall be current and in good standing with the professional’s licensing board.

2. The council shall advance the goals of the program, which include identification of misuse and diversion of controlled substances identified pursuant to section 124.554, subsection 1, paragraph “g”, and enhancement of the quality of health care delivery in this state.

3. Duties of the council shall include but not be limited to the following:

*a.* Ensuring the confidentiality of the patient, prescribing practitioner, and dispensing pharmacist and pharmacy.

*b.* Respecting and preserving the integrity of the patient’s treatment relationship with the patient’s health care providers.

*c.* Encouraging and facilitating cooperative efforts among health care practitioners and other interested and knowledgeable persons in developing best practices for prescribing and dispensing controlled substances and in educating health care practitioners and patients regarding controlled substance use and abuse.

*d.* Making recommendations regarding the continued benefits of maintaining the program in relationship to cost and other burdens to the patient, prescribing practitioner, pharmacist, and the board. The council’s recommendations shall be included in reports required by section 124.554, subsection 2.

*e.* One physician and one pharmacist member of the council shall include in their duties the responsibility for monitoring and ensuring that patient confidentiality, best interests, and civil liberties are at all times protected and preserved during the existence of the program.

4. Members of the advisory council shall be eligible to request and receive actual expenses for their duties as members of the advisory council, subject to reimbursement limits imposed by the department of administrative services, and shall also be eligible to receive a per diem compensation as provided in section 7E.6, subsection 1.

2006 Acts, ch 1147, §6, 11; 2007 Acts, ch 126, §31, 32; 2008 Acts, ch 1088, §82

2011 repeal of this section stricken by 2011 Acts, ch 58, §3, 4  
Section not amended; footnote revised

**124.556 Education and treatment.**

The program for drug prescribing and dispensing shall include education initiatives and outreach to consumers, prescribing practitioners, and pharmacists, and shall also include assistance for identifying substance abuse treatment programs and providers. The board and advisory council shall adopt rules, as provided under section 124.554, to implement this section.

2006 Acts, ch 1147, §7, 11; 2007 Acts, ch 126, §33

2011 repeal of this section stricken by 2011 Acts, ch 58, §3, 4  
Section not amended; footnote revised

**124.557 Drug information program fund.**

The drug information program fund is established to be used by the board to fund or assist in funding the program. The board may make deposits into the fund from any source, public or private, including grants or contributions of money or other items of value, which it determines necessary to carry out the purposes of this division. Moneys received by the board to establish and maintain the program must be used for the expenses of administering this division. Notwithstanding section 8.33, amounts contained in the fund that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated in future years.

2006 Acts, ch 1147, §8, 11

2011 repeal of this section stricken by 2011 Acts, ch 58, §3, 4  
Section not amended; footnote revised

**124.558 Prohibited acts — penalties.**

1. *Failure to comply with requirements.* A pharmacist, pharmacy, prescribing practitioner, or agent of a pharmacist or prescribing practitioner who knowingly fails to comply with the confidentiality requirements of this division or who delegates program information access to another individual except as provided in section 124.553, is subject to disciplinary action by the appropriate professional licensing board. A pharmacist or pharmacy that knowingly fails to comply with other requirements of this division is subject to disciplinary action by the board. Each licensing board may adopt rules in accordance with chapter 17A to implement the provisions of this section.

2. *Unlawful access, disclosure, or use of information.* A person who intentionally or knowingly accesses, uses, or discloses program information in violation of this division, unless otherwise authorized by law, is guilty of a class “D” felony. This section shall not preclude a pharmacist or prescribing practitioner who requests and receives information from the program consistent with the requirements of this chapter from otherwise lawfully providing that information to any other person for medical or pharmaceutical care purposes.

2006 Acts, ch 1147, §9, 11; 2007 Acts, ch 126, §34; 2011 Acts, ch 58, §2

2011 repeal of this section stricken by 2011 Acts, ch 58, §3, 4  
Subsection 1 amended

## CHAPTER 125

### CHEMICAL SUBSTANCE ABUSE

#### DIVISION I

#### INTRODUCTORY PROVISIONS

**125.1 Declaration of policy.**

It is the policy of this state:

1. That substance abusers and persons suffering from chemical dependency be afforded the opportunity to receive quality treatment and directed into rehabilitation services which will help them resume a socially acceptable and productive role in society.

2. To encourage substance abuse education and prevention efforts and to insure that such efforts are coordinated to provide a high quality of services without unnecessary duplication.

3. To insure that substance abuse programs are being operated by individuals who are qualified in their field whether through formal education or through employment or personal experience.

[C71, 73, §123B.2; C75, 77, 79, 81, §125.1]

[A portion of subsection 1 was inadvertently omitted in the 1993 Code]

For future amendment to subsection 1, effective July 1, 2012, see 2011 Acts, ch 121, §24, 62

Section not amended; footnote added

## 125.2 Definitions.

For purposes of this chapter, unless the context clearly indicates otherwise:

1. “*Board*” means the state board of health created pursuant to chapter 136.
2. “*Chemical dependency*” means an addiction or dependency, either physical or psychological, on a chemical substance. Persons who take medically prescribed drugs shall not be considered chemically dependent if the drug is medically prescribed and the intake is proportionate to the medical need.
3. “*Chemical substance*” means alcohol, wine, spirits, and beer as defined in chapter 123 and controlled substances as defined in section 124.101.
4. “*Chief medical officer*” means the medical director in charge of a public or private hospital, or the director’s physician-designee. This chapter does not negate the authority otherwise reposed by chapter 226 in the respective superintendents of the state mental health institutes to make decisions regarding the appropriateness of admissions or discharges of patients of those institutes, however, it is the intent of this chapter that a superintendent who is not a licensed physician shall be guided in these decisions by the chief medical officer of the institute.
5. “*Chronic substance abuser*” means a person who meets all of the following criteria:
  - a. Habitually lacks self control as to the use of chemical substances to the extent that the person is likely to seriously endanger the person’s health, or to physically injure the person’s self or others, if allowed to remain at liberty without treatment.
  - b. Lacks sufficient judgment to make responsible decisions with respect to the person’s hospitalization or treatment.
6. “*Clerk*” means the clerk of the district court.
7. “*Department*” means the Iowa department of public health.
8. “*Director*” means the director of the Iowa department of public health.
9. “*Facility*” means an institution, a detoxification center, or an installation providing care, maintenance and treatment for substance abusers licensed by the department under section 125.13, hospitals licensed under chapter 135B, or the state mental health institutes designated by chapter 226.
10. “*Incapacitated by a chemical substance*” means that a person, as a result of the use of a chemical substance, is unconscious or has the person’s judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the need for treatment.
11. “*Incompetent person*” means a person who has been adjudged incompetent by a court of law.
12. “*Interested person*” means a person who, in the discretion of the court, is legitimately concerned that a respondent receive substance abuse treatment services.
13. “*Intoxicated person*” means a person whose mental or physical functioning is substantially impaired as a result of the use of a chemical substance.
14. “*Psychiatric advanced registered nurse practitioner*” means an individual currently licensed as a registered nurse under chapter 152 or 152E who holds a national certification in psychiatric health care and who is registered with the board of nursing as an advanced registered nurse practitioner.
15. “*Residence*” means the place where a person resides. For the purpose of determining which Iowa county, if any, is liable pursuant to this chapter for payments of costs attributable to its residents, the following rules shall apply:

a. If a person claims an Iowa homestead, then the person's residence shall be in the county where that homestead is claimed, irrespective of any other factors.

b. If paragraph "a" does not apply, and the person continuously has been provided or has maintained living quarters within any county of this state for a period of not less than one year, whether or not at the same location within that county, then the person's residence shall be in that county, irrespective of other factors. However, this paragraph shall not apply to unemancipated persons under eighteen years of age who are wards of this state.

c. If paragraphs "a" and "b" do not apply, or, if the person is under eighteen years of age, is unemancipated, and is a ward of this state, then the person shall be unclassified with respect to county of residence, and payment of all costs shall be made by the department as provided in this chapter.

d. An unemancipated person under eighteen years of age who is not a ward of the state shall be deemed to reside where the parent having legal custody, or the legal guardian, or legal custodian of that person has residence as determined according to this subsection.

e. The provisions of this subsection shall not be used in any case to which section 125.43 is applicable.

16. "Respondent" means a person against whom an application is filed under section 125.75.

17. "Substance abuse" means the use of chemical substances by persons suffering from chemical dependency, persons who are incapacitated by a chemical substance, substance abusers, or chronic substance abusers.

18. "Substance abuser" means a person who habitually lacks self-control as to the use of chemical substances or uses chemical substances to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted.

[C62, 66, §123A.1; C71, 73, §123A.1, 123B.1; C75, 77, §125.2; C79, 81, §125.2, 229.50; 81 Acts, ch 58, §1; 82 Acts, ch 1212, §1]

86 Acts, ch 1245, §1122; 89 Acts, ch 197, §21; 90 Acts, ch 1085, §1, 2; 2005 Acts, ch 175, §59, 60; 2008 Acts, ch 1082, §1

For future amendments to this section, effective July 1, 2012, see 2011 Acts, ch 121, §25 - 28, 62  
Section not amended; footnote added

## DIVISION II

### SUBSTANCE ABUSE PROGRAM

#### 125.9 Powers of director.

The director may:

1. Plan, establish and maintain treatment, intervention, education, and prevention programs as necessary or desirable in accordance with the comprehensive substance abuse program.

2. Make contracts necessary or incidental to the performance of the duties and the execution of the powers of the director, including contracts with public and private agencies, organizations and individuals to pay them for services rendered or furnished to substance abusers, chronic substance abusers, or intoxicated persons.

3. Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies and the department in making an application for any grant.

4. Coordinate the activities of the department and cooperate with substance abuse programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local or private agencies in this and other states for the treatment of substance abusers, chronic substance abusers, and intoxicated persons and for the common advancement of substance abuse programs.

5. Require that a written report, in reasonable detail, be submitted to the director at any time by any agency of this state or of any of its political subdivisions in respect to any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse, which is being conducted by the agency.

6. Submit to the governor a written report of the pertinent facts at any time the director concludes that any agency of this state or of any of its political subdivisions is conducting any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse in a manner not consistent with or which impairs achievement of the objectives of the state plan to combat substance abuse, and has failed to effect appropriate changes in the function or program.

7. Keep records and engage in research and the gathering of relevant statistics.

8. Employ a deputy director who shall be exempt from the merit system. The director may employ other staff necessary to carry out the duties assigned to the director.

9. Do other acts and things necessary or convenient to execute the authority expressly granted to the director.

[C62, 66, §123A.5, 123A.7, 123A.8; C71, 73, §123A.7, 123A.8, 123B.17; C75, 77, §125.9, 224B.4, 224B.6; C79, 81, §125.9]

86 Acts, ch 1245, §1128; 87 Acts, ch 8, §1; 90 Acts, ch 1085, §3; 2005 Acts, ch 175, §63

Merit system, see chapter 8A, subchapter IV

For future amendments to subsections 2 and 4, effective July 1, 2012, see 2011 Acts, ch 121, §29, 62

Section not amended; footnote added

#### **125.10 Duties of director.**

The director shall:

1. Prepare and submit a state plan subject to approval by the board and in accordance with the provisions of 42 U.S.C. § 4573. The state plan shall designate the department as the sole agency for supervising the administration of the plan.

2. Develop, encourage, and foster statewide, regional and local plans and programs for the prevention of substance abuse and the treatment of substance abusers, chronic substance abusers, and intoxicated persons in cooperation with public and private agencies, organizations and individuals, and provide technical assistance and consultation services for these purposes.

3. Coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in the prevention of substance abuse and the treatment of substance abusers, chronic substance abusers, and intoxicated persons.

4. Cooperate with the department of human services in establishing and conducting programs to provide treatment for substance abusers, chronic substance abusers, and intoxicated persons.

5. Cooperate with the department of education, boards of education, schools, police departments, courts, and other public and private agencies, organizations, and individuals in establishing programs for the prevention of substance abuse and the treatment of substance abusers, chronic substance abusers, and intoxicated persons, and in preparing relevant curriculum materials for use at all levels of school education.

6. Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of chemical substances.

7. Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of substance abusers, chronic substance abusers, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of chemical substances.

8. Organize and implement, in cooperation with local treatment programs, training programs for all persons engaged in treatment of substance abusers, chronic substance abusers, and intoxicated persons.

9. Sponsor and implement research in cooperation with local treatment programs into the causes and nature of substance abuse and treatment of substance abusers, chronic substance abusers, and intoxicated persons, and serve as a clearing house for information relating to substance abuse.

10. Specify uniform methods for keeping statistical information by public and private

agencies, organizations and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

11. Develop and implement, with the counsel and approval of the board, the comprehensive plan for treatment of substance abusers, chronic substance abusers, and intoxicated persons in accordance with this chapter.

12. Assist in the development of, and cooperate with, substance abuse education and treatment programs for employees of state and local governments and businesses and industries in the state.

13. Utilize the support and assistance of interested persons in the community, particularly recovered substance abusers and chronic substance abusers, to encourage substance abusers and chronic substance abusers to voluntarily undergo treatment.

14. Cooperate with the commissioner of public safety in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

15. Encourage general hospitals and other appropriate health facilities to admit without discrimination substance abusers, chronic substance abusers, and intoxicated persons and to provide them with adequate and appropriate treatment. The director may negotiate and implement contracts with hospitals and other appropriate health facilities with adequate detoxification facilities.

16. Encourage all health and disability insurance programs to include substance abuse as a covered illness.

17. Review all state health, welfare, education and treatment proposals to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to substance abuse, substance abusers, chronic substance abusers, and intoxicated persons.

[C62, 66, §123A.5; C71, 73, §123B.17; C75, 77, §125.10, 224B.5; C79, 81, §125.10; 81 Acts, ch 58, §3]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1085, §4; 2005 Acts, ch 175, §64

For future amendments to subsections 2 – 5, 7 – 9, 11, 13, 15, and 17, effective July 1, 2012, see 2011 Acts, ch 121, §30, 62  
Section not amended; footnote added

### DIVISION III

#### TREATMENT PROGRAMS AND FACILITIES

##### **125.12 Comprehensive program for treatment — regional facilities.**

1. The board shall review the comprehensive substance abuse program implemented by the department for the treatment of substance abusers, chronic substance abusers, intoxicated persons, and concerned family members. Subject to the review of the board, the director shall divide the state into appropriate regions for the conduct of the program and establish standards for the development of the program on the regional level. In establishing the regions, consideration shall be given to city and county lines, population concentrations, and existing substance abuse treatment services.

2. The program of the department shall include:

a. Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital.

b. Inpatient treatment.

c. Residential treatment.

d. Outpatient and follow-up treatment and rehabilitation.

e. Prevention and education.

f. Assessment.

g. Halfway house treatment.

3. The director shall provide for adequate and appropriate treatment for substance abusers, chronic substance abusers, intoxicated persons, and concerned family members

admitted under sections 125.33 and 125.34, or under section 125.75, 125.81, or 125.91. Treatment shall not be provided at a correctional institution except for inmates.

4. The director shall maintain, supervise and control all facilities operated by the director pursuant to this chapter.

5. All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

6. The director shall prepare, publish and distribute annually a list of all facilities.

7. The director may contract for the use of a facility if the director, pursuant to section 125.44, considers this to be an effective and economical course to follow.

[C75, 77, 79, 81, §125.12; 82 Acts, ch 1212, §23]

86 Acts, ch 1001, §3; 86 Acts, ch 1245, §1129; 90 Acts, ch 1085, §5; 2005 Acts, ch 175, §65

For future amendments to subsections 1 and 3, effective July 1, 2012, see 2011 Acts, ch 121, §31, 62

Section not amended; footnote added

### **125.13 Programs licensed — exceptions.**

1. *a.* Except as provided in subsection 2, a person shall not maintain or conduct any chemical substitutes or antagonists program, residential program, or nonresidential outpatient program, the primary purpose of which is the treatment and rehabilitation of substance abusers or chronic substance abusers without having first obtained a written license for the program from the department.

*b.* Four types of licenses may be issued by the department. A renewable license may be issued for one, two, or three years. A treatment program applying for its initial license may be issued a license for two hundred seventy days. A license issued for two hundred seventy days shall not be renewed or extended.

2. The licensing requirements of this chapter do not apply to any of the following:

*a.* A hospital providing care or treatment to substance abusers or chronic substance abusers licensed under chapter 135B which is accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the board. All survey reports from the accrediting or licensing body must be sent to the department.

*b.* Any practitioner of medicine and surgery or osteopathic medicine and surgery, in the practitioner's private practice. However, a program shall not be exempted from licensing by the board by virtue of its utilization of the services of a medical practitioner in its operation.

*c.* Private institutions conducted by and for persons who adhere to the faith of any well recognized church or religious denomination for the purpose of providing care, treatment, counseling, or rehabilitation to substance abusers or chronic substance abusers and who rely solely on prayer or other spiritual means for healing in the practice of religion of such church or denomination.

*d.* A program that provides only education, prevention, referral or post treatment services.

*e.* Alcoholics anonymous.

*f.* Individuals in private practice who are providing substance abuse treatment services independent from a program that is required to be licensed under subsection 1.

*g.* Intervention and referral programs which are financed and managed by a county or counties, are staffed by county employees, and do not receive state payments pursuant to a contract under section 125.44.

*h.* Voluntary, nonprofit groups whose funding is provided solely from nontax sources.

*i.* A substance abuse treatment program not funded by the department which is accredited or licensed by the joint commission on the accreditation of health care organizations, the commission on the accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the board. All survey reports from the accrediting or licensing body must be sent to the department.

*j.* A hospital substance abuse treatment program that is accredited or licensed by the joint commission on the accreditation of health care organizations, the commission on the accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the board. All survey reports for the hospital

substance abuse treatment program from the accrediting or licensing body shall be sent to the department.

[C75, 77, §125.14, 224B.12, 224B.13; C79, 81, §125.13; 81 Acts, ch 58, §4 – 7; 82 Acts, ch 1244, §1, 2]

86 Acts, ch 1001, §4; 89 Acts, ch 243, §2; 90 Acts, ch 1085, §6, 7; 94 Acts, ch 1068, §1; 2002 Acts, ch 1108, §4, 5; 2005 Acts, ch 175, §66; 2009 Acts, ch 41, §263

For future amendments to this section, effective July 1, 2012, see 2011 Acts, ch 121, §32, 33, 62  
Section not amended; footnote added

### **125.15 Inspections.**

The department may inspect the facilities and review the procedures utilized by any chemical substitutes or antagonists program, residential program, or nonresidential outpatient program that has as a primary purpose the treatment and rehabilitation of substance abusers or chronic substance abusers, for the purpose of ensuring compliance with this chapter and the rules adopted pursuant to this chapter. The examination and review may include case record audits and interviews with staff and patients, consistent with the confidentiality safeguards of state and federal law.

[C75, 77, §224B.16; C79, 81, §125.15]

86 Acts, ch 1245, §1130; 2000 Acts, ch 1140, §20

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 121, §34, 62  
Section not amended; footnote added

### **125.32 Acceptance for treatment — rules.**

The department shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, subject to chapter 17A, considering available treatment resources and facilities, for the purpose of early and effective treatment of substance abusers, chronic substance abusers, intoxicated persons, and concerned family members. In establishing the rules the department shall be guided by the following standards:

1. If possible a patient shall be treated on a voluntary rather than an involuntary basis.
2. A patient shall be initially assigned or transferred to outpatient treatment, unless the patient is found to require inpatient, residential, or halfway house treatment.
3. A person shall not be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment.
4. An individualized treatment plan shall be prepared and maintained on a current basis for each patient after the assessment process.
5. Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and may utilize other appropriate treatment.

[C75, 77, §125.15; C79, 81, §125.32]

86 Acts, ch 1001, §6; 86 Acts, ch 1245, §1134; 90 Acts, ch 1085, §8

For future amendment to unnumbered paragraph 1, effective July 1, 2012, see 2011 Acts, ch 121, §35, 62  
Section not amended; footnote added

### **125.33 Voluntary treatment of substance abusers.**

1. A substance abuser or chronic substance abuser may apply for voluntary treatment or rehabilitation services directly to a facility or to a licensed physician and surgeon or osteopathic physician and surgeon. If the proposed patient is a minor or an incompetent person, a parent, a legal guardian or other legal representative may make the application. The licensed physician and surgeon or osteopathic physician and surgeon or any employee or person acting under the direction or supervision of the physician and surgeon or osteopathic physician and surgeon, or the facility shall not report or disclose the name of the person or the fact that treatment was requested or has been undertaken to any law enforcement officer or law enforcement agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. If the person seeking such treatment or rehabilitation is a minor who has personally made application for treatment, the fact that the minor sought treatment or rehabilitation or is receiving treatment or rehabilitation services shall not be reported or

disclosed to the parents or legal guardian of such minor without the minor's consent, and the minor may give legal consent to receive such treatment and rehabilitation.

2. Subject to rules adopted by the department, the administrator or the administrator's designee in charge of a facility may determine who shall be admitted for treatment or rehabilitation. If a person is refused admission, the administrator or the administrator's designee, subject to rules adopted by the department, shall refer the person to another facility for treatment if possible and appropriate.

3. A substance abuser or chronic substance abuser seeking treatment or rehabilitation and who is either addicted or dependent on a chemical substance may first be examined and evaluated by a licensed physician and surgeon or osteopathic physician and surgeon who may prescribe a proper course of treatment and medication, if needed. The licensed physician and surgeon or osteopathic physician and surgeon may further prescribe a course of treatment or rehabilitation and authorize another licensed physician and surgeon or osteopathic physician and surgeon or facility to provide the prescribed treatment or rehabilitation services. Treatment or rehabilitation services may be provided to a person individually or in a group. A facility providing or engaging in treatment or rehabilitation shall not report or disclose to a law enforcement officer or law enforcement agency the name of any person receiving or engaged in the treatment or rehabilitation; nor shall a person receiving or participating in treatment or rehabilitation report or disclose the name of any other person engaged in or receiving treatment or rehabilitation or that the program is in existence, to a law enforcement officer or law enforcement agency. Such information shall not be admitted in evidence in any court, grand jury, or administrative proceeding. However, a person engaged in or receiving treatment or rehabilitation may authorize the disclosure of the person's name and individual participation.

4. If a patient receiving inpatient or residential care leaves a facility, the patient shall be encouraged to consent to appropriate outpatient or halfway house treatment. If it appears to the administrator in charge of the facility that the patient is a substance abuser or chronic substance abuser who requires help, the director may arrange for assistance in obtaining supportive services.

5. If a patient leaves a facility, with or against the advice of the administrator in charge of the facility, the director may make reasonable provisions for the patient's transportation to another facility or to the patient's home. If the patient has no home the patient shall be assisted in obtaining shelter. If the patient is a minor or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian or other legal representative or by the minor or incompetent if the patient was the original applicant.

6. Any person who reports or discloses the name of a person receiving treatment or rehabilitation services to a law enforcement officer or law enforcement agency or any person receiving treatment or rehabilitation services who discloses the name of any other person receiving treatment or rehabilitation services without the written consent of the person in violation of the provisions of this section shall upon conviction be guilty of a simple misdemeanor.

[C71, 73, §224A.2, 224A.3; C75, 77, §125.16, 224A.2, 224A.3; C79, 81, §125.33]

86 Acts, ch 1001, §7; 86 Acts, ch 1245, §1135; 90 Acts, ch 1085, §9

For future amendments to subsections 1, 3, and 4, effective July 1, 2012, see 2011 Acts, ch 121, §36, 62

Section not amended; footnote added

### **125.34 Treatment and services for intoxicated persons and persons incapacitated by alcohol.**

1. An intoxicated person may come voluntarily to a facility for emergency treatment. A person who appears to be intoxicated or incapacitated by a chemical substance in a public place and in need of help may be taken to a facility by a peace officer under section 125.91. If the person refuses the proffered help, the person may be arrested and charged with intoxication under section 123.46, if applicable.

2. If no facility is readily available the person may be taken to an emergency medical service customarily used for incapacitated persons. The peace officer in detaining the person and in taking the person to a facility shall make every reasonable effort to protect the person's

health and safety. In detaining the person the detaining officer may take reasonable steps for self-protection. Detaining a person under section 125.91 is not an arrest and no entry or other record shall be made to indicate that the person who is detained has been arrested or charged with a crime.

3. A person who arrives at a facility and voluntarily submits to examination shall be examined by a licensed physician as soon as possible after the person arrives at the facility. The person may then be admitted as a patient or referred to another health facility. The referring facility shall arrange for transportation.

4. If a person is voluntarily admitted to a facility, the person's family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, the request shall be respected.

5. A peace officer who acts in compliance with this section is acting in the course of the officer's official duty and is not criminally or civilly liable therefor, unless such acts constitute willful malice or abuse.

6. If the physician in charge of the facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

7. A licensed physician and surgeon or osteopathic physician and surgeon, facility administrator, or an employee or a person acting as or on behalf of the facility administrator, is not criminally or civilly liable for acts in conformity with this chapter, unless the acts constitute willful malice or abuse.

[C75, 77, §125.17; C79, 81, §125.34; 82 Acts, ch 1212, §24]

86 Acts, ch 1001, §8

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 121, §37, 62  
Section not amended; footnote added

## DIVISION IV

### ADMINISTRATIVE PROVISIONS — FUNDING

#### **125.43 Funding at mental health institutes.**

Chapter 230 governs the determination of the costs and payment for treatment provided to substance abusers or chronic substance abusers in a mental health institute under the department of human services, except that the charges are not a lien on real estate owned by persons legally liable for support of the substance abuser or chronic substance abuser and the daily per diem shall be billed at twenty-five percent. The superintendent of a state hospital shall total only those expenditures which can be attributed to the cost of providing inpatient treatment to substance abusers or chronic substance abusers for purposes of determining the daily per diem. Section 125.44 governs the determination of who is legally liable for the cost of care, maintenance, and treatment of a substance abuser or chronic substance abuser and of the amount for which the person is liable.

[C75, 77, §125.26; C79, 81, §125.43]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1067, §21; 86 Acts, ch 1001, §10; 90 Acts, ch 1085, §10

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 121, §38, 62  
Section not amended; footnote added

#### **125.43A Prescreening — exception.**

Except in cases of medical emergency or court-ordered admissions, a person shall be admitted to a state mental health institute for substance abuse treatment only after a preliminary intake and assessment by a department-licensed treatment facility or a hospital providing care or treatment for substance abusers licensed under chapter 135B and accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the board, or by a designee of a department-licensed treatment facility or a hospital other than a state mental health institute, which confirms that the admission is appropriate to the person's substance abuse service needs. A county board of supervisors may seek an admission of a patient to a state mental

health institute who has not been confirmed for appropriate admission and the county shall be responsible for one hundred percent of the cost of treatment and services of the patient.

86 Acts, ch 1001, §11; 92 Acts, ch 1097, §1; 2005 Acts, ch 175, §74

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 121, §39, 62  
Section not amended; footnote added

#### **125.44 Agreements with facilities — liability for costs.**

The director may, consistent with the comprehensive substance abuse program, enter into written agreements with a facility as defined in section 125.2 to pay for one hundred percent of the cost of the care, maintenance, and treatment of substance abusers and chronic substance abusers, except when section 125.43A applies. All payments for state patients shall be made in accordance with the limitations of this section. Such contracts shall be for a period of no more than one year.

The contract may be in the form and contain provisions as agreed upon by the parties. The contract shall provide that the facility shall admit and treat substance abusers and chronic substance abusers regardless of where they have residence. If one payment for care, maintenance, and treatment is not made by the patient or those legally liable for the patient, the payment shall be made by the department directly to the facility. Payments shall be made each month and shall be based upon the rate of payment for services negotiated between the department and the contracting facility. If a facility projects a temporary cash flow deficit, the department may make cash advances at the beginning of each fiscal year to the facility. The repayment schedule for advances shall be part of the contract between the department and the facility. This section does not pertain to patients treated at the mental health institutes.

If the appropriation to the department is insufficient to meet the requirements of this section, the department shall request a transfer of funds and section 8.39 shall apply.

The substance abuser or chronic substance abuser is legally liable to the facility for the total amount of the cost of providing care, maintenance, and treatment for the substance abuser or chronic substance abuser while a voluntary or committed patient in a facility. This section does not prohibit any individual from paying any portion of the cost of treatment.

The department is liable for the cost of care, treatment, and maintenance of substance abusers and chronic substance abusers admitted to the facility voluntarily or pursuant to section 125.75, 125.81, or 125.91 or section 321J.3 or 124.409 only to those facilities that have a contract with the department under this section, only for the amount computed according to and within the limits of liability prescribed by this section, and only when the substance abuser or chronic substance abuser is unable to pay the costs and there is no other person, firm, corporation, or insurance company bound to pay the costs.

The department's maximum liability for the costs of care, treatment, and maintenance of substance abusers and chronic substance abusers in a contracting facility is limited to the total amount agreed upon by the parties and specified in the contract under this section.

[C71, 73, §123B.4, 123B.8; C75, 77, §125.27, 125.31; C79, §125.44, 125.48; C81, §125.44; 82 Acts, ch 1212, §25]

86 Acts, ch 1001, §12, 13; 86 Acts, ch 1220, §25; 86 Acts, ch 1245, §1137; 89 Acts, ch 243, §4, 5; 90 Acts, ch 1085, §11

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 121, §40, 62  
Section not amended; footnote added

#### **125.46 County of residence determined.**

The facility shall, when a substance abuser or chronic substance abuser is admitted, or as soon thereafter as it receives the proper information, determine and enter upon its records the Iowa county of residence of the substance abuser or chronic substance abuser, or that the person resides in some other state or country, or that the person is unclassified with respect to residence.

[C71, 73, §123B.6; C75, 77, §125.29; C79, 81, §125.46]

90 Acts, ch 1085, §12

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 121, §41, 62  
Section not amended; footnote added

**125.55 Audits.**

All licensed substance abuse programs are subject to annual audit either by the auditor of state or in lieu of an audit by the auditor of state the substance abuse program may contract with or employ certified public accountants to conduct the audit, in accordance with sections 11.6, 11.14, and 11.19. The audit format shall be as prescribed by the auditor of state. The certified public accountant shall submit a copy of the audit to the director. A licensed substance abuse program is also subject to special audits as the director requests. The licensed substance abuse program or the department shall pay all expenses incurred by the auditor of state in conducting an audit under this section.

[C79, 81, §125.55; 81 Acts, ch 58, §10; 82 Acts, ch 1166, §1]

89 Acts, ch 264, §5; 2011 Acts, ch 75, §35

Section amended

## DIVISION V

### INVOLUNTARY COMMITMENT OR TREATMENT OF CHRONIC SUBSTANCE ABUSERS

**125.75 Involuntary commitment or treatment — application.**

Proceedings for the involuntary commitment or treatment of a chronic substance abuser to a facility may be commenced by the county attorney or an interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located or which is the respondent's place of residence. The clerk or the clerk's designee shall assist the applicant in completing the application. The application shall:

1. State the applicant's belief that the respondent is a chronic substance abuser.
2. State any other pertinent facts.
3. Be accompanied by one or more of the following:
  - a. A written statement of a licensed physician in support of the application.
  - b. One or more supporting affidavits corroborating the application.
  - c. Corroborative information obtained and reduced to writing by the clerk or the clerk's designee, but only when circumstances make it infeasible to obtain, or when the clerk considers it appropriate to supplement, the information under either paragraph "a" or paragraph "b".

[C75, 77, §125.19(1, 2); C79, 81, §229.51; 82 Acts, ch 1212, §3]

90 Acts, ch 1085, §13

Summary of involuntary commitment procedures available from clerk; see §229.45

For future amendments to this section, effective July 1, 2012, see 2011 Acts, ch 121, §42, 43, 62  
Section not amended; footnote added

**125.80 Physician's examination — report — scheduling of hearing.**

1. *a.* An examination of the respondent shall be conducted within a reasonable time and prior to the commitment hearing by one or more licensed physicians as required by the court's order. If the respondent is taken into custody under section 125.81, the examination shall be conducted within twenty-four hours after the respondent is taken into custody. If the respondent desires, the respondent may have a separate examination by a licensed physician of the respondent's own choice. The court shall notify the respondent of the right to choose a physician for a separate examination. The reasonable cost of the examinations shall be paid from county funds upon order of the court if the respondent lacks sufficient funds to pay the cost.

*b.* A licensed physician conducting an examination pursuant to this section may consult with or request the participation in the examination of facility personnel, and may include with or attach to the written report of the examination any findings or observations by facility personnel who have been consulted or have participated in the examination.

*c.* If the respondent is not taken into custody under section 125.81, but the court is subsequently informed that the respondent has declined to be examined by a licensed

physician pursuant to the court order, the court may order limited detention of the respondent as necessary to facilitate the examination of the respondent by the licensed physician.

2. A written report of the examination by a court-designated physician shall be filed with the clerk prior to the hearing date. A written report of an examination by a physician chosen by the respondent may be similarly filed. The clerk shall immediately:

a. Cause a report to be shown to the judge who issued the order.

b. Cause the respondent's attorney to receive a copy of the report of a court-designated physician.

3. If the report of a court-designated physician is to the effect that the respondent is not a chronic substance abuser, the court, without taking further action, may terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of a court-designated physician is to the effect that the respondent is a chronic substance abuser, the court shall schedule a commitment hearing as soon as possible. The hearing shall be held not more than forty-eight hours after the report is filed, excluding Saturdays, Sundays, and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exist for delaying the hearing.

[C75, 77, §125.19(1 – 4); C79, 81, §229.51, 229.52(1, 2); 82 Acts, ch 1212, §8]

90 Acts, ch 1085, §14; 2009 Acts, ch 41, §263

For future amendments to subsections 3 and 4, effective July 1, 2012, see 2011 Acts, ch 121, §44, 62

Section not amended; footnote added

### **125.81 Immediate custody.**

1. If a person filing an application requests that a respondent be taken into immediate custody, and the court upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is a chronic substance abuser who is likely to injure the person or other persons if allowed to remain at liberty, the court may enter a written order directing that the respondent be taken into immediate custody by the sheriff, and be detained until the commitment hearing, which shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next business day. The court may order the respondent detained for the period of time until the hearing is held, and no longer except as provided in section 125.88, in accordance with subsection 2, paragraph "a", if possible, and if not, then in accordance with subsection 2, paragraph "b", or, only if neither of these alternatives is available in accordance with subsection 2, paragraph "c".

2. Detention may be:

a. In the custody of a relative, friend, or other suitable person who is willing and able to accept responsibility for supervision of the respondent, with reasonable restrictions as the court may order including but not limited to restrictions on or a prohibition of any expenditure, encumbrance, or disposition of the respondent's funds or property.

b. In a suitable hospital, the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered. The hospital may provide treatment which is necessary to preserve the respondent's life, or to appropriately control the respondent's behavior which is likely to result in physical injury to the person or to others if allowed to continue, and other treatment as deemed appropriate by the chief medical officer.

c. In the nearest facility which is licensed to care for persons with mental illness or substance abuse, provided that detention in a jail or other facility intended for confinement of those accused or convicted of a crime shall not be ordered.

3. The respondent's attorney may be allowed by the court to present evidence and arguments before the court's determination under this section. If such an opportunity is not provided at that time, respondent's attorney shall be allowed to present evidence and

arguments after the issuance of the court's order of confinement and while the respondent is confined.

[82 Acts, ch 1212, §9]

90 Acts, ch 1085, §15; 91 Acts, ch 108, §2; 92 Acts, ch 1072, §1; 92 Acts, ch 1165, §1; 2009 Acts, ch 41, §187

For future amendment to subsection 1, effective July 1, 2012, see 2011 Acts, ch 121, §45, 62  
Section not amended; footnote added

### **125.82 Commitment hearing.**

1. At a commitment hearing, evidence in support of the contentions made in the application may be presented by the applicant, or by an attorney for the applicant, or by the county attorney. During the hearing, the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of other interested persons. If the respondent is present at the hearing, as provided in subsection 3, and has been medicated within twelve hours, or a longer period of time as the court may designate, prior to the beginning of the hearing or a session of the hearing, the court shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

2. A person not necessary for the conduct of the hearing shall be excluded, except that the court may admit a person having a legitimate interest in the hearing. Upon motion of the applicant, the court may exclude the respondent from the hearing during the testimony of a witness if the court determines that the witness' testimony is likely to cause the respondent severe emotional trauma.

3. The person who filed the application and a licensed physician, mental health professional as defined in section 228.1, or certified alcohol and drug counselor certified by the nongovernmental Iowa board of substance abuse certification who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless the court for good cause finds that their presence or testimony is not necessary. The applicant, respondent, and the respondent's attorney may waive the presence or telephonic appearance of the licensed physician, mental health professional, or certified alcohol and drug counselor who examined the respondent and agree to submit as evidence the written report of the licensed physician, mental health professional, or certified alcohol and drug counselor. The respondent's attorney shall inform the court if the respondent's attorney reasonably believes that the respondent, due to diminished capacity, cannot make an adequately considered waiver decision. "Good cause" for finding that the testimony of the licensed physician, mental health professional, or certified alcohol and drug counselor who examined the respondent is not necessary may include, but is not limited to, such a waiver. If the court determines that the testimony of the licensed physician, mental health professional, or certified alcohol and drug counselor is necessary, the court may allow the licensed physician, mental health professional, or certified alcohol and drug counselor to testify by telephone. The respondent shall be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing that the attorney has conversed with the respondent, and that in the attorney's judgment the respondent cannot make a meaningful contribution to the hearing, or that the respondent has waived the right to be present, and the basis for the attorney's conclusions. A stipulation to the respondent's absence shall be reviewed by the court before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by the respondent's absence.

4. The respondent's welfare is paramount, and the hearing shall be tried as a civil matter and conducted in as informal a manner as is consistent with orderly procedure. Discovery as permitted under the Iowa rules of civil procedure is available to the respondent. The court shall receive all relevant and material evidence, but the court is not bound by the rules of evidence. A presumption in favor of the respondent exists, and the burden of evidence and support of the contentions made in the application shall be upon the person who filed the application. If upon completion of the hearing the court finds that the contention that the

respondent is a chronic substance abuser has not been sustained by clear and convincing evidence, the court shall deny the application and terminate the proceeding.

5. If the respondent is not taken into custody under section 125.81, but the court finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order limited detention of the respondent as authorized in section 125.81, as is necessary to ensure that the respondent will not depart from the jurisdiction of the court without the court's approval until the proceeding relative to the respondent has been concluded.

[C75, 77, §125.19(3-7, 10, 13); C79, 81, §229.52(1); 82 Acts, ch 1212, §10]

90 Acts, ch 1085, §16; 91 Acts, ch 108, §3; 2006 Acts, ch 1115, §1; 2006 Acts, ch 1116, §1; 2006 Acts, ch 1159, §30

For future amendment to subsection 4, effective July 1, 2012, see 2011 Acts, ch 121, §46, 62

Section not amended; footnote added

### **125.83 Placement for evaluation.**

If upon completion of the commitment hearing, the court finds that the contention that the respondent is a chronic substance abuser has been sustained by clear and convincing evidence, the court shall order the respondent placed at a facility or under the care of a suitable facility on an outpatient basis as expeditiously as possible for a complete evaluation and appropriate treatment. The court shall furnish to the facility at the time of admission or outpatient placement, a written statement of facts setting forth the evidence on which the finding is based. The administrator of the facility shall report to the court no more than fifteen days after the individual is admitted to or placed under the care of the facility, which shall include the chief medical officer's recommendation concerning substance abuse treatment. An extension of time may be granted for a period not to exceed seven days upon a showing of good cause. A copy of the report shall be sent to the respondent's attorney who may contest the need for an extension of time if one is requested. If the request is contested, the court shall make an inquiry as it deems appropriate and may either order the respondent released from the facility or grant extension of time for further evaluation. If the administrator fails to report to the court within fifteen days after the individual is admitted to the facility, and no extension of time has been requested, the administrator is guilty of contempt and shall be punished under chapter 665. The court shall order a rehearing on the application to determine whether the respondent should continue to be held at the facility.

[C75, 77, §125.19(4); C79, 81, §229.52(2); 82 Acts, ch 1212, §11]

90 Acts, ch 1020, §1; 90 Acts, ch 1085, §17

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 121, §47, 62

Section not amended; footnote added

### **125.83A Placement in certain federal facilities.**

1. If upon completion of the commitment hearing, the court finds that the contention that the respondent is a chronic substance abuser has been sustained by clear and convincing evidence, and the court is furnished evidence that the respondent is eligible for care and treatment in a facility operated by the United States department of veterans affairs or another agency of the United States government and that the facility is willing to receive the respondent, the court may so order. The respondent, when so placed in a facility operated by the United States department of veterans affairs or another agency of the United States government within or outside of this state, shall be subject to the rules of the United States department of veterans affairs or other agency, but shall not lose any procedural rights afforded the respondent by this chapter. The chief officer of the facility shall have, with respect to the respondent so placed, the same powers and duties as the chief medical officer of a hospital in this state would have in regard to submission of reports to the court, retention of custody, transfer, convalescent leave, or discharge. Jurisdiction is retained in the court to maintain surveillance of the respondent's treatment and care, and at any time to inquire into the respondent's condition and the need for continued care and custody.

2. Upon receipt of a certificate stating that a respondent placed under this chapter is eligible for care and treatment in a facility operated by the United States department of veterans affairs or another agency of the United States government which is willing to

receive the respondent without charge to the state of Iowa or any county in the state, the chief medical officer may transfer the respondent to that facility. Upon so doing, the chief medical officer shall notify the court which ordered the respondent's placement in the same manner as would be required in the case of a transfer under section 125.86, subsection 2, and the respondent transferred shall be entitled to the same rights as the respondent would have under that subsection. No respondent shall be transferred under this section who is confined pursuant to conviction of a public offense or whose placement was ordered upon contention of incompetence to stand trial by reason of mental illness, without prior approval of the court which ordered that respondent's placement.

3. A judgment or order of commitment by a court of competent jurisdiction of another state or the District of Columbia, under which any person is hospitalized or placed in a facility operated by the United States department of veterans affairs or another agency of the United States government, shall have the same force and effect with respect to that person while the person is in this state as the judgment or order would have if the person were in the jurisdiction of the court which issued it. That court shall be deemed to have retained jurisdiction of the person so placed for the purpose of inquiring into that person's condition and the need for continued care and custody, as do courts in this state under this section. Consent is given to the application of the law of the state or district in which the court is situated which issued the judgment or order as regards authority of the chief officer of any facility, operated in this state by the United States department of veterans affairs or another agency of the United States government, to retain custody, transfer, place on convalescent leave, or discharge the person so committed.

97 Acts, ch 159, §2; 2009 Acts, ch 26, §8

For future amendment to subsection 1, effective July 1, 2012, see 2011 Acts, ch 121, §48, 62  
Section not amended; footnote added

#### **125.84 Evaluation report.**

The facility administrator's report to the court of the chief medical officer's substance abuse evaluation of the respondent shall be made no later than the expiration of the time specified in section 125.83. At least two copies of the report shall be filed with the clerk, who shall distribute the copies in the manner described by section 125.80, subsection 2. The report shall state one of the four following alternative findings:

1. That the respondent does not, as of the date of the report, require further treatment for substance abuse. If the report so states, the court shall order the respondent's immediate release from involuntary commitment and terminate the proceedings.

2. That the respondent is a chronic substance abuser who is in need of full-time custody, care, and treatment in a facility, and is considered likely to benefit from treatment. If the report so states, the court shall enter an order which may require the respondent's continued placement and commitment to a facility for appropriate treatment.

3. That the respondent is a chronic substance abuser who is in need of treatment, but does not require full-time placement in a facility. If the report so states, the report shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis, and the court shall enter an order which may direct the respondent to submit to the recommended treatment. The order shall provide that if the respondent fails or refuses to submit to treatment, as directed by the court's order, the court may order that the respondent be taken into immediate custody as provided by section 125.81 and, following notice and hearing held in accordance with the procedures of sections 125.77 and 125.82, may order the respondent treated as a patient requiring full-time custody, care, and treatment as provided in subsection 2, and may order the respondent involuntarily committed to a facility.

4. That the respondent is a chronic substance abuser who is in need of treatment, but in the opinion of the chief medical officer is not responding to the treatment provided. If the report so states, the report shall include the facility administrator's recommendation for alternative placement, and the court shall enter an order which may direct the respondent's transfer to

the recommended placement or to another placement after consultation with respondent's attorney and the facility administrator who made the report under this subsection.

[82 Acts, ch 1212, §12]

90 Acts, ch 1020, §2; 90 Acts, ch 1085, §18

For future amendments to subsections 2, 3, and 4, effective July 1, 2012, see 2011 Acts, ch 121, §49, 62  
Section not amended; footnote added

### **125.91 Emergency detention.**

1. The procedure prescribed by this section shall only be used for an intoxicated person who has threatened, attempted, or inflicted physical self-harm or harm on another, and is likely to inflict physical self-harm or harm on another unless immediately detained, or who is incapacitated by a chemical substance, if that person cannot be taken into immediate custody under sections 125.75 and 125.81 because immediate access to the court is not possible.

2. *a.* A peace officer who has reasonable grounds to believe that the circumstances described in subsection 1 are applicable may, without a warrant, take or cause that person to be taken to the nearest available facility referred to in section 125.81, subsection 2, paragraph "b" or "c". Such an intoxicated or incapacitated person may also be delivered to a facility by someone other than a peace officer upon a showing of reasonable grounds. Upon delivery of the person to a facility under this section, the examining physician may order treatment of the person, but only to the extent necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue. The peace officer or other person who delivered the person to the facility shall describe the circumstances of the matter to the examining physician. If the person is a peace officer, the peace officer may do so either in person or by written report. If the examining physician has reasonable grounds to believe that the circumstances in subsection 1 are applicable, the examining physician shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. The magistrate shall, based upon the circumstances described by the examining physician, give the examining physician oral instructions either directing that the person be released forthwith, or authorizing the person's detention in an appropriate facility. The magistrate may also give oral instructions and order that the detained person be transported to an appropriate facility.

*b.* If the magistrate orders that the person be detained, the magistrate shall, by the close of business on the next working day, file a written order with the clerk in the county where it is anticipated that an application may be filed under section 125.75. The order may be filed by facsimile if necessary. The order shall state the circumstances under which the person was taken into custody or otherwise brought to a facility and the grounds supporting the finding of probable cause to believe that the person is a chronic substance abuser likely to result in physical injury to the person or others if not detained. The order shall confirm the oral order authorizing the person's detention including any order given to transport the person to an appropriate facility. The clerk shall provide a copy of that order to the chief medical officer of the facility to which the person was originally taken, any subsequent facility to which the person was transported, and to any law enforcement department or ambulance service that transported the person pursuant to the magistrate's order.

3. The chief medical officer of the facility shall examine and may detain the person pursuant to the magistrate's order for a period not to exceed forty-eight hours from the time the order is dated, excluding Saturdays, Sundays, and holidays, unless the order is dismissed by a magistrate. The facility may provide treatment which is necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue or is otherwise deemed medically necessary by the chief medical officer, but shall not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility and released from detention no later than the expiration of the forty-eight-hour period, unless an application for involuntary commitment is filed with the clerk pursuant to section 125.75. The detention of a person by the procedure in this section, and not in excess of the period of time prescribed by this section, shall not render the peace officer, physician,

or facility detaining the person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, or facility had reasonable grounds to believe that the circumstances described in subsection 1 were applicable.

4. The cost of detention in a facility under the procedure prescribed in this section shall be paid in the same way as if the person had been committed to the facility pursuant to an application filed under section 125.75.

[C75, 77, §125.17, 125.18; C79, 81, §125.34(4), 125.35; 82 Acts, ch 1212, §19]

90 Acts, ch 1085, §19; 2003 Acts, ch 68, §1, 2; 2009 Acts, ch 41, §188

For future amendments to subsections 1, 2, and 3, effective July 1, 2012, see 2011 Acts, ch 121, §50, 62

Section not amended; footnote added

## CHAPTER 135

### DEPARTMENT OF PUBLIC HEALTH

Plumbing and mechanical systems board  
within the department of public health;  
see chapter 105

#### DIVISION I

#### GENERAL PROVISIONS

##### **135.11 Duties of department.**

The director of public health shall be the head of the “Iowa Department of Public Health”, which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, prevent substance abuse and unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the state hygienic laboratory at the state university of Iowa.

5. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distributed shall be labeled “Iowa Department of Public Health”.

6. Exercise general supervision over the administration and enforcement of the sexually transmitted diseases and infections law, chapter 139A, subchapter II.

7. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation. However, the department may approve a request for an exception to the application of specific embalming and disposition rules adopted pursuant to this subsection if such rules would otherwise conflict with tenets and practices of a recognized religious denomination to which the deceased individual adhered or of which denomination the deceased individual was a member. The department shall inform the board of mortuary science of any such approved exception which may affect services provided by a funeral director licensed pursuant to chapter 156.

8. Establish, publish, and enforce rules which require companies, corporations, and other entities to obtain a permit from the department prior to scattering cremated human remains.

9. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.

10. Enforce the law relative to chapter 146 and “Health-related Professions”, Title IV, subtitle 3, excluding chapter 155.

11. Establish and maintain divisions as are necessary for the proper enforcement of the laws administered by the department.

12. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of chapters 125 and 155, and Title IV, subtitle 2, excluding chapter 146 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

13. Administer healthy aging and essential public health services by approving grants of state funds to the local boards of health for the purposes of promoting healthy aging throughout the lifespan and enhancing health promotion and disease prevention services, and by providing guidelines for the approval of the grants and allocation of the state funds. Guidelines, evaluation requirements and formula allocation procedures for the services shall be established by the department by rule.

14. Administer chapters 125, 136A, 136C, 139A, 142, 142A, 144, and 147A.

15. Issue an annual report to the governor as provided in section 7E.3, subsection 4.

16. Consult with the office of statewide clinical education programs at the university of Iowa college of medicine and annually submit a report to the general assembly by January 15 verifying the number of physicians in active practice in Iowa by county who are engaged in providing obstetrical care. To the extent data are readily available, the report shall include information concerning the number of deliveries per year by specialty and county, the age of physicians performing deliveries, and the number of current year graduates of the university of Iowa college of medicine and the Des Moines university — osteopathic medical center entering into residency programs in obstetrics, gynecology, and family practice. The report may include additional data relating to access to obstetrical services that may be available.

17. Administer the statewide maternal and child health program and the program for children with disabilities by conducting mobile and regional child health specialty clinics and conducting other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential conditions which may cause disabilities and children with chronic illnesses in accordance with the requirements of Tit. V of the federal Social Security Act. The department shall provide technical assistance to encourage the coordination and collaboration of state agencies in developing outreach centers which provide publicly supported services for pregnant women, infants, and children. The department shall also, through cooperation and collaborative agreements with the department of human services and the mobile and regional child health specialty clinics, establish common intake proceedings for maternal and child health services. The department shall work in cooperation with the legislative services agency in monitoring the effectiveness of the maternal and child health centers, including the provision of transportation for patient appointments and the keeping of scheduled appointments.

18. Establish, publish, and enforce rules requiring prompt reporting of methemoglobinemia, pesticide poisoning, and the reportable poisonings and illnesses established pursuant to section 139A.21.

19. Collect and maintain reports of pesticide poisonings and other poisonings, illnesses, or injuries caused by selected chemical or physical agents, including methemoglobinemia and pesticide and fertilizer hypersensitivity; and compile and publish, annually, a statewide and county-by-county profile based on the reports.

20. Adopt rules which require personnel of a licensed hospice, of a homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or of an agency which provides respite care services and receives funds to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions through a program approved by the department. The rules shall require that new employees complete the training within six months of initial employment and existing employees complete the training on or before January 1, 1989.

21. Adopt rules which require all emergency medical services personnel, firefighters, and law enforcement personnel to complete a minimum of two hours of training concerning

acquired immune deficiency syndrome-related conditions and the prevention of human immunodeficiency virus infection.

22. Adopt rules which provide for the testing of a convicted or alleged offender for the human immunodeficiency virus pursuant to sections 915.40 through 915.43. The rules shall provide for the provision of counseling, health care, and support services to the victim.

23. Establish ad hoc and advisory committees to the director in areas where technical expertise is not otherwise readily available. Members may be compensated for their actual and necessary expenses incurred in the performance of their duties. To encourage health consumer participation, public members may also receive a per diem as specified in section 7E.6 if funds are available and the per diem is determined to be appropriate by the director. Expense moneys paid to the members shall be paid from funds appropriated to the department. A majority of the members of such a committee constitutes a quorum.

24. Establish an abuse education review panel for review and approval of mandatory reporter training curricula for those persons who work in a position classification that under law makes the persons mandatory reporters of child or dependent adult abuse and the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board.

25. Establish and administer a substance abuse treatment facility pursuant to section 135.130.

26. Administer annual grants to county boards of health for the purpose of conducting programs for the testing of private water supply wells, the closing of abandoned private water supply wells, and the renovation or rehabilitation of private water supply wells. Grants shall be funded through moneys transferred to the department from the agriculture management account of the groundwater protection fund pursuant to section 455E.11, subsection 2, paragraph "b", subparagraph (3), subparagraph division (b). The department shall adopt rules relating to the awarding of the grants.

27. Establish and administer, if sufficient funds are available to the department, a program to assess and forecast health workforce supply and demand in the state for the purpose of identifying current and projected workforce needs. The program may collect, analyze, and report data that furthers the purpose of the program. The program shall not release information that permits identification of individual respondents of program surveys.

28. In consultation with the advisory committee for perinatal guidelines, develop and maintain the statewide perinatal program based on the recommendations of the American academy of pediatrics and the American college of obstetricians and gynecologists contained in the most recent edition of the guidelines for perinatal care, and shall adopt rules in accordance with chapter 17A to implement those recommendations. Hospitals within the state shall determine whether to participate in the statewide perinatal program, and select the hospital's level of participation in the program. A hospital having determined to participate in the program shall comply with the guidelines appropriate to the level of participation selected by the hospital. Perinatal program surveys and reports are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the affected hospital, and are not admissible in evidence in a judicial or administrative proceeding other than a proceeding involving verification of the participating hospital under this subsection.

29. In consultation with the department of corrections, the antibiotic resistance task force, and the American federation of state, county and municipal employees, develop educational programs to increase awareness and utilization of infection control practices in institutions listed in section 904.102.

30. Administer the Iowa youth survey, in collaboration with other state agencies, as appropriate, every two years to students in grades six, eight, and eleven in Iowa's public and nonpublic schools. Survey data shall be evaluated and reported, with aggregate data available online at the Iowa youth survey internet site.

1. [C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.11(1)]

2, 3. [C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.11(2, 3)]

4. [C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.11(4)]

5, 6. [C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(8, 9); C73, 75, 77, 79, 81, §135.11(7, 8)]

7. [S13, §2572-a, -b, -c; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(11); C73, §135.11(10); C75, 77, 79, 81, §135.11(9)]

8. [C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(12); C73, §135.11(11); C75, 77, 79, 81, §135.11(10)]

9. [S13, §2575-a42; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(13); C73, §135.11(12); C75, 77, 79, 81, §135.11(11)]

10. [C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(14); C73, §135.11(13); C75, 77, 79, 81, §135.11(12)]

11, 12. [C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(15, 16); C73, §135.11(14, 15); C75, 77, 79, 81, §135.11(13, 14)]

13. [C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(17); C73, §135.11(16); C75, 77, 79, 81, §135.11(15)]

14. [C75, 77, 79, 81, §135.11(16)]

15. [82 Acts, ch 1260, §55]

83 Acts, ch 27, §7; 86 Acts, ch 1245, §1104; 87 Acts, ch 8, §2; 87 Acts, ch 115, §22; 87 Acts, ch 225, §202; 88 Acts, ch 1224, §12; 89 Acts, ch 304, §103; 90 Acts, ch 1259, §10; 91 Acts, ch 258, §29; 93 Acts, ch 140, §4; 94 Acts, ch 1023, §11; 94 Acts, ch 1132, §9; 96 Acts, ch 1036, §2; 96 Acts, ch 1128, §1; 96 Acts, ch 1129, §23; 97 Acts, ch 23, §13; 97 Acts, ch 197, §1; 98 Acts, ch 1053, §1; 98 Acts, ch 1087, §1; 98 Acts, ch 1090, §60, 84; 98 Acts, ch 1221, §12; 99 Acts, ch 141, §2; 2000 Acts, ch 1058, §14; 2000 Acts, ch 1066, §37; 2000 Acts, ch 1223, §18; 2001 Acts, ch 58, §3; 2001 Acts, ch 122, §1; 2001 Acts, ch 184, §6; 2001 Acts, 2nd Ex, ch 1, §25, 28; 2002 Acts, ch 1108, §7; 2003 Acts, ch 33, §8, 11; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 44, §36; 2004 Acts, ch 1167, §1; 2005 Acts, ch 89, §2, 3; 2007 Acts, ch 10, §18; 2007 Acts, ch 159, §17; 2008 Acts, ch 1058, §1, 2, 15; 2008 Acts, ch 1084, §11; 2008 Acts, ch 1088, §83; 2008 Acts, ch 1180, §20; 2009 Acts, ch 41, §263; 2009 Acts, ch 151, §30; 2010 Acts, ch 1088, §4 – 6; 2011 Acts, ch 63, §33

Laboratory tests, §263.7, 263.8

Establishment of state poison control center; 2000 Acts, ch 1221, §1

Subsection 13 amended

**135.27A Governor's council on physical fitness and nutrition.** Repealed by 2011 Acts, ch 129, § 94, 156.

## DIVISION VI

### HEALTH FACILITIES COUNCIL

**135.80 Mental health professional shortage area program.** Transferred to § 135.180; 2011 Acts, ch 25, §80.

## DIVISION IX

### HEALTHY FAMILIES PROGRAM

#### **135.106 Healthy families programs — HOPES-HFI program.**

1. The Iowa department of public health shall establish a healthy opportunities for parents to experience success (HOPES) – healthy families Iowa (HFI) program to provide services to families and children during the prenatal through preschool years. The program shall be designed to do all of the following:

- a. Promote optimal child health and development.
- b. Improve family coping skills and functioning.

- c. Promote positive parenting skills and intrafamilial interaction.
  - d. Prevent child abuse and neglect and infant mortality and morbidity.
2. The HOPES-HFI program shall be developed by the Iowa department of public health, and may be implemented, in whole or in part, by contracting with a nonprofit child abuse prevention organization, local nonprofit certified home health program or other local nonprofit organizations, and shall include, but is not limited to, all of the following components:
    - a. Identification of barriers to positive birth outcomes, encouragement of collaboration and cooperation among providers of health care, social and human services, and other services to pregnant women and infants, and encouragement of pregnant women and women of childbearing age to seek health care and other services which promote positive birth outcomes.
    - b. Provision of community-based home-visiting family support to pregnant women and new parents who are identified through a standardized screening process to be at high risk for problems with successfully parenting their child.
    - c. Provision by family support workers of individual guidance, information, and access to health care and other services through care coordination and community outreach, including transportation.
    - d. Provision of systematic screening, prenatally or upon the birth of a child, to identify high-risk families.
    - e. Interviewing by a HOPES-HFI program worker or hospital social worker of families identified as high risk and encouragement of acceptance of family support services.
    - f. Provision of services including, but not limited to, home visits, support services, and instruction in child care and development.
    - g. Individualization of the intensity and scope of services based upon the family's needs, goals, and level of risk.
    - h. Assistance by a family support worker to participating families in creating a link to a "medical home" in order to promote preventive health care.
    - i. Evaluation and reporting on the program, including an evaluation of the program's success in reducing participants' risk factors and provision of services and recommendations for changes in or expansion of the program.
    - j. Provision of continuous follow-up contact with a family served by the program until identified children reach age three or age four in cases of continued high need or until the family attains its individualized goals for health, functioning, and self-sufficiency.
    - k. Provision or employment of family support workers who have experience as a parent, knowledge of health care services, social and human services, or related community services and have participated in a structured training program.
    - l. Provision of a training program that meets established standards for the education of family support workers. The structured training program shall include at a minimum the fundamentals of child health and development, dynamics of child abuse and neglect, and principles of effective parenting and parenting education.
    - m. Provision of crisis child care through utilization of existing child care services to participants in the program.
    - n. Program criteria shall include a required match of one dollar provided by the organization contracting to deliver services for each two dollars provided by the state grant. This requirement shall not restrict the department from providing unmatched grant funds to communities to plan new or expanded programs for HOPES-HFI. The department shall establish a limit on the amount of administrative costs that can be supported with state funds.
    - o. Involvement with the community assessment and planning process in the community served by HOPES-HFI programs to enhance collaboration and integration of family support programs.
    - p. Collaboration, to the greatest extent possible, with other family support programs funded or operated by the state.
    - q. Utilization of private party, third party, and medical assistance for reimbursement to defray the costs of services provided by the program to the extent possible.
3. It is the intent of the general assembly to provide communities with the discretion

and authority to redesign existing local programs and services targeted at and assisting families expecting babies and families with children who are newborn through five years of age. The Iowa department of public health, department of human services, department of education, and other state agencies and programs, as appropriate, shall provide technical assistance and support to communities desiring to redesign their local programs and shall facilitate the consolidation of existing state funding appropriated and made available to the community for family support services. Funds which are consolidated in accordance with this subsection shall be used to support the redesigned service delivery system. In redesigning services, communities are encouraged to implement a single uniform family risk assessment mechanism and shall demonstrate the potential for improved outcomes for children and families. Requests by local communities for the redesigning of services shall be submitted to the Iowa department of public health, department of human services, and department of education, and are subject to the approval of the early childhood Iowa state board in consultation with the departments, based on the practices utilized with early childhood Iowa areas under chapter 256I.

4. It is the intent of the general assembly that priority for home visitation funding be given to approaches using evidence-based or promising models for home visitation.

92 Acts, 2nd Ex, ch 1001, §419; 97 Acts, ch 138, §1; 98 Acts, ch 1206, §10; 2004 Acts, ch 1086, §35; 2006 Acts, ch 1157, §15; 2010 Acts, ch 1031, §290; 2011 Acts, ch 129, §84, 156

NEW subsection 4

## DIVISION XVII

### DISASTER PREPAREDNESS

#### **135.143 Public health response teams.**

1. The department shall approve public health response teams to supplement and support disrupted or overburdened local medical and public health personnel, hospitals, and resources. Assistance shall be rendered under the following circumstances:

a. At or near the site of a disaster or threatened disaster by providing direct medical care to victims or providing other support services.

b. If local medical or public health personnel or hospitals request the assistance of a public health response team to provide direct medical care to victims or to provide other support services in relation to any of the following incidents:

(1) During an incident resulting from a novel or previously controlled or eradicated infectious agent, disease, or biological toxin.

(2) After a chemical attack or accidental chemical release.

(3) After an intentional or accidental release of radioactive material.

(4) In response to a nuclear or radiological attack or accident.

(5) Where an incident poses a high probability of a large number of deaths or long-term disabilities in the affected population.

(6) During or after a natural occurrence or incident, including but not limited to fire, flood, storm, drought, earthquake, tornado, or windstorm.

(7) During or after a man-made occurrence or incident, including but not limited to an attack, spill, or explosion.

2. The department shall provide by rule a process for registration and approval of public health response team members and sponsor entities and shall authorize specific public health response teams, which may include but are not limited to disaster assistance teams and environmental health response teams. The department may expedite the registration and approval process during a disaster, threatened disaster, or other incident described in subsection 1.

3. A member of a public health response team acting pursuant to this division of this chapter shall be considered an employee of the state under section 29C.21 and chapter 669, shall be afforded protection as an employee of the state under section 669.21, and shall be

considered an employee of the state for purposes of workers' compensation, disability, and death benefits, provided that the member has done all of the following:

a. Registered with and received approval to serve on a public health response team from the department.

b. Provided direct medical care or other support services during a disaster, threatened disaster, or other incident described in subsection 1; or participated in a training exercise to prepare for a disaster or other incident described in subsection 1.

4. The department shall provide the department of administrative services with a list of individuals who have registered with and received approval from the department to serve on a public health response team. The department shall update the list on a quarterly basis, or as necessary for the department of administrative services to determine eligibility for coverage.

5. Upon notification of a compensable loss, the department of administrative services shall seek authorization from the executive council to pay as an expense from the appropriations addressed in section 7D.29 those costs associated with covered workers' compensation benefits.

2003 Acts, ch 33, §4, 11; 2003 Acts, ch 145, §286; 2005 Acts, ch 89, §9; 2009 Acts, ch 37, §7, 8; 2011 Acts, ch 131, §25, 158

Subsection 5 amended

#### **135.144 Additional duties of the department related to a public health disaster.**

If a public health disaster exists, the department, in conjunction with the governor, may do any of the following:

1. Decontaminate or cause to be decontaminated, to the extent reasonable and necessary to address the public health disaster, any facility or material if there is cause to believe the contaminated facility or material may endanger the public health.

2. Adopt and enforce measures to provide for the identification and safe disposal of human remains, including performance of postmortem examinations, transportation, embalming, burial, cremation, interment, disinterment, and other disposal of human remains. To the extent possible, religious, cultural, family, and individual beliefs of the deceased person or the deceased person's family shall be considered when disposing of any human remains.

3. Take reasonable measures as necessary to prevent the transmission of infectious disease and to ensure that all cases of communicable disease are properly identified, controlled, and treated.

4. Take reasonable measures as necessary to ensure that all cases of chemical, biological, and radiological contamination are properly identified, controlled, and treated.

5. Order physical examinations and tests and collect specimens as necessary for the diagnosis or treatment of individuals, to be performed by any qualified person authorized to do so by the department. An examination or test shall not be performed or ordered if the examination or test is reasonably likely to lead to serious harm to the affected individual. The department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any individual whose refusal of medical examination or testing results in uncertainty regarding whether the individual has been exposed to or is infected with a communicable or potentially communicable disease or otherwise poses a danger to public health.

6. Vaccinate or order that individuals be vaccinated against an infectious disease and to prevent the spread of communicable or potentially communicable disease. Vaccinations shall be administered by any qualified person authorized to do so by the department. The vaccination shall not be provided or ordered if it is reasonably likely to lead to serious harm to the affected individual. To prevent the spread of communicable or potentially communicable disease, the department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any person who is unable or unwilling to undergo vaccination pursuant to this subsection.

7. Treat or order that individuals exposed to or infected with disease receive treatment or prophylaxis. Treatment or prophylaxis shall be administered by any qualified person authorized to do so by the department. Treatment or prophylaxis shall not be provided or ordered if the treatment or prophylaxis is reasonably likely to lead to serious harm to the

affected individual. To prevent the spread of communicable or potentially communicable disease, the department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any individual who is unable or unwilling to undergo treatment or prophylaxis pursuant to this section.

8. Isolate or quarantine individuals or groups of individuals pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter.

9. Inform the public when a public health disaster has been declared or terminated, about protective measures to take during the disaster, and about actions being taken to control the disaster.

10. Accept grants and loans from the federal government pursuant to section 29C.6 or available provisions of federal law.

11. If a public health disaster or other public health emergency situation exists which poses an imminent threat to the public health, safety, and welfare, the department, in conjunction with the governor, may provide financial assistance, from funds appropriated to the department that are not otherwise encumbered, to political subdivisions as needed to alleviate the disaster or the emergency. If the department does not have sufficient unencumbered funds, the governor may request the executive council to authorize the payment of up to one million dollars as an expense from the appropriations addressed in section 7D.29 to alleviate the disaster or the emergency. If additional financial assistance is required in excess of one million dollars, approval by the legislative council is also required.

12. Temporarily reassign department employees for purposes of response and recovery efforts, to the extent such employees consent to the reassignments.

13. Order, in conjunction with the department of education, temporary closure of any public school or nonpublic school, as defined in section 280.2, to prevent or control the transmission of a communicable disease as defined in section 139A.2.

2003 Acts, ch 33, §5, 11; 2003 Acts, ch 179, §65; 2004 Acts, ch 1097, §1; 2005 Acts, ch 19, §32; 2009 Acts, ch 37, §9; 2010 Acts, ch 1088, §1; 2011 Acts, ch 131, §26, 158

Subsection 11 amended

## DIVISION XVIII

### GAMBLING TREATMENT PROGRAM

#### **135.150 Gambling treatment program — standards and licensing.**

1. *a.* The department shall operate a gambling treatment program to provide programs which may include but are not limited to outpatient and follow-up treatment for persons affected by problem gambling, rehabilitation and residential treatment programs, information and referral services, crisis call access, education and preventive services, and financial management and credit counseling services.

*b.* A person shall not maintain or conduct a gambling treatment program funded through the department unless the person has obtained a license for the program from the department. The department shall adopt rules to establish standards for the licensing and operation of gambling treatment programs under this section. The rules shall specify, but are not limited to specifying, the qualifications for persons providing gambling treatment services, standards for the organization and administration of gambling treatment programs, and a mechanism to monitor compliance with this section and the rules adopted under this section.

2. The department shall report semiannually to the general assembly's standing committees on government oversight regarding the operation of the gambling treatment program. The report shall include but is not limited to information on the moneys expended and grants awarded for operation of the gambling treatment program.

2004 Acts, ch 1136, §55; 2005 Acts, ch 175, §77; 2009 Acts, ch 182, §106; 2010 Acts, ch 1069, §15

Department of public health to continue to implement a process for creation of a system for uniform delivery of gambling and substance abuse treatment services; 2008 Acts, ch 1187, §3; 2009 Acts, ch 182, §2; 2010 Acts, ch 1192, §2; 2011 Acts, ch 123, §13, 16; 2011 Acts, ch 129, §2, 114, 156

Section not amended; footnote revised

DIVISION XX  
COLLABORATIVE SAFETY NET  
PROVIDER NETWORK

**135.153 Iowa collaborative safety net provider network established.**

1. The department shall establish an Iowa collaborative safety net provider network that includes community health centers, rural health clinics, free clinics, maternal and child health centers, the expansion population provider network as described in chapter 249J, local boards of health that provide direct services, Iowa family planning network agencies, child health specialty clinics, and other safety net providers. The network shall be a continuation of the network established pursuant to 2005 Iowa Acts, ch. 175, section 2, subsection 12. The network shall include all of the following:

a. An Iowa safety net provider advisory group consisting of representatives of community health centers, rural health clinics, free clinics, maternal and child health centers, the expansion population provider network as described in chapter 249J, local boards of health that provide direct services, Iowa family planning network agencies, child health specialty clinics, other safety net providers, patients, and other interested parties.

b. A planning process to logically and systematically implement the Iowa collaborative safety net provider network.

c. A database of all community health centers, rural health clinics, free clinics, maternal and child health centers, the expansion population provider network as described in chapter 249J, local boards of health that provide direct services, Iowa family planning network agencies, child health specialty clinics, and other safety net providers. The data collected shall include the demographics and needs of the vulnerable populations served, current provider capacity, and the resources and needs of the participating safety net providers.

d. Network initiatives to, at a minimum, improve quality, improve efficiency, reduce errors, and provide clinical communication between providers. The network initiatives shall include but are not limited to activities that address all of the following:

- (1) Training.
- (2) Information technology.
- (3) Financial resource development.
- (4) A referral system for ambulatory care.
- (5) A referral system for specialty care.
- (6) Pharmaceuticals.
- (7) Recruitment of health professionals.

2. The network shall form a governing group which includes two individuals each representing community health centers, rural health clinics, free clinics, maternal and child health centers, the expansion population provider network as described in chapter 249J, local boards of health that provide direct services, the state board of health, Iowa family planning network agencies, child health specialty clinics, and other safety net providers.

3. The department shall provide for evaluation of the network and its impact on the medically underserved.

**2007 Acts, ch 218, §103**

Development and continuation of pharmaceutical infrastructure for safety net providers and implementation of specialty care initiative in two communities; 2007 Acts, ch 218, §97, 108, 109; 2008 Acts, ch 1187, §62; 2009 Acts, ch 182, §60; 2010 Acts, ch 1192, §2; 2011 Acts, ch 129, §2, 114, 156

Development of plan for coordination of care for individuals with diabetes who receive care from safety net providers; 2010 Acts, ch 1134, §4

Section not amended; footnote revised

DIVISION XXI  
IOWA HEALTH INFORMATION  
TECHNOLOGY SYSTEM

**135.156 Electronic health information — department duties — advisory council — executive committee.**

1. *a.* The department shall direct a public and private collaborative effort to promote the adoption and use of health information technology in this state in order to improve health care quality, increase patient safety, reduce health care costs, enhance public health, and empower individuals and health care professionals with comprehensive, real-time medical information to provide continuity of care and make the best health care decisions. The department shall provide coordination for the development and implementation of an interoperable electronic health records system, telehealth expansion efforts, the health information technology infrastructure, and other health information technology initiatives in this state. The department shall be guided by the principles and goals specified in section 135.155.

*b.* All health information technology efforts shall endeavor to represent the interests and meet the needs of consumers and the health care sector, protect the privacy of individuals and the confidentiality of individuals' information, promote physician best practices, and make information easily accessible to the appropriate parties. The system developed shall be consumer-driven, flexible, and expandable.

2. *a.* An electronic health information advisory council is established which shall consist of the representatives of entities involved in the electronic health records system task force established pursuant to section 217.41A, Code 2007, a pharmacist, a licensed practicing physician, a consumer who is a member of the state board of health, a representative of the state's Medicare quality improvement organization, the executive director of the Iowa communications network, a representative of the private telecommunications industry, a representative of the Iowa collaborative safety net provider network created in section 135.153, a nurse informaticist from the university of Iowa, and any other members the department or executive committee of the advisory council determines necessary and appoints to assist the department or executive committee at various stages of development of the electronic health information system. Executive branch agencies shall also be included as necessary to assist in the duties of the department and the executive committee. Public members of the advisory council shall receive reimbursement for actual expenses incurred while serving in their official capacity only if they are not eligible for reimbursement by the organization that they represent. Any legislative members shall be paid the per diem and expenses specified in section 2.10.

*b.* An executive committee of the electronic health information advisory council is established. Members of the executive committee of the advisory council shall receive reimbursement for actual expenses incurred while serving in their official capacity only if they are not eligible for reimbursement by the organization that they represent. The executive committee shall consist of the following members:

(1) Three members, each of whom is the chief information officer of one of the three largest private health care systems in the state.

(2) One member who is the chief information officer of the university of Iowa hospitals and clinics, or the chief information officer's designee, selected by the director of the university of Iowa hospitals and clinics.

(3) One member who is a representative of a rural hospital which is a member of the Iowa hospital association, selected by the Iowa hospital association.

(4) One member who is a consumer member of the state board of health, selected by the state board of health.

(5) One member who is a licensed practicing physician, selected by the Iowa medical society.

(6) One member who is licensed to practice nursing, selected by the Iowa nurses association.

(7) One representative of an insurance carrier, selected by the federation of Iowa insurers.

3. The executive committee, with the technical assistance of the advisory council and the support of the department, shall do all of the following:

a. Develop a statewide health information technology plan by July 1, 2009. In developing the plan, the executive committee shall seek the input of providers, payers, and consumers. Standards and policies developed for the plan shall promote and be consistent with national standards developed by the office of the national coordinator for health information technology of the United States department of health and human services and shall address or provide for all of the following:

(1) The effective, efficient, statewide use of electronic health information in patient care, health care policymaking, clinical research, health care financing, and continuous quality improvement. The executive committee shall recommend requirements for interoperable electronic health records in this state including a recognized interoperability standard.

(2) Education of the public and health care sector about the value of health information technology in improving patient care, and methods to promote increased support and collaboration of state and local public health agencies, health care professionals, and consumers in health information technology initiatives.

(3) Standards for the exchange of health care information.

(4) Policies relating to the protection of privacy of patients and the security and confidentiality of patient information.

(5) Policies relating to information ownership.

(6) Policies relating to governance of the various facets of the health information technology system.

(7) A single patient identifier or alternative mechanism to share secure patient information. If no alternative mechanism is acceptable to the executive committee, all health care professionals shall utilize the mechanism selected by the executive committee by July 1, 2010.

(8) A standard continuity of care record and other issues related to the content of electronic transmissions. All health care professionals shall utilize the standard continuity of care record by July 1, 2010.

(9) Requirements for electronic prescribing.

(10) Economic incentives and support to facilitate participation in an interoperable system by health care professionals.

b. Identify existing and potential health information technology efforts in this state, regionally, and nationally, and integrate existing efforts to avoid incompatibility between efforts and avoid duplication.

c. Coordinate public and private efforts to provide the network backbone infrastructure for the health information technology system. In coordinating these efforts, the executive committee shall do all of the following:

(1) Develop policies to effectuate the logical cost-effective usage of and access to the state-owned network, and support of telecommunication carrier products, where applicable.

(2) Consult with the Iowa communications network, private fiberoptic networks, and any other communications entity to seek collaboration, avoid duplication, and leverage opportunities in developing a network backbone.

(3) Establish protocols to ensure compliance with any applicable federal standards.

(4) Determine costs for accessing the network at a level that provides sufficient funding for the network.

d. Promote the use of telemedicine.

(1) Examine existing barriers to the use of telemedicine and make recommendations for eliminating these barriers.

(2) Examine the most efficient and effective systems of technology for use and make recommendations based on the findings.

e. Address the workforce needs generated by increased use of health information technology.

f. Recommend rules to be adopted in accordance with chapter 17A to implement all aspects of the statewide health information technology plan and the network.

g. Coordinate, monitor, and evaluate the adoption, use, interoperability, and efficiencies of the various facets of health information technology in this state.

h. Seek and apply for any federal or private funding to assist in the implementation and support of the health information technology system and make recommendations for funding mechanisms for the ongoing development and maintenance costs of the health information technology system.

i. Identify state laws and rules that present barriers to the development of the health information technology system and recommend any changes to the governor and the general assembly.

4. Recommendations and other activities resulting from the work of the department or the executive committee shall be presented to the board for action or implementation.

2008 Acts, ch 1188, §25

Health information technology system business model and financial sustainability plan; legal standards and policy provisions for pilot project administered during fiscal year beginning July 1, 2011; 2011 Acts, ch 129, §111, 112

Section not amended; footnote added

## DIVISION XXII

### MEDICAL HOME

#### **135.159 Medical home system — advisory council — development and implementation.**

1. The department shall administer the medical home system. The department shall adopt rules pursuant to chapter 17A necessary to administer the medical home system.

2. a. The department shall establish an advisory council which shall include but is not limited to all of the following members, selected by their respective organizations, and any other members the department determines necessary to assist in the department's duties at various stages of development of the medical home system:

(1) The director of human services, or the director's designee.

(2) The commissioner of insurance, or the commissioner's designee.

(3) A representative of the federation of Iowa insurers.

(4) A representative of the Iowa dental association.

(5) A representative of the Iowa nurses association.

(6) A physician and an osteopathic physician licensed pursuant to chapter 148 who are family physicians and members of the Iowa academy of family physicians.

(7) A health care consumer.

(8) A representative of the Iowa collaborative safety net provider network established pursuant to section 135.153.

(9) A representative of the governor's developmental disabilities council.

(10) A representative of the Iowa chapter of the American academy of pediatrics.

(11) A representative of the child and family policy center.

(12) A representative of the Iowa pharmacy association.

(13) A representative of the Iowa chiropractic society.

(14) A representative of the university of Iowa college of public health.

b. Public members of the advisory council shall receive reimbursement for actual expenses incurred while serving in their official capacity only if they are not eligible for reimbursement by the organization that they represent.

3. The department shall develop a plan for implementation of a statewide medical home system. The department, in collaboration with parents, schools, communities, health plans, and providers, shall endeavor to increase healthy outcomes for children and adults by linking the children and adults with a medical home, identifying health improvement goals for children and adults, and linking reimbursement strategies to increasing healthy outcomes for children and adults. The plan shall provide that the medical home system shall do all of the following:

a. Coordinate and provide access to evidence-based health care services, emphasizing

convenient, comprehensive primary care and including preventive, screening, and well-child health services.

- b. Provide access to appropriate specialty care and inpatient services.
- c. Provide quality-driven and cost-effective health care.
- d. Provide access to pharmacist-delivered medication reconciliation and medication therapy management services, where appropriate.
- e. Promote strong and effective medical management including but not limited to planning treatment strategies, monitoring health outcomes and resource use, sharing information, and organizing care to avoid duplication of service. The plan shall provide that in sharing information, the priority shall be the protection of the privacy of individuals and the security and confidentiality of the individual's information. Any sharing of information required by the medical home system shall comply and be consistent with all existing state and federal laws and regulations relating to the confidentiality of health care information and shall be subject to written consent of the patient.
- f. Emphasize patient and provider accountability.
- g. Prioritize local access to the continuum of health care services in the most appropriate setting.

h. Establish a baseline for medical home goals and establish performance measures that indicate a child or adult has an established and effective medical home. For children, these goals and performance measures may include but are not limited to childhood immunization rates, well-child care utilization rates, care management for children with chronic illnesses, emergency room utilization, and oral health service utilization.

i. For children, coordinate with and integrate guidelines, data, and information from existing newborn and child health programs and entities, including but not limited to the healthy opportunities for parents to experience success – healthy families Iowa program, the early childhood Iowa initiative, the center for congenital and inherited disorders screening and health care programs, standards of care for pediatric health guidelines, the office of minority and multicultural health established in section 135.12, the oral health bureau established in section 135.15, and other similar programs and services.

4. The department shall develop an organizational structure for the medical home system in this state. The organizational structure plan shall integrate existing resources, provide a strategy to coordinate health care services, provide for monitoring and data collection on medical homes, provide for training and education to health care professionals and families, and provide for transition of children to the adult medical care system. The organizational structure may be based on collaborative teams of stakeholders throughout the state such as local public health agencies, the collaborative safety net provider network established in section 135.153, or a combination of statewide organizations. Care coordination may be provided through regional offices or through individual provider practices. The organizational structure may also include the use of telemedicine resources, and may provide for partnering with pediatric and family practice residency programs to improve access to preventive care for children. The organizational structure shall also address the need to organize and provide health care to increase accessibility for patients including using venues more accessible to patients and having hours of operation that are conducive to the population served.

5. The department shall adopt standards and a process to certify medical homes based on the national committee for quality assurance standards. The certification process and standards shall provide mechanisms to monitor performance and to evaluate, promote, and improve the quality of health of and health care delivered to patients through a medical home. The mechanism shall require participating providers to monitor clinical progress and performance in meeting applicable standards and to provide information in a form and manner specified by the department. The evaluation mechanism shall be developed with input from consumers, providers, and payers. At a minimum the evaluation shall determine any increased quality in health care provided and any decrease in cost resulting from the medical home system compared with other health care delivery systems. The standards and process shall also include a mechanism for other ancillary service providers to become affiliated with a certified medical home.

6. The department shall adopt education and training standards for health care professionals participating in the medical home system.

7. The department shall provide for system simplification through the use of universal referral forms, internet-based tools for providers, and a central medical home internet site for providers.

8. The department shall recommend a reimbursement methodology and incentives for participation in the medical home system to ensure that providers enter and remain participating in the system. In developing the recommendations for incentives, the department shall consider, at a minimum, providing incentives to promote wellness, prevention, chronic care management, immunizations, health care management, and the use of electronic health records. In developing the recommendations for the reimbursement system, the department shall analyze, at a minimum, the feasibility of all of the following:

a. Reimbursement under the medical assistance program to promote wellness and prevention, provide care coordination, and provide chronic care management.

b. Increasing reimbursement to Medicare levels for certain wellness and prevention services, chronic care management, and immunizations.

c. Providing reimbursement for primary care services by addressing the disparities between reimbursement for specialty services and primary care services.

d. Increased funding for efforts to transform medical practices into certified medical homes, including emphasizing the implementation of the use of electronic health records.

e. Targeted reimbursement to providers linked to health care quality improvement measures established by the department.

f. Reimbursement for specified ancillary support services such as transportation for medical appointments and other such services.

g. Providing reimbursement for medication reconciliation and medication therapy management service, where appropriate.

9. The department shall coordinate the requirements and activities of the medical home system with the requirements and activities of the dental home for children as described in section 249J.14, and shall recommend financial incentives for dentists and nondental providers to promote oral health care coordination through preventive dental intervention, early identification of oral disease risk, health care coordination and data tracking, treatment, chronic care management, education and training, parental guidance, and oral health promotions for children.

10. The department shall integrate the recommendations and policies developed pursuant to section 135.161, Code 2011, into the medical home system and shall incorporate the development and implementation of the state initiative for prevention and chronic care management as developed pursuant to section 135.161, Code 2011, into the duties of the medical home system advisory council beginning January 1, 2012.

11. *Implementation phases.*

a. Initial implementation shall require participation in the medical home system of children who are recipients of full benefits under the medical assistance program. The department shall work with the department of human services and shall recommend to the general assembly a reimbursement methodology to compensate providers participating under the medical assistance program for participation in the medical home system.

b. The department shall work with the department of human services to expand the medical home system to adults who are recipients of full benefits under the medical assistance program and the expansion population under the IowaCare program. The department shall work with the centers for Medicare and Medicaid services of the United States department of health and human services to allow Medicare recipients to utilize the medical home system.

c. The department shall work with the department of administrative services to allow state employees to utilize the medical home system.

d. The department shall work with insurers and self-insured companies, if requested, to make the medical home system available to individuals with private health care coverage.

12. The department shall provide oversight for all certified medical homes. The

department shall review the progress of the medical home system and recommend improvements to the system, as necessary.

13. The department shall annually evaluate the medical home system and make recommendations to the governor and the general assembly regarding improvements to and continuation of the system.

14. Recommendations and other activities resulting from the duties authorized for the department under this section shall require approval by the board prior to any subsequent action or implementation.

2008 Acts, ch 1188, §46; 2009 Acts, ch 41, §44; 2009 Acts, ch 133, §34; 2010 Acts, ch 1031, §292; 2010 Acts, ch 1141, §23; 2011 Acts, ch 25, §16; 2011 Acts, ch 129, §78, 82

2011 amendment to subsection 10 takes effect December 31, 2011; 2011 Acts, ch 129, §82

Subsection 3, paragraph i amended

Subsection 10 amended

DIVISION XXIII  
PREVENTION AND CHRONIC  
CARE MANAGEMENT

**135.161 Prevention and chronic care management initiative — advisory council.** Repealed by 2011 Acts, ch 129, § 81, 82. See § 135.159(10).

2011 repeal of this section takes effect December 31, 2011; 2011 Acts, ch 129, §82

**135.162 Clinicians advisory panel.** Repealed by 2011 Acts, ch 63, § 35.

With respect to proposed amendment to this section by 2011 Acts, ch 129, §79, see Code editor's note on simple harmonization

DIVISION XXVII  
EARLY CHILDHOOD IOWA  
COUNCIL

**135.173A Child care advisory committee.**

1. The early childhood Iowa council\* shall establish a state child care advisory committee as part of the council. The advisory committee shall advise and make recommendations to the governor, general assembly, department of human services, and other state agencies concerning child care.

2. The membership of the advisory committee shall consist of a broad spectrum of parents and other persons from across the state with an interest in or involvement with child care.

3. Except as otherwise provided, the voting members of the advisory committee shall be appointed by the council from a list of names submitted by a nominating committee to consist of one member of the advisory committee, one member of the department of human services' child care staff, three consumers of child care, and one member of a professional child care organization. Two names shall be submitted for each appointment. The voting members shall be appointed for terms of three years.

4. The voting membership of the advisory committee shall be appointed in a manner so as to provide equitable representation of persons with an interest in child care and shall include all of the following:

- a. Two parents of children served by a registered child development home.
- b. Two parents of children served by a licensed center.
- c. Two not-for-profit child care providers.
- d. Two for-profit child care providers.
- e. One child care home provider.
- f. Three child development home providers.
- g. One child care resource and referral service grantee.
- h. One nongovernmental child advocacy group representative.
- i. One designee of the department of human services.

- j. One designee of the Iowa department of public health.
  - k. One designee of the department of education.
  - l. One head start program provider.
  - m. One person who is a business owner or executive officer from nominees submitted by the Iowa chamber of commerce executives.
  - n. One designee of the community empowerment office\*\* of the department of management.
  - o. One person who is a member of the Iowa afterschool alliance.
  - p. One person who is part of a local program implementing the statewide preschool program for four-year-old children under chapter 256C.
  - q. One person who represents the early childhood Iowa council.\*
5. In addition to the voting members of the advisory committee, the membership shall include four legislators as ex officio, nonvoting members. The four legislators shall be appointed one each by the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives for terms as provided in section 69.16B.
6. In fulfilling the advisory committee's role, the committee shall do all of the following:
- a. Consult with the department of human services and make recommendations concerning policy issues relating to child care.
  - b. Advise the department of human services concerning services relating to child care, including but not limited to any of the following:
    - (1) Resource and referral services.
    - (2) Provider training.
    - (3) Quality improvement.
    - (4) Public-private partnerships.
    - (5) Standards review and development.
    - (6) The federal child care and development block grant, state funding, grants, and other funding sources for child care.
  - c. Assist the department of human services in developing an implementation plan to provide seamless service to recipients of public assistance, which includes child care services. For the purposes of this subsection, "seamless service" means coordination, where possible, of the federal and state requirements which apply to child care.
  - d. Advise and provide technical services to the director of the department of education or the director's designee relating to prekindergarten, kindergarten, and before and after school programming and facilities.
  - e. Make recommendations concerning child care expansion programs that meet the needs of children attending a core education program by providing child care before and after the core program hours and during times when the core program does not operate.
  - f. Make recommendations for improving collaborations between the child care programs involving the department of human services and programs supporting the education and development of young children including but not limited to the federal head start program; the statewide preschool program for four-year-old children; and the early childhood, at-risk, and other early education programs administered by the department of education.
  - g. Make recommendations for eliminating duplication and otherwise improving the eligibility determination processes used for the state child care assistance program and other programs supporting low-income families, including but not limited to the federal head start, early head start, and even start programs; the early childhood, at-risk, and preschool programs administered by the department of education; the family and self-sufficiency grant program; and the family investment program.
  - h. Make recommendations as to the most effective and efficient means of managing the state and federal funding available for the state child care assistance program.
  - i. Review program data from the department of human services and other departments concerning child care as deemed to be necessary by the advisory committee, although a department shall not provide personally identifiable data or information.
  - j. Advise and assist the early childhood Iowa council in developing the strategic plan required pursuant to section 135.173.\*

7. The department of human services shall provide information to the advisory committee semiannually on all of the following:

- a. Federal, state, local, and private revenues and expenditures for child care including but not limited to updates on the current and future status of the revenues and expenditures.
- b. Financial information and data relating to regulation of child care by the department of human services and the usage of the state child care assistance program.
- c. Utilization and availability data relating to child care regulation, quantity, and quality from consumer and provider perspectives.
- d. Statistical and demographic data regarding child care providers and the families utilizing child care.
- e. Statistical data regarding the processing time for issuing notices of decision to state child care assistance applicants and for issuing payments to child care providers.

8. The advisory committee shall coordinate with the early childhood Iowa council\* its reporting annually in December to the governor and general assembly concerning the status of child care in the state, providing findings, and making recommendations. The annual report may be personally presented to the general assembly's standing committees on human resources by a representative of the advisory committee.

2010 Acts, ch 1031, §354, 361

\*Former section 135.173, creating the early childhood Iowa council, is repealed; see 2010 Acts, ch 1031, §361; 2010 Acts, ch 1192, §84

\*\*Former section 28.3, establishing the community empowerment office, is repealed; membership slots on the child care advisory committee to be identified by the early childhood Iowa state board; see 2010 Acts, ch 1031, §361; 2010 Acts, ch 1192, §84

2010 enactment of this section takes effect July 1, 2011; 2010 Acts, ch 1031, §361

NEW section

## DIVISION XXIX

### HEALTH CARE WORKFORCE SUPPORT

#### **135.177 Physician assistant mental health fellowship program — repeal.**

1. The department, in cooperation with the college student aid commission, shall establish a physician assistant mental health fellowship program in accordance with this section. Funding for the program may be provided through the health care workforce shortage fund or the physician assistant mental health fellowship program account created in section 135.175. The purpose of the program is to determine the effect of specialized training and support for physician assistants in providing mental health services on addressing Iowa's shortage of mental health professionals.

2. The program shall provide for all of the following:

a. Collaboration with a hospital serving a thirteen-county area in central Iowa that provides a clinic at the Iowa veterans home, a private nonprofit agency headquartered in a city with a population of more than one hundred ninety thousand that operates a freestanding psychiatric medical institution for children, a private university with a medical school educating osteopathic physicians located in a city with a population of more than one hundred ninety thousand, the Iowa veterans home, and any other clinical partner designated for the program. Population figures used in this paragraph refer to the most recent certified federal census. The clinical partners shall provide supervision, clinical experience, training, and other support for the program and physician assistant students participating in the program.

b. Elderly, youth, and general population clinical experiences.

c. A fellowship of twelve months for three physician assistant students, annually.

d. Supervision of students participating in the program provided by the university and the other clinical partners participating in the program.

e. A student participating in the program shall be eligible for a stipend of not more than fifty thousand dollars for the twelve months of the fellowship plus related fringe benefits. In addition, a student who completes the program and practices in Iowa in a mental health professional shortage area, as defined in section 135.180, shall be eligible for up to twenty thousand dollars in loan forgiveness. The stipend and loan forgiveness provisions shall be

determined by the department and the college student aid commission, in consultation with the clinical partners.

f. The state and private entity clinical partners shall regularly evaluate and document their experiences with the approaches utilized and outcomes achieved by the program to identify an optimal model for operating the program. The evaluation process shall include but is not limited to identifying ways the program’s clinical and training components could be modified to facilitate other student and practicing physician assistants specializing as mental health professionals.

3. This section is repealed June 30, 2014.

2009 Acts, ch 118, §47, 54; 2011 Acts, ch 25, §129

Implementation of section conditioned upon availability of funding; 2009 Acts, ch 118, §54 Subsection 2, paragraph e amended

**135.179 Reserved.**

DIVISION XXX

MENTAL HEALTH PROFESSIONAL SHORTAGE AREA PROGRAM

**135.180 Mental health professional shortage area program.**

1. For the purposes of this section, “*mental health professional shortage areas*” means geographic areas in this state that have been designated by the United States department of health and human services, health resources and services administration, bureau of health professionals, as having a shortage of mental health professionals.

2. The department shall establish and administer a mental health professional shortage area program in accordance with this section. Implementation of the program shall be limited to the extent of the funding appropriated or otherwise made available for the program.

3. The program shall provide stipends to support psychiatrist positions with an emphasis on securing and retaining medical directors at community mental health centers, providers of mental health services to county residents pursuant to a waiver approved under section 225C.7, subsection 3, and hospital psychiatric units that are located in mental health professional shortage areas.

4. The department shall apply the rules in determining the number and amounts of stipends within the amount of funding available for the program for a fiscal year.

5. For each fiscal year in which funding is allocated by the program, the department shall report to the governor and general assembly summarizing the program’s activities and the impact made to address the shortage of mental health professionals.

2007 Acts, ch 218, §102

CS2007, §135.80

2011 Acts, ch 25, §80

CS2011, §135.180

Allocation of funds; 2007 Acts, ch 218, §97; 2008 Acts, ch 1187, §62; 2009 Acts, ch 182, §60; 2010 Acts, ch 1192, §2 Section transferred from §135.80 in Code Supplement 2011 pursuant to directive in 2011 Acts, ch 25, §80

CHAPTER 135A

PUBLIC HEALTH MODERNIZATION ACT

Legislative findings and intent; purpose;  
2009 Acts, ch 182, §114, 126

Implementation of chapter subject to funding, see §135A.11

**135A.5 Governmental public health evaluation committee.**

1. A governmental public health evaluation committee is established to develop and implement the evaluation of the governmental public health system and voluntary accreditation program. The committee shall meet at least quarterly. The committee shall

consist of no fewer than eleven members and no more than thirteen members. The members shall be appointed by the director of the department. The director may solicit and consider recommendations from professional organizations, associations, and academic institutions in making appointments to the committee.

2. Committee members shall not be members of the governmental public health advisory council.

3. Committee members shall serve for a term of two years and may be reappointed for a maximum of three consecutive terms. Initial appointment shall be in staggered terms. Vacancies shall be filled for the remainder of the original appointment.

4. The membership of the committee shall satisfy all of the following requirements:

a. At least one member representing each of Iowa's six public health regions. Each representative shall be an employee or administrator of a designated local public health agency or a member of a local board of health. Such members shall be appointed to ensure expertise in the areas of communicable and infectious diseases, environmental health, injury prevention, healthy behaviors, and emergency preparedness.

b. Two members who are representatives of the department.

c. A representative of the state hygienic laboratory at the university of Iowa.

d. At least two representatives from academic institutions which grant undergraduate and postgraduate degrees in public health or other health-related fields.

e. At least one economist who has demonstrated experience in public health, health care, or a health-related field.

f. At least one research analyst.

5. The committee may utilize other relevant public health expertise when necessary to carry out its roles and responsibilities.

6. The committee shall do all of the following:

a. Develop and implement processes for evaluation of the governmental public health system and the voluntary accreditation program.

b. Collect and report baseline information for organizational capacity and public health service delivery based on the Iowa public health standards prior to implementation of the voluntary accreditation program on January 2, 2012.

c. Evaluate the effectiveness of the accrediting entity and the voluntary accreditation process.

d. Evaluate the appropriateness of the Iowa public health standards and develop measures to determine reliability and validity.

e. Determine what process and outcome improvements in the governmental public health system are attributable to voluntary accreditation.

f. Assure that the evaluation process is capturing data to support key research in public health system effectiveness and health outcomes.

g. Annually submit a report to the department by July 1.

h. Form and utilize subcommittees as necessary to carry out the duties of the committee.

2009 Acts, ch 182, §119, 126; 2010 Acts, ch 1061, §28; 2011 Acts, ch 63, §34

Subsection 1 amended

## CHAPTER 135B

### LICENSURE AND REGULATION OF HOSPITALS

Abortion liability exculpation, chapter 146  
Psychiatric medical institutions for children, chapter 135H

#### **135B.19 Title of division.**

This division may be cited as the "*Pathology and Radiology Services in Hospitals Law*".  
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.19]

2011 Acts, ch 34, §36

Section amended

## CHAPTER 135C

### HEALTH CARE FACILITIES

Cost-related systems, §249.12  
 Modified price-based case-mix reimbursement for nursing facilities; 2001 Acts, ch 192, §4;  
 2002 Acts, ch 1172, §2; 2003 Acts, ch 112, §9;  
 2003 Acts, ch 175, §50; 2003 Acts, ch 179, §165;  
 2004 Acts, ch 1175, §154; 2005 Acts, ch 175, §31;  
 2006 Acts, ch 1184, §30; 2007 Acts, ch 218, §33, 67;  
 2008 Acts, ch 1187, §32, 33; 2009 Acts, ch 182, §32, 33;  
 2009 Acts, ch 183, §73; 2010 Acts, ch 1182, §20-23, 36;  
 2010 Acts, ch 1192, §33; 2010 Acts, ch 1193, §73;  
 2011 Acts, ch 129, §28, 141, 156

#### 135C.16 Inspections.

1. In addition to the inspections required by sections 135C.9 and 135C.38, the department shall make or cause to be made such further unannounced inspections as it deems necessary to adequately enforce this chapter. At least one general unannounced inspection shall be conducted for each health care facility within a thirty-month period. The inspector shall show identification to the person in charge of the facility and state that an inspection is to be made before beginning the inspection. An employee of the department who gives unauthorized advance notice of an inspection made or planned to be made under this subsection or section 135C.38 shall be disciplined as determined by the director, except that if the employee is employed pursuant to the merit system provisions of chapter 8A, subchapter IV, the discipline shall not exceed the discipline authorized pursuant to that subchapter.

2. a. The department shall prescribe by rule that any licensee or applicant for license desiring to make specific types of physical or functional alterations or additions to its facility or to construct new facilities shall, before commencing the alteration or additions or new construction, submit plans and specifications to the department for preliminary inspection and approval or recommendations with respect to compliance with the department's rules and standards.

b. When the plans and specifications have been properly approved by the department or other appropriate state agency, for a period of at least five years from completion of the construction or alteration, the facility or the portion of the facility constructed or altered in accord with the plans and specifications shall not be considered deficient or ineligible for licensing by reason of failure to meet any rule or standard established subsequent to approval of the plans and specifications.

c. When construction or alteration of a facility or portion of a facility has been completed in accord with plans and specifications submitted as required by this subsection and properly approved by the department or other appropriate state agency, and it is discovered that the facility or portion of a facility is not in compliance with a requirement of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, and the deficiency was apparent from the plans and specifications submitted but was not noted or objected to by the department or other appropriate state agency, the department or agency responsible for the oversight shall either waive the requirement or reimburse the licensee or applicant for any costs which are necessary to bring the new or reconstructed facility or portion of a facility into compliance with the requirement and which the licensee or applicant would not have incurred if the facility or portion of the facility had been constructed in compliance with the requirements of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted.

d. If within two years from the completion of the construction or alteration of the facility or portion thereof, a department or agency of the state orders that the new or reconstructed facility or portion thereof be brought into compliance with the requirements of this chapter or the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, the state shall have a claim for damages to the extent of any reimbursement paid to the licensee or applicant against any person who designed the facility or portion thereof for negligence in the preparation of the plans and specifications therefor,

subject to all defenses based upon the negligence of the state in reviewing and approving those plans and specifications, but not thereafter.

e. The provisions of this subsection shall not apply where the deficiency presents a clear and present danger to the safety of the residents of the facility.

3. An inspector of the department may enter any licensed health care facility without a warrant, and may examine all records pertaining to the care provided residents of the facility. An inspector of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. An inspector of the department of human services shall have the same right with respect to any facility where one or more residents are cared for entirely or partially at public expense, and an investigator of the designated protection and advocacy agency shall have the same right with respect to any facility where one or more residents have developmental disabilities or mental illnesses, and the state fire marshal or a deputy appointed pursuant to section 135C.9, subsection 1, paragraph “b” shall have the same right of entry into any facility and the right to inspect any records pertinent to fire safety practices and conditions within that facility. If any such inspector has probable cause to believe that any institution, building, or agency not licensed as a health care facility is in fact a health care facility as defined by this chapter, and upon producing identification that the individual is an inspector is denied entry thereto for the purpose of making an inspection, the inspector may, with the assistance of the county attorney of the county in which the purported health care facility is located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been any violations of this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.16; 82 Acts, ch 1065, §1]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1227, §1; 87 Acts, ch 234, §427; 90 Acts, ch 1204, §15; 92 Acts, ch 1242, §26; 2000 Acts, ch 1180, §1; 2003 Acts, ch 145, §187; 2009 Acts, ch 41, §47

Limitation on inspections of state-licensed health care facilities not certified under Medicare or Medicaid; 2011 Acts, ch 127, §16, 74, 89  
Section not amended; footnote revised

## CHAPTER 135H

### PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

Cost-based reimbursement methodology, §249A.31

#### 135H.3 Nature of care.

1. A psychiatric medical institution for children shall utilize a team of professionals to direct an organized program of diagnostic services, psychiatric services, nursing care, and rehabilitative services to meet the needs of residents in accordance with a medical care plan developed for each resident. The membership of the team of professionals may include but is not limited to an advanced registered nurse practitioner or a physician assistant. Social and rehabilitative services shall be provided under the direction of a qualified mental health professional.

2. If a child is diagnosed with a biologically based mental illness as defined in section 514C.22 and meets the medical assistance program criteria for admission to a psychiatric medical institution for children, the child shall be deemed to meet the acuity criteria for medically necessary inpatient benefits under a group policy, contract, or plan providing for third-party payment or prepayment of health, medical, and surgical coverage benefits issued by a carrier, as defined in section 513B.2, or by an organized delivery system authorized under 1993 Iowa Acts, ch. 158, that is subject to section 514C.22. Such medically necessary benefits shall not be excluded or denied as care that is substantially custodial in nature under section 514C.22, subsection 8, paragraph “b”.

89 Acts, ch 283, §4; 2009 Acts, ch 179, §182; 2011 Acts, ch 121, §7; 2011 Acts, ch 131, §151,  
153

Subsection 1 amended

**135H.6 Inspection — conditions for issuance.**

The department shall issue a license to an applicant under this chapter if all the following conditions exist:

1. The department has ascertained that the applicant's medical facilities and staff are adequate to provide the care and services required of a psychiatric institution.

2. The proposed psychiatric institution is accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the council on accreditation of services for families and children, or by any other recognized accrediting organization with comparable standards acceptable under federal regulation.

3. The applicant complies with applicable state rules and standards for a psychiatric institution adopted by the department in accordance with federal requirements under 42 C.F.R. § 441.150 – 441.156.

4. The applicant has been awarded a certificate of need pursuant to chapter 135, unless exempt as provided in this section.

5. The department of human services has submitted written approval of the application based on the department of human services' determination of need. The department of human services shall identify the location and number of children in the state who require the services of a psychiatric medical institution for children. Approval of an application shall be based upon the location of the proposed psychiatric institution relative to the need for services identified by the department of human services and an analysis of the applicant's ability to provide services and support consistent with requirements under chapter 232, particularly regarding community-based treatment. If the proposed psychiatric institution is not freestanding from a facility licensed under chapter 135B or 135C, approval under this subsection shall not be given unless the department of human services certifies that the proposed psychiatric institution is capable of providing a resident with a living environment similar to the living environment provided by a licensee which is freestanding from a facility licensed under chapter 135B or 135C.

6. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter for services reimbursed by the medical assistance program under chapter 249A to exceed four hundred thirty beds.

7. In addition to the beds authorized under subsection 6, the department of human services may establish not more than thirty beds licensed under this chapter at the state mental health institute at Independence. The beds shall be exempt from the certificate of need requirement under subsection 4.

8. The department of human services may give approval to conversion of beds approved under subsection 6, to beds which are specialized to provide substance abuse treatment. However, the total number of beds approved under subsection 6 and this subsection shall not exceed four hundred thirty. Conversion of beds under this subsection shall not require a revision of the certificate of need issued for the psychiatric institution making the conversion. Beds for children who do not reside in this state and whose service costs are not paid by public funds in this state are not subject to the limitations on the number of beds and certificate of need requirements otherwise applicable under this section.

9. The proposed psychiatric institution is under the direction of an agency which has operated a facility licensed under section 237.3, subsection 2, paragraph "a", as a comprehensive residential facility for children for three years or of an agency which has operated a facility for three years providing psychiatric services exclusively to children or adolescents and the facility meets or exceeds requirements for licensure under section 237.3, subsection 2, paragraph "a", as a comprehensive residential facility for children.

10. A psychiatric institution licensed prior to July 1, 1999, may exceed the number of beds authorized under subsection 6 if the excess beds are used to provide services funded from a source other than the medical assistance program under chapter 249A. Notwithstanding subsections 4, 5, and 6, the provision of services using those excess beds does not require a certificate of need or a review by the department of human services.

11. If a child has an emotional, behavioral, or mental health disorder, the psychiatric institution does not require court proceedings to be initiated or that a child's parent, guardian,

or custodian must terminate parental rights over or transfer legal custody of the child for the purpose of obtaining treatment from the psychiatric institution for the child. Relinquishment of a child's custody shall not be a condition of the child receiving services.

89 Acts, ch 283, §7; 90 Acts, ch 1239, §1, 2; 93 Acts, ch 53, §7; 93 Acts, ch 172, §30; 93 Acts, ch 180, §80; 96 Acts, ch 1213, §32; 98 Acts, ch 1218, §66; 99 Acts, ch 51, §1, 2; 99 Acts, ch 98, §1; 2001 Acts, ch 191, §35; 2005 Acts, ch 117, §1; 2011 Acts, ch 121, §8; 2011 Acts, ch 131, §151, 153

Subsection 8 amended

## CHAPTER 135N

### HEMOPHILIA ADVISORY COMMITTEE

Chapter effective March 30, 2007, pursuant to  
2007 Acts, ch 31, §7, if funds appropriated;  
FY 2007-2008 appropriation made for  
hemophilia advisory council and this chapter  
in 2007 Acts, ch 218, §97; 2008 Acts, ch 1187, §62, 94, 97

#### **135N.3 Establishment and duties of hemophilia advisory committee.**

1. The director of the department of public health shall establish an advisory committee known as the hemophilia advisory committee.

2. The committee shall review and make recommendations to the center for congenital and inherited disorders advisory committee established by rule of the department pursuant to chapter 136A concerning but not limited to the following:

a. Proposed legislative or administrative changes to policies and programs that are integral to the health and wellness of individuals with hemophilia and other bleeding and clotting disorders.

b. Standards of care and treatment for persons living with hemophilia and other bleeding and clotting disorders.

c. The development of community-based initiatives to increase awareness of care and treatment for persons living with hemophilia and other bleeding and clotting disorders.

d. Facilitating communication and cooperation between persons with hemophilia and other bleeding and clotting disorders.

2007 Acts, ch 31, §3, 7; 2010 Acts, ch 1192, §78; 2011 Acts, ch 25, §81, 144, 145

Section not amended; Code section history updated

## CHAPTER 136

### STATE BOARD OF HEALTH

#### **136.1 Composition of board.**

1. The state board of health shall consist of the following members:

a. Two members learned in health-related disciplines.

b. Three members who have direct experience with public health.

c. Two members who have direct experience with substance abuse treatment or prevention.

d. Four members representing the general public.

2. At least one of such members shall be licensed in the practice of medicine and surgery or osteopathic medicine and surgery under chapter 148.

[S13, §2564-a; C24, 27, 31, 35, 39, §2218; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.1]

86 Acts, ch 1245, §1119; 2005 Acts, ch 175, §78; 2010 Acts, ch 1090, §1; 2011 Acts, ch 25, §17

Section amended

### 136.3 Duties.

The state board of health shall provide a forum for the development of public health policy in the state of Iowa and shall have the following powers and duties:

1. Consider and study legislation and administration concerning public health.
2. Advise the department on any issue related to the promotion and protection of the health of Iowans including but not limited to:
  - a. Prevention of epidemics and the spread of disease, including communicable and infectious diseases such as zoonotic diseases, quarantine and isolation, sexually transmitted diseases, and antitoxins and vaccines.
  - b. Protection against environmental hazards.
  - c. Prevention of injuries.
  - d. Promotion of healthy behaviors.
  - e. Preparing for, responding to, and recovering from public health emergencies and disasters.
3. Establish policies governing the performance of the department in the discharge of any duties imposed on it by law.
4. Provide guidance to the director in the discharge of the director's duties.
5. Adopt and implement the Iowa public health standards.
6. Assure that the department complies with Iowa Code, administrative rules, and the Iowa public health standards. For this purpose the board shall have access at any time to all documents and records of the department.
7. Assure that the department prepares and distributes an annual report.
8. Advise or make recommendations to the director of public health, governor, and general assembly relative to public health and advocate for state and local public health to comply with the Iowa public health standards.
9. Offer consultation to the governor in the appointment of the director of the department.
10. Adopt, promulgate, amend, and repeal rules and regulations consistent with law for the protection of the public health and prevention of substance abuse, and for the guidance of the department. All rules adopted by the department are subject to approval by the board.
11. Act by committee, or by a majority of the board.
12. Keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the department.
13. Perform those duties authorized pursuant to chapter 125. The board may appoint a substance abuse and gambling treatment program committee to approve or deny applications for licensure received from substance abuse programs pursuant to chapter 125 and gambling treatment programs pursuant to chapter 135 and to perform any other function authorized by chapter 125 or 135 and delegated to the committee.
14. Perform those duties authorized pursuant to sections 135.156 and 135.159 and other provisions of law.

[C97, §2565; C24, 27, 31, 35, 39, §2220; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.3]

86 Acts, ch 1245, §1120; 2001 Acts, ch 184, §8; 2002 Acts, ch 1050, §19; 2005 Acts, ch 175, §79, 80; 2008 Acts, ch 1188, §27, 47, 53, 66; 2010 Acts, ch 1090, §2; 2011 Acts, ch 129, §80, 82

2011 amendment to subsection 14 takes effect December 31, 2011; 2011 Acts, ch 129, §82

Subsection 14 amended

## CHAPTER 137F

### FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS

#### **137F.3A Municipal corporation inspections — contingent appropriation.**

1. *a.* The department of inspections and appeals may employ additional full-time equivalent positions to enforce the provisions of this chapter and chapters 137C and 137D, with the approval of the department of management, if either of the following apply:

(1) A municipal corporation operating pursuant to a chapter 28E agreement with the department of inspections and appeals to enforce the chapters either fails to renew the agreement effective after April 1, 2007, or discontinues, after April 1, 2007, enforcement activities in one or more jurisdictions during the agreement time frame.

(2) The department of inspections and appeals cancels an agreement after April 1, 2007, due to noncompliance with the terms of the agreement.

*b.* Before approval may be given, the director of the department of management must have determined that the expenses exceed the funds budgeted by the general assembly for food inspections to the department of inspections and appeals. The department of inspections and appeals may hire no more than one full-time equivalent position for each six hundred inspections required pursuant to this chapter and chapters 137C and 137D.

2. Notwithstanding chapter 137D, and sections 137C.9 and 137F.6, if the conditions described in this section are met, fees imposed pursuant to that chapter and those sections shall be retained by and are appropriated to the department of inspections and appeals each fiscal year to provide for salaries, support, maintenance, and miscellaneous purposes associated with the additional inspections. The appropriation made in this subsection is not applicable in a fiscal year for which the general assembly enacts an appropriation made for the purposes described in this subsection.

2006 Acts, ch 1185, §46, 53; 2007 Acts, ch 215, §214, 221; 2009 Acts, ch 133, §39

For fiscal years beginning July 1, 2011, and July 1, 2012, department of inspections and appeals to retain license fees generated as a result of actions under this section occurring during the fiscal period beginning July 1, 2009, and ending June 30, 2011, for the purpose of enforcing chapters 137C, 137D, and 137F; 2011 Acts, ch 127, §15, 73, 89

Section not amended; footnote revised

## CHAPTER 139A

### COMMUNICABLE AND INFECTIOUS DISEASES AND POISONINGS

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### **139A.2 Definitions.**

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

1. “*Area quarantine*” means prohibiting ingress and egress to and from a building or buildings, structure or structures, or other definable physical location, or portion thereof, to prevent or contain the spread of a suspected or confirmed quarantinable disease or to prevent or contain exposure to a suspected or known chemical, biological, radioactive, or other hazardous or toxic agent.

2. “*Business*” means and includes every trade, occupation, or profession.

3. “*Care provider*” means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual’s official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. “*Care provider*” also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

4. “*Communicable disease*” means any disease spread from person to person or animal to person.

5. “*Contagious or infectious disease*” means hepatitis in any form, meningococcal disease, AIDS or HIV as defined in section 141A.1, tuberculosis, and any other disease determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

6. “*Department*” means the Iowa department of public health.

7. “*Designated officer*” means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

8. “*Exposure*” means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

9. “*Exposure-prone procedure*” means a procedure performed by a health care provider which presents a recognized risk of percutaneous injury to the health care provider and if such an injury occurs, the health care provider’s blood is likely to contact a patient’s body cavity, subcutaneous tissues, or mucous membranes, or an exposure-prone procedure as defined by the centers for disease control and prevention of the United States department of health and human services.

10. “*HBV*” means hepatitis B virus.

11. “*Health care facility*” means a health care facility as defined in section 135C.1, an ambulatory surgical center, or a clinic.

12. “*Health care provider*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

13. “*HIV*” means HIV as defined in section 141A.1.

14. “*Hospital*” means hospital as defined in section 135B.1.

15. “*Isolation*” means the separation of persons or animals presumably or actually infected with a communicable disease or who are disease carriers for the usual period of communicability of that disease in such places, marked by placards if necessary, and under such conditions as will prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible persons.

16. “*Local board*” means the local board of health.

17. “*Local department*” means the local health department.

18. “*Placard*” means a warning sign to be erected and displayed on the periphery of a quarantine area, forbidding entry to or exit from the area.

19. “*Public health disaster*” means public health disaster as defined in section 135.140.

20. “*Quarantinable disease*” means any communicable disease designated by rule adopted by the department as requiring quarantine or isolation to prevent its spread.

21. “*Quarantine*” means the limitation of freedom of movement of persons or animals that have been exposed to a quarantinable disease within specified limits marked by placards for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent the spread of a quarantinable disease which affects people.

22. “*Reportable disease*” means any disease designated by rule adopted by the department requiring its occurrence to be reported to an appropriate authority.

23. “*Sexually transmitted disease or infection*” means a disease or infection as identified by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

24. “*Significant exposure*” means a situation in which there is a risk of contracting disease through exposure to a person’s infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

25. “*Terminal cleaning*” means cleaning procedures defined in the isolation guidelines

issued by the centers for disease control and prevention of the United States department of health and human services.

2000 Acts, ch 1066, §2; 2001 Acts, ch 24, §29; 2001 Acts, ch 157, §1 – 3; 2003 Acts, ch 33, §9, 11; 2004 Acts, ch 1168, §6; 2006 Acts, ch 1079, §2; 2008 Acts, ch 1088, §141; 2011 Acts, ch 63, §18, 19

Subsections 5 and 8 amended

NEW subsection 24 and former subsection 24 renumbered as 25

### **139A.19 Care provider notification.**

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains a significant exposure from an individual while rendering health care services or other services, the individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider of the results of the test, upon submission of a significant exposure report by the care provider to the hospital, clinic, other health facility, or other person specified in this section to whom the individual is delivered by the care provider as determined by rule.

*b.* The hospital, clinic, or other health facility in which the significant exposure occurred or other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number.

*c.* A hospital, clinic, or other health facility, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

*d.* Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information, with the exception of AIDS or HIV pursuant to section 80.9B, in the course of the care provider's duties over the police radio broadcasting system under chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

2. *a.* If the test results are positive, the hospital, clinic, other health facility, or other person performing the test shall notify the subject of the test and make any required reports to the department pursuant to sections 139A.3 and 141A.6. The report to the department shall include the name of the individual tested.

*b.* If the individual tested is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, other health facility, or other person conducting the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider.

*c.* The notification to the care provider shall be provided as soon as is reasonably possible following determination that the subject of the test has a contagious or infectious disease. The notification shall not include the name of the individual tested for the contagious or infectious disease unless the individual consents. If the care provider who sustained a significant exposure determines the identity of the individual diagnosed or confirmed as having a contagious or infectious disease, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a

specific written release is obtained from the individual diagnosed with or confirmed as having a contagious or infectious disease.

3. This section does not preclude a hospital, clinic, other health facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.

4. A hospital, clinic, other health facility, or health care provider, or other person participating in good faith in complying with provisions authorized or required under this section is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

5. A hospital's, clinic's, other health facility's, or health care provider's duty to notify under this section is not continuing but is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the individual who was the source of the significant exposure.

6. Notwithstanding subsection 5, the hospital, clinic, or other health facility may provide a procedure for notifying the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health facility, the individual who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source individual's contagious or infectious disease status to the exposed care provider.

7. A hospital, clinic, other health facility, health care provider, or other person who is authorized to perform a test under this section who performs the test in compliance with this section or who fails to perform the test authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

8. A hospital, clinic, other health facility, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the test authorized.

9. The department shall adopt rules pursuant to chapter 17A to administer this section. The department may determine by rule the contagious or infectious diseases for which testing is reasonable and appropriate and which may be administered under this section.

10. The employer of a care provider who sustained a significant exposure under this section shall pay the costs of testing for the individual who is the source of the significant exposure and of the testing of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall assist an individual who is the source of the significant exposure in finding resources to pay for the costs of the testing and shall assist a care provider who renders direct aid without compensation in finding resources to pay for the cost of the test.

2000 Acts, ch 1066, §19; 2001 Acts, ch 157, §4; 2011 Acts, ch 63, §20; 2011 Acts, ch 131, §54, 158

Section amended

## SUBCHAPTER II

### CONTROL OF SEXUALLY TRANSMITTED DISEASES AND INFECTIONS

#### **139A.33 Partner notification program.**

1. The department shall maintain a partner notification program for persons known to have tested positive for a reportable sexually transmitted disease or infection.

2. In administering the program, the department shall provide for all of the following:

a. A person who voluntarily participates in the program shall receive post-test counseling during which time the person shall be encouraged to refer for counseling and testing

any person with whom the person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

3. The department may delegate its partner notification duties under this section to local health authorities or a physician or other health care provider, as provided by rules adopted by the department.

4. In making contact with sexual or drug equipment-sharing partners, the department or its designee shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of the persons contacted.

5. a. This section shall not be interpreted as creating a duty to warn third parties of the danger of exposure to a sexually transmitted disease or infection through contact with a person who tests positive for a sexually transmitted disease.

b. This section shall not be interpreted to require the department to provide partner notification services to all persons who have tested positive for a sexually transmitted disease or infection.

2000 Acts, ch 1066, §29; 2011 Acts, ch 63, §21

Section amended

## CHAPTER 141A

### ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

#### 141A.1 Definitions.

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

1. “*AIDS*” means acquired immune deficiency syndrome as defined by the centers for disease control and prevention of the United States department of health and human services.

2. “*AIDS-related conditions*” means any condition resulting from human immunodeficiency virus infection that meets the definition of AIDS as established by the centers for disease control and prevention of the United States department of health and human services.

3. “*Blinded epidemiological studies*” means studies in which specimens which were collected for other purposes are selected according to established criteria, are permanently stripped of personal identifiers, and are then tested.

4. “*Blood bank*” means a facility for the collection, processing, or storage of human blood or blood derivatives, including blood plasma, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

5. “*Care provider*” means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual’s official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. “*Care provider*” also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

6. “*Department*” means the Iowa department of public health.

7. “*Exposure*” means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

8. “*Good faith*” means objectively reasonable and not in violation of clearly established statutory rights or other rights of a person which a reasonable person would know or should have known.

9. “*Health care provider*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, or optometry, or as a physician assistant, dental hygienist, or acupuncturist.

10. “*Health facility*” means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant center and procurement agency, or other health care institution.

11. “*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS.

12. “*HIV-related condition*” means any condition resulting from human immunodeficiency virus infection.

13. “*HIV-related test*” means a diagnostic test conducted by a laboratory approved pursuant to the federal Clinical Laboratory Improvement Amendments for determining the presence of HIV or antibodies to HIV.

14. “*Infectious bodily fluids*” means bodily fluids capable of transmitting HIV as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

15. “*Legal guardian*” means a person appointed by a court pursuant to chapter 633 or an attorney in fact as defined in section 144B.1. In the case of a minor, “*legal guardian*” also means a parent or other person responsible for the care of the minor.

16. “*Nonblinded epidemiological studies*” means studies in which specimens are collected for the express purpose of testing for HIV infection and persons included in the nonblinded study are selected according to established criteria.

17. “*Release of test results*” means a written authorization for disclosure of HIV-related test results which is signed and dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

18. “*Sample*” means a human specimen obtained for the purpose of conducting an HIV-related test.

19. “*Significant exposure*” means a situation in which there is a risk of contracting HIV through exposure to a person’s infectious bodily fluids in a manner capable of transmitting HIV as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

99 Acts, ch 181, §5; 2001 Acts, ch 157, §5, 6; 2007 Acts, ch 70, §1, 2; 2008 Acts, ch 1088, §92; 2011 Acts, ch 63, §22, 23

Subsection 2 amended

NEW subsection 7 and former subsections 7 – 18 renumbered as 8 – 19

Subsections 12, 14, 16, and 19 amended

#### **141A.2 Lead agency.**

1. The department is designated as the lead agency in the coordination and implementation of the Iowa comprehensive HIV plan.

2. The department shall adopt rules pursuant to chapter 17A to implement and enforce this chapter. The rules may include procedures for taking appropriate action with regard to health facilities or health care providers which violate this chapter or the rules adopted pursuant to this chapter.

3. The department shall adopt rules pursuant to chapter 17A which require that if a health care provider attending a person prior to the person’s death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition for the information of any person handling the body of the deceased person subsequent to the person’s death. For purposes of this subsection, “*contagious or infectious disease*” means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease including AIDS or HIV infection, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

4. The department shall provide consultation services to all care providers, including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first responders, peace officers, and fire fighters, who provide care services to a person, and to all persons who attend dead bodies regarding standard precautions to prevent the transmission of contagious and infectious diseases.

5. The department shall coordinate efforts with local health officers to investigate sources of HIV infection and use every appropriate means to prevent the spread of HIV.

6. The department, with the approval of the state board of health, may conduct epidemiological blinded and nonblinded studies to determine the incidence and prevalence of HIV infection. Initiation of any new epidemiological studies shall be contingent upon the receipt of funding sufficient to cover all the costs associated with the studies. The informed consent, reporting, and counseling requirements of this chapter shall not apply to blinded studies.

99 Acts, ch 181, §6; 2007 Acts, ch 70, §3; 2011 Acts, ch 63, §24

Subsection 5 amended

### **141A.3 Duties of the department.**

1. All federal and state moneys appropriated to the department for HIV-related activities shall be utilized and distributed in a manner consistent with the guidelines established by the United States department of health and human services.

2. The department shall do all of the following:

a. Provide consultation services to agencies and organizations regarding appropriate policies for testing, education, confidentiality, and infection control.

b. Provide health information to the public regarding HIV, including information about how HIV is transmitted and how transmittal can be prevented. The department shall prepare and distribute information regarding HIV transmission and prevention.

c. Provide consultation services concerning HIV infection in the workplace.

d. Implement HIV education risk-reduction programs for specific populations at high risk for infection.

e. Provide an informational brochure for patients who provide samples for purposes of performing an HIV test which, at a minimum, shall include a summary of the patient's rights and responsibilities under the law.

f. In cooperation with the department of education, recommend evidence-based, medically accurate HIV prevention curricula for use at the discretion of secondary and middle schools.

99 Acts, ch 181, §7; 2007 Acts, ch 70, §4; 2011 Acts, ch 63, §25

Subsection 2, paragraph b amended

### **141A.4 Testing and education.**

1. HIV testing and education shall be offered to persons who are at risk for HIV infection including all of the following:

a. Males who have had sexual relations with other males.

b. All persons testing positive for a sexually transmitted disease.

c. All persons having a history of injecting drug abuse.

d. Male and female sex workers and those who trade sex for drugs, money, or favors.

e. Sexual partners of HIV-infected persons.

f. Persons whose sexual partners are identified in paragraphs "a" through "e".

2. a. All pregnant women shall be tested for HIV infection as part of the routine panel of prenatal tests.

b. A pregnant woman shall be notified that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test.

c. If a pregnant woman objects to and declines the test, the decision shall be documented in the pregnant woman's medical record.

d. Information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus shall be made available to all pregnant women.

99 Acts, ch 181, §8; 2007 Acts, ch 70, §5; 2011 Acts, ch 63, §26

Subsection 1 amended

**141A.5 Partner notification program — HIV.**

1. The department shall maintain a partner notification program for persons known to have tested positive for HIV infection.

2. In administering the program, the department shall provide for the following:

a. A person who tests positive for HIV infection shall receive post-test counseling, during which time the person shall be encouraged to refer for counseling and HIV testing any person with whom the person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

c. (1) Devise a procedure, as a part of the partner notification program, to provide for the notification of an identifiable third party who is a sexual partner of or who shares drug injecting equipment with a person who has tested positive for HIV, by the department or a physician, when all of the following situations exist:

(a) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of HIV transmission to the third party.

(b) When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

(2) Notwithstanding subsection 3, the department or a physician may reveal the identity of a person who has tested positive for HIV infection pursuant to this subsection only to the extent necessary to protect a third party from the direct threat of transmission. This subsection shall not be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with a person who tests positive for HIV infection.

(3) The department shall adopt rules pursuant to chapter 17A to implement this paragraph “c”. The rules shall provide a detailed procedure by which the department or a physician may directly notify an endangered third party.

3. In making contact the department shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of persons contacted.

4. The department may delegate its partner notification duties under this section to local health authorities unless the local authority refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

5. In addition to the provisions for partner notification provided under this section and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to chapter 691, who determines through an investigation that a deceased person was infected with HIV, may notify directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

99 Acts, ch 181, §9; 2007 Acts, ch 70, §6; 2011 Acts, ch 63, §27

Subsection 2, paragraph c, subparagraph (1), subparagraph division (a) amended

**141A.6 HIV-related conditions — consent, testing, and reporting — penalty.**

1. Prior to undergoing a voluntary HIV-related test, information shall be available to the subject of the test concerning testing and any means of obtaining additional information regarding HIV transmission and risk reduction. If an individual signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the specific purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an individual has not signed a general consent form for the performance of medical tests and procedures or the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to performing an HIV-related test. If an individual is unable to provide consent, the individual’s legal guardian may provide consent. If the individual’s legal guardian cannot be located or is unavailable, a

health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

2. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology or immediately after the initial examination or treatment of an individual infected with HIV, the physician or other health care provider at whose request the test was performed or who performed the initial examination or treatment shall make a report to the department on a form provided by the department.

3. Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

4. Within seven days of the death of a person with HIV infection, the attending physician shall make a report to the department on a form provided by the department.

5. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the director of a blood bank shall make a report to the department on a form provided by the department.

6. Within seven days of the receipt of a test result that is indicative of HIV, the director of a clinical laboratory shall make a report to the department on a form provided by the department.

7. The forms provided by the department shall require inclusion of all of the following information:

- a. The name of the patient.
- b. The address of the patient.
- c. The patient's date of birth.
- d. The gender of the patient.
- e. The race and ethnicity of the patient.
- f. The patient's marital status.
- g. The patient's telephone number.
- h. If an HIV-related test was performed, the name and address of the laboratory or blood bank.
- i. If an HIV-related test was performed, the date the test was found to be positive and the collection date.
- j. If an HIV-related test was performed, the name of the physician or health care provider who performed the test.
- k. If the patient is female, whether the patient is pregnant.

8. An individual who repeatedly fails to file the report required under this section is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

9. A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under this section is subject to a civil penalty of not more than one thousand dollars per occurrence. The department shall not impose the penalty under this subsection without prior written notice and opportunity for hearing.

99 Acts, ch 181, §10; 2000 Acts, ch 1066, §39; 2000 Acts, ch 1140, §26; 2007 Acts, ch 70, §7; 2011 Acts, ch 63, §28

Subsection 1 amended

**141A.8 Care provider notification.** Repealed by 2011 Acts, ch 63, § 32.

#### **141A.9 Confidentiality of information.**

1. Any information, including reports and records, obtained, submitted, and maintained pursuant to this chapter is strictly confidential medical information. The information shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except as provided in this

chapter. A person shall not be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to persons entitled to that information under this chapter.

2. HIV-related test results shall be made available for release to the following individuals or under the following circumstances:

a. To the subject of the test or the subject's legal guardian subject to the provisions of section 141A.7, subsection 3, when applicable.

b. To any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.

c. To an authorized agent or employee of a health facility or health care provider, if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain the test results, the agent or employee provides patient care or handles or processes samples, and the agent or employee has a medical need to know such information.

d. To a health care provider providing care to the subject of the test when knowledge of the test results is necessary to provide care or treatment.

e. To the department in accordance with reporting requirements for an HIV-related condition.

f. To a health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen provided prior to July 1, 1988, for the purpose of artificial insemination.

g. To a person allowed access to an HIV-related test result by a court order which is issued in compliance with the following provisions:

(1) A court has found that the person seeking the test results has demonstrated a compelling need for the test results which need cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure due to its deterrent effect on future testing or due to its effect in leading to discrimination.

(2) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

(3) Before granting an order, the court shall provide the person whose test results are in question with notice and a reasonable opportunity to participate in the proceedings if the person is not already a party.

(4) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(5) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may gain access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

h. To an employer, if the test is authorized to be required under any other provision of law.

i. Pursuant to sections 915.42 and 915.43, to a convicted or alleged sexual assault offender; the physician or other health care provider who orders the test of a convicted or alleged offender; the victim; the parent, guardian, or custodian of the victim if the victim is a minor; the physician of the victim if requested by the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the victim's spouse; persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault; members of the victim's family within the third degree of consanguinity; and the county attorney who may use the results as evidence in the prosecution of sexual assault under chapter 915, subchapter IV, or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph, "victim" means victim as defined in section 915.40.

j. To employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the

department of human services, and employees of city and county jails, if the employees have direct supervision over inmates of those facilities or institutions in the exercise of the duties prescribed pursuant to section 80.9B.

3. Release may be made of medical or epidemiological information for research or statistical purposes in a manner such that no individual person can be identified.

4. Release may be made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related rules concerning the treatment, control, and investigation of HIV infection by public health officials.

5. Release may be made of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of the named party.

6. Release may be made of test results concerning a patient pursuant to procedures established under section 141A.5, subsection 2, paragraph “c”.

7. Medical information secured pursuant to subsection 1 may be shared between employees of the department who shall use the information collected only for the purposes of carrying out their official duties in preventing the spread of the disease or the spread of other reportable diseases as defined in section 139A.2.

99 Acts, ch 181, §13; 2000 Acts, ch 1066, §40; 2007 Acts, ch 70, §10; 2008 Acts, ch 1031, §103; 2008 Acts, ch 1032, §25; 2011 Acts, ch 63, §29, 30

Subsection 2, paragraph i amended  
Subsection 3 amended

#### **141A.10 Immunities.**

1. A person making a report in good faith pursuant to this chapter is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

2. A health care provider attending a person who tests positive for HIV infection has no duty to disclose to or to warn third parties of the dangers of exposure to HIV infection through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

99 Acts, ch 181, §14; 2011 Acts, ch 63, §31

Subsection 2 amended

## **CHAPTER 142A**

### **TOBACCO USE PREVENTION AND CONTROL**

#### **142A.1 Tobacco use prevention and control partnership — purpose and intent.**

1. The purpose of this chapter is to establish a comprehensive partnership among the general assembly, the executive branch, communities, and the people of Iowa in addressing the prevalence of tobacco use in the state.

2. It is the intent of the general assembly that the comprehensive tobacco use prevention and control initiative established in this chapter will specifically address reduction of tobacco use by youth and pregnant women and enhancement of the capacity of youth to make healthy choices. The initiative shall allow extensive involvement of youth in attaining these results.

3. It is also the intent of the general assembly that the comprehensive tobacco use prevention and control initiative will foster a social and legal climate in which tobacco use becomes undesirable and unacceptable, in which role models and those who influence youth promote healthy social norms and demonstrate behavior that counteracts the glamorization of tobacco use, and in which tobacco becomes less accessible to youth. The intent of the general assembly shall be accomplished by engaging all who are affected by the use of tobacco in the state, including smokers and nonsmokers, youth, and adults.

2000 Acts, ch 1192, §1, 17; 2011 Acts, ch 63, §1

Subsection 2 amended

**142A.2 Definitions.**

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

1. “*Administrator*” means the administrator of the division of tobacco use prevention and control.
2. “*Commission*” means the commission on tobacco use prevention and control established in this chapter.
3. “*Community partnership*” means a public agency or nonprofit organization implementing the tobacco use prevention and control initiative in a local area in accordance with this chapter.
4. “*Department*” means the Iowa department of public health.
5. “*Director*” means the director of public health.
6. “*Division*” means the division of tobacco use prevention and control of the Iowa department of public health, established pursuant to this chapter.
7. “*Initiative*” means the comprehensive tobacco use prevention and control initiative established in this chapter.
8. “*Manufacturer*” means manufacturer as defined in section 453A.1.
9. “*Pregnant woman*” means a female of any age who is pregnant.
10. “*School-age youth*” means a person attending school in kindergarten through grade twelve.
11. “*Tobacco*” means both cigarettes and tobacco products as defined in section 453A.1.
12. “*Youth*” means a person who is five through twenty-four years of age.

2000 Acts, ch 1192, §2, 17; 2011 Acts, ch 63, §2

Subsection 10 stricken and former subsections 11 – 13 renumbered as 10 – 12

**142A.3 Tobacco use prevention and control — division — commission — created.**

1. The department shall establish, as a separate and distinct division within the department, a division of tobacco use prevention and control. The division shall develop, implement, and administer the initiative established in this chapter and shall perform other duties as directed by this chapter or as assigned by the director of public health.

2. A commission on tobacco use prevention and control is established to develop policy, provide direction for the initiative, and perform all other duties related to the initiative and other tobacco use prevention and control activities as directed by this chapter or referred to the commission by the director of public health.

3. The membership of the commission shall include the following voting members who shall serve three-year, staggered terms:

a. Members, at least one of whom is a member of a racial minority, to be appointed by the governor, subject to confirmation by the senate pursuant to sections 2.32 and 69.19, and consisting of the following:

(1) Three members who are active with nonprofit health organizations that emphasize tobacco use prevention or who are active as health services providers, at the local level.

(2) Three members who are active with health promotion activities at the local level in youth education, nonprofit services, or other activities relating to tobacco use prevention and control.

b. Three voting members, to be selected by the participants in the annual statewide youth summit of the initiative’s youth program, who shall not be subject to section 69.16 or 69.16A. However, the selection process shall provide for diversity among the members and at least one of the youth members shall be a female.

4. The commission shall also include the following ex officio, nonvoting members:

a. Four members of the general assembly, with not more than one member from each chamber being from the same political party. The majority leader of the senate and the minority leader of the senate shall each appoint one of the senate members. The majority leader of the house of representatives and the minority leader of the house of representatives shall each appoint one of the house members.

b. The presiding officer of the statewide youth executive body, selected by the delegates to the statewide youth summit.

5. In addition to the members of the commission, the following agencies, organizations,

and persons shall each assign a single liaison to the commission to provide assistance to the commission in the discharge of the commission's duties:

- a. The department of education.
- b. The drug policy coordinator.
- c. The department of justice, office of the attorney general.
- d. The department of human services.

6. Citizen members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Citizen members shall be paid a per diem as specified in section 7E.6. Legislative members are eligible for per diem and expenses as provided in section 2.10.

7. A member of the commission who is convicted of a crime relating to tobacco, alcohol, or controlled substances is subject to removal from the commission.

8. A vacancy on the commission other than for the youth members shall be filled in the same manner as the original appointment for the balance of the unexpired term. A youth member vacancy shall be filled by the presiding officer of the statewide executive body as selected by the delegates to the statewide youth summit.

9. The commission shall elect a chairperson from among its voting members and may select other officers from among its voting members, as determined necessary by the commission. The commission shall meet regularly as determined by the commission, upon the call of the chairperson, or upon the call of a majority of the voting members.

10. The commission may designate an advisory council. The commission shall determine the membership and representation of the advisory council and members of the council shall serve at the pleasure of the commission. The advisory council may include representatives of health care provider groups, parent groups, antitobacco advocacy programs and organizations, tobacco retailers, research and evaluation experts, and youth organizers.

2000 Acts, ch 1192, §3, 17; 2004 Acts, ch 1176, §6; 2009 Acts, ch 133, §42; 2010 Acts, ch 1061, §30; 2011 Acts, ch 63, §3, 4

Subsection 3, paragraph a amended  
Subsection 5, paragraph e stricken

#### **142A.4 Commission duties.**

The commission shall do all of the following:

1. Develop and implement the comprehensive tobacco use prevention and control initiative as provided in this chapter.

2. Provide a forum for the discussion, development, and recommendation of public policy alternatives in the field of tobacco use prevention and control.

3. Develop an educational component of the initiative. Educational efforts provided through the school system shall be developed in conjunction with the department of education.

4. Develop a plan for implementation of the initiative in accordance with the purpose and intent specified in section 142A.1.

5. Provide for technical assistance, training, and other support under the initiative.

6. Take actions to develop and implement a statewide system for the initiative programs that are delivered through community partnerships.

7. Manage and coordinate the provision of funding and other moneys available to the initiative by combining all or portions of appropriations or other revenues as authorized by law.

8. Assist with the linkage of the initiative with child welfare and juvenile justice decategorization projects, education programming, early childhood Iowa areas, and other programs and services directed to youth at the state and community level.

9. a. Coordinate and respond to any requests from a community partnership relating to any of the following:

(1) Removal of barriers to community partnership efforts.

(2) Pooling and redirecting of existing federal, state, or other public or private funds available for purposes that are consistent with the initiative.

(3) Seeking of federal waivers to assist community partnership efforts.

b. In coordinating and responding to the requests, the commission shall work with state

agencies, the governor, and the general assembly as necessary to address requests deemed appropriate by the commission.

10. Adopt rules pursuant to chapter 17A as necessary for the designation, governance, and oversight of the initiative and the implementation of this chapter. The commission shall provide for community partnership and youth program input in the rules adoption process. The rules shall include but are not limited to all of the following:

a. Performance indicators for initiative programs, community partnerships, and the services provided under the auspices of community partnerships. The performance indicators shall be developed with input from communities.

b. Minimum standards to further the provision of equal access to services.

11. Monitor and evaluate the effectiveness of performance measures utilized under the initiative.

12. Submit a report to the governor and the general assembly on a periodic basis, during the initial year of operation, and on an annual basis thereafter, regarding the initiative, including demonstrated progress based on performance indicators. The commission shall report more frequently if requested by the joint appropriations subcommittee that makes recommendations concerning the commission's budget. Beginning July 1, 2005, the commission shall also perform a comprehensive review of the initiative and shall submit a report of its findings to the governor and the general assembly on or before December 15, 2005.

13. Represented by the chairperson of the commission, annually appear before the joint appropriations subcommittee that makes recommendations concerning the commission's budget to report on budget expenditures and division operations relative to the prior fiscal year and the current fiscal year.

14. Advise the director in evaluating potential candidates for the position of administrator, consult with the director in the hiring of the administrator, and review and advise the director on the performance of the administrator in the discharge of the administrator's duties.

15. Prioritize funding needs and the allocation of moneys appropriated and other resources available for the programs and activities of the initiative.

16. Review fiscal needs of the initiative and make recommendations to the director in the development of budget requests.

17. Solicit and accept any gift of money or property, including any grant of money, services, or property from the federal government, the state, a political subdivision, or a private source that is consistent with the goals of the initiative. The commission shall adopt rules prohibiting the acceptance of gifts from a manufacturer of tobacco products.

18. Advise and make recommendations to the governor, the general assembly, the director, and the administrator, relative to tobacco use, treatment, intervention, prevention, control, and education programs in the state.

19. Evaluate the work of the division and the department relating to the initiative. For this purpose, the commission shall have access to any relevant department records and documents, and other information reasonably obtainable by the department.

20. Develop the structure for the statewide youth summit to be held annually.

21. Approve the content of any materials distributed by the youth program pursuant to section 142A.9, prior to distribution of the materials.

2000 Acts, ch 1192, §4, 17; 2004 Acts, ch 1176, §7; 2005 Acts, ch 179, §57; 2009 Acts, ch 41, §263; 2010 Acts, ch 1031, §293; 2011 Acts, ch 63, §5

Subsections 14 and 17 stricken and former subsections 15 and 16 and 18 – 23 renumbered as 14 – 21

#### **142A.5 Director and administrator duties.**

1. The director shall do all of the following:

a. Establish and maintain the division of tobacco use prevention and control.

b. Employ a separate division administrator, in accordance with the requirements of section 142A.4, subsection 14, in a full-time equivalent position whose sole responsibility and duty shall be the administration and oversight of the division. The division administrator shall report to and shall serve at the pleasure of the director. The administrator shall be exempt from the merit system provisions of chapter 8A, subchapter IV.

c. Coordinate all tobacco use prevention and control programs and activities under the purview of the department.

d. Receive and review budget recommendations from the commission. The director shall consider these recommendations in developing the budget request for the department.

2. The administrator shall do all of the following:

a. Implement the initiative, coordinate the activities of the commission and the initiative, and coordinate other tobacco use prevention and control activities as assigned by the director.

b. Monitor and evaluate the effectiveness of performance measures.

c. Provide staff and administrative support to the commission.

d. Administer contracts entered into under this chapter.

e. Coordinate and cooperate with other tobacco use prevention and control programs within and outside of the state.

f. Provide necessary information to the commission to assist the commission in making its annual report to the joint appropriations subcommittee pursuant to section 142A.4, subsection 13, and in fulfilling other commission duties pursuant to section 142A.4.

2000 Acts, ch 1192, §5, 17; 2003 Acts, ch 145, §190; 2004 Acts, ch 1176, §8, 9; 2011 Acts, ch 63, §6, 7

Subsection 1, paragraph e stricken

Subsection 2, paragraph f stricken and former paragraph g redesignated as f

**142A.6 Comprehensive tobacco use prevention and control initiative established — purpose — results.**

1. A comprehensive tobacco use prevention and control initiative is established. The division shall implement the initiative as provided in this chapter.

2. The purpose of the initiative is to attain the following results:

a. Reduction of tobacco use by youth.

b. Strong, active youth involvement in activities to prevent youth tobacco use and to promote cessation of youth tobacco use.

c. Enhanced capacity of youth to make healthy choices.

d. Reduction of tobacco use by pregnant women.

3. Success in achieving the initiative's desired results may be demonstrated by a minimum of the following:

a. Data demonstrating consistent progress in reducing the prevalence of tobacco use among youth and adults.

b. Survey results indicating widespread support among youth for the initiative's tobacco use prevention and control activities; for programs that enhance the ability of youth to make healthy choices including those related to use of tobacco, alcohol, and other substances; and for the media, marketing, and communications efforts supporting the initiative's desired results. Any survey conducted may also include an assessment of the effectiveness of tobacco use prevention and control activities in affecting other unhealthy youth behaviors including sexual activity and violent behavior.

4. The division shall implement the initiative in a manner that ensures that youth are extensively involved in the decision making for the programs implemented under the initiative. The initiative shall also involve parents, schools, and community members in activities to achieve the results desired for the initiative. The division shall encourage collaboration at the state and local levels to maximize available resources and to provide flexibility to support community efforts.

5. Procurement of goods and services necessary to implement the initiative is subject to approval of the commission. Notwithstanding chapter 8A, subchapter III, or any other provision of law to the contrary, such procurement may be accomplished by the commission under its own competitive bidding process which shall provide for consideration of such factors as price, bidder competence, and expediency in procurement.

6. In order to promote the tobacco use prevention and control partnership established in section 142A.1, the following persons shall comply with the following, as applicable:

a. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away cigarettes or tobacco products.

b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not provide free articles, products, commodities, gifts, or concessions in any exchange for the purchase of cigarettes or tobacco products.

c. The prohibitions in this section do not apply to transactions between manufacturers, distributors, wholesalers, or retailers.

d. For the purpose of this subsection, manufacturer, distributor, wholesaler, retailer, and distributing agent mean as defined in section 453A.1.

2000 Acts, ch 1192, §6, 17; 2003 Acts, ch 145, §191; 2011 Acts, ch 63, §8, 9

See also §453A.39

Subsection 2, paragraph e stricken

Subsection 3, paragraph c stricken

#### **142A.7 Initiative components.**

1. The initiative shall include but is not limited to all of the following:

a. Youth programs, designed to achieve the initiative's desired results, that are directed by youth participants for youth.

b. A media, marketing, and communications program to achieve the initiative's desired results. Advertising shall not include the name, voice, or likeness of any elected or appointed public official or of any candidate for elective office.

c. Independent evaluation of each component of the statewide initiative.

d. Ongoing statewide assessment of data, review of indicators used in assessing the effectiveness of the initiative, and evaluation of the initiative, its programs, and its marketing strategy. The initial baseline used to measure the effectiveness of the initiative shall be developed using existing, available indicators. Following development of the initial baseline, indicators of the effectiveness of the initiative shall be reviewed on at least an annual basis to ensure that the indicators used most accurately provide for measurement of such effectiveness. Primary emphasis in data assessment shall be on data relating to tobacco usage and may include data demonstrating the prevalence of tobacco use among youth and pregnant women, and the prevalence of the use of alcohol and other substances among youth. Sources of data considered shall include but are not limited to the centers for disease control and prevention of the United States department of health and human services and the Iowa youth tobacco survey, and may include the Iowa youth risk survey conducted by the department or the youth risk behavior survey.

e. A tobacco use prevention and control education program.

2. Administrative costs associated with each program of the initiative and program provider shall be established at a reasonable level consistent with effective management practices.

3. Requests for information or for proposals shall emphasize that performance measures are required for any contract or allocation of funding under the initiative.

2000 Acts, ch 1192, §7, 17; 2011 Acts, ch 63, §10

Subsection 1, paragraph f stricken

#### **142A.8 Community partnerships.**

1. A community partnership is a public agency or nonprofit organization operating in a local area under contract with the department to implement the initiative in that local area utilizing broad community involvement. The community partnership or its designee shall act as the fiscal agent for moneys administered by the community partnership.

2. A community partnership area shall encompass a county or multicounty area, school district or multischool district area, economic development enterprise zone that meets the requirements of an urban or rural enterprise community under Tit. XIII of the federal Omnibus Budget Reconciliation Act of 1993, or early childhood Iowa area, in accordance with criteria adopted by the commission for appropriate population levels and size of geographic areas.

3. The commission shall adopt rules pursuant to chapter 17A providing procedures for the initial designation of community partnership areas and for subsequent changes to the initially designated areas.

4. The requirements for contracts entered into by a community partnership and the department shall include but are not limited to all of the following:

- a. Administrative functions.
- b. Fiscal provisions.
- c. Community and youth involvement in program and administrative decisions.
- d. Evaluation of the program.

2000 Acts, ch 1192, §8, 17; 2010 Acts, ch 1031, §294; 2010 Acts, ch 1061, §180; 2011 Acts, ch 63, §11

Subsection 4, paragraph d stricken and former paragraph e redesignated as d

#### **142A.9 Youth program.**

1. A youth program component shall be implemented in each community partnership area to achieve the purposes of the initiative.

2. The youth program shall include but is not limited to all of the following:

a. A structure for program participants to interact with other participating youth within the community partnership area and in other areas of the state.

b. A structure for formal youth involvement in youth program governance at the community partnership area level and in a statewide youth summit or summits consisting of participation by representatives of the community partnership area level.

c. A structure for participation in a statewide executive body consisting of participants selected by the delegates to the statewide youth summit of the youth program.

d. Youth activities that are character-based and focused on rewarding appropriate values, behavior, and healthy choices by participants.

3. To the greatest extent possible, the youth program shall be directed by youth for youth participants. State and local administrators associated with the initiative shall consult with and utilize the youth program participants in the media, marketing, and communications program; education efforts; and other aspects of the initiative including evaluation and collaboration.

2000 Acts, ch 1192, §9, 17; 2011 Acts, ch 63, §12

Subsection 3 amended

## CHAPTER 142C

### REVISED UNIFORM ANATOMICAL GIFT ACT

#### **142C.8 Rights and duties of procurement organizations and donors.**

1. When a hospital refers an individual at or near death to a procurement organization, the procurement organization shall make a reasonable search of the records of the state department of transportation and any donor registry that the hospital knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

2. A procurement organization shall be allowed reasonable access to information in the records of the state department of transportation to ascertain whether an individual at or near death is a donor.

3. When a hospital refers an individual at or near death to a procurement organization, the procurement organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part shall not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

4. Unless prohibited by law other than this chapter, at any time after a donor's death, the person to whom a part passes under section 142C.5 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

5. Unless prohibited by law other than this chapter, an examination under subsection 3 or 4 may include an examination of all medical and dental records of the donor or prospective donor.

6. Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

7. Upon referral by a hospital under subsection 1, a procurement organization shall make a reasonable search for any person listed in section 142C.4 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, the procurement organization shall promptly advise the other person of all relevant information.

8. Subject to section 142C.5, subsection 9, the rights of a person to whom a part passes under section 142C.5 are superior to the rights of all other persons with respect to the part.

9. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person who accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of the remains in a funeral service. If the gift is of a part, the person to whom the part passes under section 142C.5, upon the death of the donor and prior to embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

10. The physician, physician assistant, or advanced registered nurse practitioner who attends the decedent at death and the physician, physician assistant, or advanced registered nurse practitioner who determines the time of death shall not participate in the procedures for removing or transplanting a part from the decedent.

11. A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

95 Acts, ch 39, §8; 2007 Acts, ch 44, §10; 2011 Acts, ch 26, §1

Subsection 10 amended

## CHAPTER 144

### VITAL STATISTICS

#### **144.13B Waiver of fees — military service.**

Notwithstanding any provision of this chapter to the contrary, the certified copy fees for a birth certificate or death certificate of a service member who died while performing military duty, as defined in section 29A.1, subsection 3, 11, or 12, shall be waived for a period of one year from the date of death for a family member of the deceased service member.

2010 Acts, ch 1170, §2; 2011 Acts, ch 47, §7

Section amended

#### **144.26 Death certificate.**

1. *a.* A death certificate for each death which occurs in this state shall be filed as directed by the state registrar within three days after the death and prior to final disposition, and shall be registered by the county registrar if it has been completed and filed in accordance with this chapter. A death certificate shall include the social security number, if provided, of the deceased person. All information including the certifying physician's, physician assistant's, or advanced registered nurse practitioner's name shall be typewritten.

*b.* A physician assistant or an advanced registered nurse practitioner authorized to sign a death certificate shall be licensed in this state and shall have been in charge of the deceased patient's care.

2. All information included on a death certificate may be provided as mutually agreed upon by the division and the child support recovery unit, including by automated exchange.

3. The county in which a dead body is found is the county of death. If death occurs in a

moving conveyance, the county in which the dead body is first removed from the conveyance is the county of death.

4. a. The department shall establish by rule procedures for making a finding of presumption of death when no body can be found. The department shall also provide by rule the responsibility for completing and signing the medical certification of cause of death in such circumstances. The presumptive death certificate shall be in a form prescribed by the state registrar and filed in the county where the death was presumed to occur.

b. The division shall provide for the correction, substitution, or removal of a presumptive death certificate when the body of the person is later found, additional facts are discovered, or the person is discovered to be alive.

[SS15, §587-b; C24, 27, 31, 35, 39, §2319; C46, 50, 54, 58, 62, 66, §141.3; C71, 73, 75, 77, 79, 81, S81, §144.26; 81 Acts, ch 64, §5]

88 Acts, ch 1158, §40; 97 Acts, ch 159, §14; 97 Acts, ch 175, §226; 2002 Acts, ch 1108, §11; 2011 Acts, ch 26, §2

Subsection 1 amended

#### **144.28 Medical certification.**

1. a. For the purposes of this section, “*nonnatural cause of death*” means the death is a direct or indirect result of physical, chemical, thermal, or electrical trauma, or drug or alcohol intoxication or other poisoning.

b. Unless there is a nonnatural cause of death, the medical certification shall be completed and signed by the physician, physician assistant, or advanced registered nurse practitioner in charge of the patient’s care for the illness or condition which resulted in death within seventy-two hours after receipt of the death certificate from the funeral director or individual who initially assumes custody of the body.

c. If there is a nonnatural cause of death, the county or state medical examiner shall be notified and shall conduct an inquiry.

d. If the decedent was an infant or child and the cause of death is not known, a medical examiner’s inquiry shall be conducted and an autopsy performed as necessary to exclude a nonnatural cause of death.

e. If upon inquiry into a death, the county or state medical examiner determines that a preexisting natural disease or condition was the likely cause of death and that the death does not affect the public interest as described in section 331.802, subsection 3, the medical examiner may elect to defer to the physician, physician assistant, or advanced registered nurse practitioner in charge of the patient’s preexisting condition the certification of the cause of death.

f. When an inquiry is required by the county or state medical examiner, the medical examiner shall investigate the cause and manner of death and shall complete and sign the medical certification within seventy-two hours after determination of the cause and manner of death.

2. The person completing the medical certification of cause of death shall attest to its accuracy either by signature or by an electronic process approved by rule.

[C24, 27, 31, 35, 39, §2320; C46, 50, 54, 58, 62, 66, §141.4(18); C71, 73, 75, 77, 79, 81, §144.28]

97 Acts, ch 159, §16; 2002 Acts, ch 1098, §2; 2007 Acts, ch 159, §26; 2008 Acts, ch 1058, §13; 2011 Acts, ch 26, §3

Subsection 1, paragraphs b and e amended

## CHAPTER 144C

### FINAL DISPOSITION ACT

#### 144C.6 Declaration of designee — form — requirements.

1. A declaration executed pursuant to this chapter may but need not be in the following form:

I hereby designate ..... as my designee. My designee shall have the sole responsibility for making decisions concerning the final disposition of my remains and the ceremonies to be performed after my death. This declaration hereby revokes all prior declarations. This designation becomes effective upon my death.

My designee shall act in a manner that is reasonable under the circumstances.

I may revoke or amend this declaration at any time. I agree that a third party (such as a funeral or cremation establishment, funeral director, or cemetery) who receives a copy of this declaration may act in reliance on it. Revocation of this declaration is not effective as to a third party until the third party receives notice of the revocation. My estate shall indemnify my designee and any third party for costs incurred by them or claims arising against them as a result of their good faith reliance on this declaration.

I execute this declaration as my free and voluntary act.

2. A declaration executed pursuant to this chapter shall be in a written form that substantially complies with the form in subsection 1, is properly completed, is contained in or attached to a durable power of attorney for health care under chapter 144B, and is dated and signed by the declarant or another person acting on the declarant's behalf at the direction of and in the presence of the declarant. In addition, a declaration shall be either of the following:

*a.* Signed by at least two individuals who are not named therein and who, in the presence of each other and the declarant, witnessed the signing of the declaration by the declarant, or another person acting on the declarant's behalf at the direction of and in the presence of the declarant, and witnessed the signing of the declaration by each other.

*b.* Acknowledged before a notarial officer.

3. A declaration may include the location of an agreement for prearranged funeral services or funeral merchandise as defined in and executed under chapter 523A, cemetery lots owned by or reserved for the declarant, and special instructions regarding organ donation consistent with chapter 142C.

4. A declaration for disposition of remains made by a service member who died while performing military duty as defined in section 29A.1, subsection 3, 11, or 12, on forms provided and authorized by the department of defense for service members for this purpose shall constitute a valid declaration of designee for purposes of this chapter.

2008 Acts, ch 1051, §11, 22; 2010 Acts, ch 1170, §3; 2011 Acts, ch 47, §8

Subsection 4 amended

## CHAPTER 147

### GENERAL PROVISIONS, HEALTH-RELATED PROFESSIONS

Continuing education and regulation; see chapter 272C

#### **147.107 Drug dispensing, supplying, and prescribing — limitations.**

1. A person, other than a pharmacist, physician, dentist, podiatric physician, or veterinarian who dispenses as an incident to the practice of the practitioner's profession, shall not dispense prescription drugs or controlled substances.

2. *a.* A pharmacist, physician, dentist, or podiatric physician who dispenses prescription drugs, including but not limited to controlled substances, for human use, may delegate nonjudgmental dispensing functions to staff assistants only when verification of the accuracy and completeness of the dispensing is determined by the pharmacist or practitioner in the pharmacist's or practitioner's physical presence. However, the physical presence requirement does not apply when a pharmacist or practitioner is utilizing an automated dispensing system or when a pharmacist is utilizing a tech-check-tech program, as defined in section 155A.3. When using an automated dispensing system the pharmacist or practitioner shall utilize an internal quality control assurance plan that ensures accuracy for dispensing. When using a tech-check-tech program the pharmacist shall utilize an internal quality control assurance plan, in accordance with rules adopted by the board of pharmacy, that ensures accuracy for dispensing. Verification of automated dispensing and tech-check-tech accuracy and completeness remains the responsibility of the pharmacist or practitioner and shall be determined in accordance with rules adopted by the board of pharmacy, the board of medicine, the dental board, and the board of podiatry for their respective licensees.

*b.* A dentist, physician, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall report the fact that they dispense prescription drugs with the practitioner's respective board at least biennially.

*c.* A physician, dentist, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall offer to provide the patient with a written prescription that may be dispensed from a pharmacy of the patient's choice or offer to transmit the prescription orally, electronically, or by facsimile in accordance with section 155A.27 to a pharmacy of the patient's choice.

3. A physician assistant or registered nurse may supply, when pharmacist services are not reasonably available or when it is in the best interests of the patient, on the direct order of the supervising physician, a quantity of properly packaged and labeled prescription drugs, controlled substances, or contraceptive devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician assistant or registered nurse, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices.

4. Notwithstanding subsection 3, a physician assistant shall not dispense prescription drugs as an incident to the practice of the supervising physician or the physician assistant, but may supply, when pharmacist services are not reasonably available, or when it is in the best interests of the patient, a quantity of properly packaged and labeled prescription drugs, controlled substances, or medical devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician assistant, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices. Prescription drugs supplied under the provisions of this subsection shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable overhead costs, as they relate to supplying prescription drugs to the patient, and not at a profit to the physician or the physician assistant. If prescription drug supplying authority is delegated by a supervising physician to a physician assistant, a nurse or staff assistant may assist the physician assistant in providing that service. Rules shall be adopted by the board of physician assistants, after consultation with the board of pharmacy, to implement this subsection.

5. Notwithstanding subsection 1 and any other provision of this section to the contrary, a physician may delegate the function of prescribing drugs, controlled substances, and medical devices to a physician assistant licensed pursuant to chapter 148C. When delegated prescribing occurs, the supervising physician's name shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Rules relating to the authority of physician assistants to prescribe drugs, controlled substances, and medical devices pursuant to this subsection shall be adopted by the board of physician assistants, after consultation with the board of medicine and the board of pharmacy. However, the rules shall prohibit the prescribing of schedule II controlled substances which are listed as depressants pursuant to chapter 124.

6. Health care providers shall consider the instructions of the physician assistant to be instructions of the supervising physician if the instructions concern duties delegated to the physician assistant by a supervising physician.

7. Notwithstanding subsection 1, a family planning clinic may dispense birth control drugs and devices upon the order of a physician. Subsections 2 and 3 do not apply to a family planning clinic under this subsection.

8. Notwithstanding subsection 1, but subject to the limitations contained in subsections 2 and 3, a registered nurse who is licensed and registered as an advanced registered nurse practitioner and who qualifies for and is registered in a recognized nursing specialty may prescribe substances or devices, including controlled substances or devices, if the nurse is engaged in the practice of a nursing specialty regulated under rules adopted by the board of nursing in consultation with the board of medicine and the board of pharmacy.

9. Notwithstanding section 147.86, a person, including a pharmacist, who violates this section is guilty of a simple misdemeanor.

84 Acts, ch 1006, §1; 88 Acts, ch 1232, §1; 91 Acts, ch 238, §1; 91 Acts, ch 239, §1; 92 Acts, ch 1163, §37; 92 Acts, ch 1183, §10; 94 Acts, ch 1134, §1; 95 Acts, ch 108, §5; 2002 Acts, ch 1108, §13; 2003 Acts, ch 93, §3, 14; 2003 Acts, ch 108, §39; 2004 Acts, ch 1036, §8; 2004 Acts, ch 1101, §22; 2006 Acts, ch 1094, §1; 2007 Acts, ch 10, §78; 2007 Acts, ch 218, §202; 2008 Acts, ch 1016, §1; 2008 Acts, ch 1088, §43

See also §154.1, 155A.4

Notwithstanding subsection 2, board of pharmacy authorized to approve a pilot or demonstration research project relating to authority of prescription validation and pharmacist ability to provide enhanced patient care; rules adoption and legislative reporting required; see 2011 Acts, ch 63, §36

Section not amended; footnote added

### **147.136 Scope of recovery.**

1. Except as otherwise provided in subsection 2, in an action for damages for personal injury against a physician and surgeon, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, or nurse licensed to practice that profession in this state, or against a hospital licensed for operation in this state, based on the alleged negligence of the practitioner in the practice of the profession or occupation, or upon the alleged negligence of the hospital in patient care, in which liability is admitted or established, the damages awarded shall not include actual economic losses incurred or to be incurred in the future by the claimant by reason of the personal injury, including but not limited to the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and the loss of services and loss of earned income, to the extent that those losses are replaced or are indemnified by insurance, or by governmental, employment, or service benefit programs or from any other source.

2. This section shall not bar recovery of economic losses replaced or indemnified by any of the following:

- a. Benefits received under the medical assistance program under chapter 249A.
- b. The assets of the claimant or of the members of the claimant's immediate family.

[C77, 79, 81, §147.136]

95 Acts, ch 108, §6; 2008 Acts, ch 1088, §141; 2011 Acts, ch 129, §85, 156

Section amended

## CHAPTER 147A

### EMERGENCY MEDICAL CARE — TRAUMA CARE

Enforcement, §147.87, 147.92  
Penalty, general, §147.86

#### SUBCHAPTER I

### EMERGENCY MEDICAL CARE

#### **147A.2 Council established — terms of office.**

1. An EMS advisory council shall be appointed by the director. Membership of the council shall be comprised of individuals nominated from, but not limited to, the following state or national organizations: Iowa osteopathic medical association, Iowa medical society, American college of emergency physicians, Iowa physician assistant society, Iowa academy of family physicians, university of Iowa hospitals and clinics, American academy of emergency medicine, American academy of pediatrics, Iowa EMS association, Iowa firefighters association, Iowa professional fire fighters, EMS education programs committee, Iowa nurses association, Iowa hospital association, and the Iowa state association of counties. The council shall also include at least two at-large members who are volunteer emergency medical care providers and a representative of a private service program.

2. The EMS advisory council shall advise the director and develop policy recommendations concerning the regulation, administration, and coordination of emergency medical services in the state.

95 Acts, ch 41, §10; 98 Acts, ch 1100, §18; 2001 Acts, ch 74, §5; 2010 Acts, ch 1149, §9; 2011 Acts, ch 25, §18

Subsection 1 amended

## CHAPTER 152C

### MASSAGE THERAPY

Enforcement, §147.87, 147.92  
Penalty, general, §147.86

#### **152C.3 Requirements for licensure.**

1. The board shall adopt rules pursuant to chapter 17A establishing a procedure for licensing of massage therapists. License requirements shall include the following:

a. Completion of a curriculum of massage education at a school approved by the board which requires for admission a diploma from an accredited high school or the equivalent and requires completion of at least six hundred hours of supervised academic instruction. However, educational requirements under this paragraph are subject to reduction by the board if, after public notice and hearing, the board determines that the welfare of the public may be adequately protected with fewer hours of education.

b. Passage of an examination given or approved by the board.

c. Payment of a reasonable fee required by the board which shall compensate and be retained by the board for the costs of administering this chapter.

2. In addition to provisions for licensure, the rules shall include the following:

a. Requirements regarding completion of at least twelve hours of continuing education annually regarding subjects concerning massage and related techniques or the health and safety of the public, subject to reduction by the board if, after public notice and hearing, the board determines that the welfare of the public may be adequately protected with fewer hours.

b. Requirements for issuance of a reciprocal license to licensees of states with license

requirements equal to or exceeding those of this chapter. The rules shall provide for issuance of a temporary reciprocal license for licensees of states with lower requirements.

3. A massage therapist licensed pursuant to this chapter shall be issued a license number and a license certificate.

92 Acts, ch 1137, §3; 93 Acts, ch 71, §1; 98 Acts, ch 1053, §31 – 33; 2011 Acts, ch 57, §1  
Subsection 1, paragraph a amended

## CHAPTER 153

### DENTISTRY

Penalty, §147.86  
Licensing board, support staff exceptions;  
location and powers; see §135.11A, 135.31

#### 153.14 Persons not included.

Section 153.13 shall not be construed to include the following classes:

1. Students of dentistry who practice dentistry upon patients at clinics in connection with their regular course of instruction at an accredited dental college, students of dental hygiene who practice upon patients at clinics in connection with their regular course of instruction at state-approved schools, and students of dental assisting who practice upon patients at clinics in connection with a regular course of instruction determined by the board pursuant to section 153.39.

2. Licensed “physicians and surgeons” or licensed “osteopathic physicians and surgeons” who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession.

3. Persons licensed to practice dental hygiene who are exclusively engaged in the practice of said profession.

4. Dentists and dental hygienists who are licensed in another state and who are active or reserve members of the United States military service when acting in the line of duty in this state.

5. Persons registered to practice as a dental assistant.

1, 2. [S13, §2600-1, -o; C24, 27, 31, 35, 39, §2566; C46, 50, 54, 58, 62, 66, §153.2; C71, 73, 75, 77, 79, 81, §153.14]

3. [C24, 27, 31, 35, 39, §2566; C46, 50, 54, 58, 62, 66, §153.2; C71, 73, 75, 77, 79, 81, §153.14]

89 Acts, ch 63, §1; 95 Acts, ch 16, §1; 2000 Acts, ch 1002, §3, 4; 2007 Acts, ch 10, §133; 2009 Acts, ch 133, §57; 2011 Acts, ch 129, §86, 156

Subsection 1 amended

#### 153.21 License by credentials.

The board may issue a license under this chapter without examination to an applicant who furnishes satisfactory proof that the applicant meets all of the following requirements:

1. Holds a license from a similar dental board of another state, territory, or district of the United States under requirements equivalent or substantially equivalent to those of this state.

2. Has satisfied at least one of the following:

a. Passed an examination administered by a regional or national testing service, which examination has been approved by the dental board in accordance with section 147.34, subsection 1.

b. Has for three consecutive years immediately prior to the filing of the application in this state been in a legal practice of dentistry or dental hygiene in such other state, territory, or district of the United States.

3. Furnishes such other evidence as to the applicant's qualifications and lawful practice as the board may require.

[C71, 73, 75, 77, 79, 81, §153.21]

2002 Acts, ch 1108, §16; 2011 Acts, ch 80, §1

Section stricken and rewritten

## CHAPTER 154A

### HEARING AIDS

Enforcement, §147.87, 147.92

#### **154A.24 Suspension or revocation.**

The board may revoke or suspend a license or temporary permit permanently or for a fixed period for any of the following causes:

1. Conviction of a felony. The record of conviction, or a certified copy, shall be conclusive evidence of conviction.
2. Procuring a license or temporary permit by fraud or deceit.
3. Unethical conduct in any of the following forms:
  - a. Obtaining a fee or making a sale by fraud or misrepresentation.
  - b. Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.
  - c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.
  - d. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
  - e. Representing that the service or advice of a person licensed to practice medicine, or one who is certificated as a clinical audiologist by the board of speech pathology and audiology or its equivalent, will be used or made available in the fitting or selection, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words "doctor", "clinic", "clinical audiologist", "state approved", or similar words, abbreviations, or symbols which tend to connote the medical or other professions, except where the title "certified hearing aid audiologist" has been granted by the national hearing aid society, or that the hearing aid dispenser has been recommended by this state or the board when such is not accurate.
  - f. Habitual intemperance.
  - g. Permitting another person to use the license or temporary permit.
  - h. Advertising a manufacturer's product or using a manufacturer's name or trademark to imply a relationship with the manufacturer that does not exist.
    - i. Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to a person who advises another in a professional capacity, as an inducement to influence the person or cause the person to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence others to refrain from dealing in the products of competitors.
    - j. Conducting business while suffering from a contagious or infectious disease.
    - k. Engaging in the fitting or selection and sale of hearing aids under a false name or alias, with fraudulent intent.
    - l. Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting or selection of hearing aids, except in cases of selling replacement hearing aids of the same make or model within one year of the original sale.
    - m. Gross incompetence or negligence in fitting or selection and selling of hearing aids.

n. Using an advertisement or other representation which has the effect of misleading or deceiving purchasers or prospective purchasers into the belief that any hearing aid or device, or part or accessory thereof, is a new invention or involves a new mechanical or scientific principle when such is not the fact.

o. Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle, and that in many cases of hearing loss, this type of instrument may not be suitable.

p. Stating or implying that the use of a hearing aid will restore normal hearing or preserve hearing or prevent or retard progressions of hearing impairment or any other false or misleading claim regarding the use or benefit of a hearing aid.

q. Representing or implying that a hearing aid is or will be “custom-made”, “made to order”, “prescription made”, or in any other sense especially fabricated for an individual person when such is not the case.

r. Violating any of the provisions of section 714.16.

s. Such other acts or omissions as the board may determine to be unethical conduct.

[C75, 77, 79, 81, §154A.24]

90 Acts, ch 1073, §1; 2001 Acts, ch 58, §18; 2007 Acts, ch 10, §146; 2011 Acts, ch 129, §87, 156

Subsection 3, paragraph s stricken and former paragraph t redesignated as s

## CHAPTER 155A

### PHARMACY

Licensing board, support staff exception;  
location and powers; see §135.11A, 135.31

#### **155A.43 Pharmaceutical collection and disposal program — annual allocation.**

Of the fees collected pursuant to sections 124.301 and 147.80 and chapter 155A by the board of pharmacy, and retained by the board pursuant to section 147.82, not more than one hundred twenty-five thousand dollars may be allocated annually by the board for administering the pharmaceutical collection and disposal program originally established pursuant to 2009 Iowa Acts, chapter 175, section 9. The program shall provide for the management and disposal of unused, excess, and expired pharmaceuticals. The board of pharmacy may cooperate with the Iowa pharmacy association and may consult with the department and sanitary landfill operators in administering the program.

2011 Acts, ch 129, §88, 156

NEW section

## CHAPTER 158

### BARBERING

Enforcement, §147.87, 147.92

#### **158.2 Prohibition — exceptions.**

A person shall not practice barbering with or without compensation unless the person possesses a license issued under the provisions of section 158.3. A person licensed under section 158.3 shall not represent to the public that the person is primarily engaged in practices other than haircutting unless the functions are in fact the person’s primary function or specialty. Practices listed in section 158.1 when performed by the following persons do not constitute barbering:

1. Licensed physicians and surgeons, osteopathic physicians and surgeons, nurses, dentists, podiatric physicians, optometrists, chiropractors, and physical therapists, when exclusively engaged in the practice of their respective professions.

2. Licensed practitioners of cosmetology arts and sciences as defined in section 157.1.

3. Students enrolled in licensed barber schools or schools of cosmetology arts and sciences who are practicing under the instruction or immediate supervision of an instructor.

4. Persons who, without compensation, perform any of the practices on an emergency basis or on a casual basis.

5. Employees and residents of hospitals, health care facilities, orphans' homes, juvenile homes, and other similar facilities who shampoo, arrange, dress, or curl the hair of any resident, or who shave or trim the beard of any resident, without receiving direct compensation from the person receiving the service.

6. Persons who perform any of the practices listed in section 158.1 on themselves or on a member of the person's immediate family.

7. Offenders committed to the custody of the director of the department of corrections who cut the hair or trim or shave the beard of any other offender within a correctional facility, without receiving direct compensation from the person receiving the service.

8. Persons committed pursuant to chapter 229A to the custody of the director of the department of human services in the unit for sexually violent predators who cut the hair or trim or shave the beard of any other person within the unit, without receiving direct compensation from the person receiving the service.

[C27, 31, 35, §2585-b12; C39, §2585.26; C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §158.2]

92 Acts, ch 1205, §18; 96 Acts, ch 1034, §68; 2005 Acts, ch 174, §20; 2008 Acts, ch 1088, §141; 2009 Acts, ch 133, §66; 2011 Acts, ch 98, §4

NEW subsection 8

## CHAPTER 159

### DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **159.18 Publicizing of farm programs.**

1. As used in this section, "*farm programs*" includes, but is not limited to, financial incentive programs established within the division of soil conservation of the department of agriculture and land stewardship as provided in section 161A.70 and the beginning farmer loan program administered by the agricultural development authority as provided in section 175.12.

2. The department shall publicize the availability of farm programs to women and minority persons. The department shall disseminate the information electronically or by publishing printed brochures for distribution to locations and institutions serving farmers, including departmental offices, financial institutions participating in farm programs, and soil and water conservation district offices.

3. The department shall cooperate with private institutions and public agencies in order to carry out this section, including the economic development authority and the United States department of agriculture.

2000 Acts, ch 1224, §25; 2011 Acts, ch 118, §85, 89

Code editor directive applied

SUBCHAPTER II  
AGRICULTURAL MARKETING

**159.20 Powers of department.**

1. The department shall perform duties designed to lead to more advantageous marketing of Iowa agricultural commodities. The department may do any of the following:

- a. Investigate the marketing of agricultural commodities.
- b. Promote the sale, distribution, and merchandising of agricultural commodities.
- c. Furnish information and assistance concerning agricultural commodities to the public.
- d. Cooperate with the college of agriculture and life sciences of the Iowa state university of science and technology in encouraging agricultural marketing education and research.
- e. Accumulate and diffuse information concerning the marketing of agricultural commodities in cooperation with persons, agencies, or the federal government.
- f. Investigate methods and practices related to the processing, handling, grading, classifying, sorting, weighing, packing, transportation, storage, inspection, or merchandising of agricultural commodities within this state.
- g. Ascertain sources of supply for Iowa agricultural commodities. The department shall prepare and periodically publish lists of names and addresses of producers and consignors of agricultural commodities.
- h. Perform inspection or grading of an agricultural commodity if requested by a person engaged in the production, marketing, or processing of the agricultural commodity. However, the person must pay for the services as provided by rules adopted by the department.
- i. Cooperate with the economic development authority to avoid duplication of efforts between the department and the agricultural marketing program operated by the economic development authority.
- j. Provide for the promotion and expansion of renewable fuels and coproducts, by doing all of the following:

(1) Assist the office of renewable fuels and coproducts in administering the provisions of chapter 159A, subchapter II.

(2) Assist the renewable fuel infrastructure board, provide for the administration of the renewable fuel infrastructure programs, and provide for the management of the renewable fuel infrastructure fund, as provided in chapter 159A, subchapter III.

2. As used in this subchapter:

a. “*Agricultural commodity*” means any unprocessed agricultural product, including animals, agricultural crops, and forestry products grown, raised, produced, or fed in Iowa for sale in commercial channels.

b. “*Commercial channels*” means the processes for sale of an agricultural commodity or unprocessed product from the agricultural commodity to any person, public or private, who resells the agricultural commodity for breeding, processing, slaughter, or distribution.

[C62, 66, 71, 73, 75, 77, 79, 81, §159.20]

86 Acts, ch 1245, §610; 91 Acts, ch 254, §4; 92 Acts, ch 1163, §39; 92 Acts, ch 1239, §26 – 28; 94 Acts, ch 1119, §10; 98 Acts, ch 1032, §3; 2008 Acts, ch 1032, §27; 2009 Acts, ch 41, §58; 2010 Acts, ch 1031, §237; 2011 Acts, ch 113, §45, 56; 2011 Acts, ch 118, §85, 89

Code editor directive applied

Subsection 1, paragraph j amended

## CHAPTER 159A

### RENEWABLE FUELS AND COPRODUCTS

For transition provisions relating to the administration of the renewable fuel infrastructure program by the department of agriculture and land stewardship, including but not limited to the effect of the transition on pending enforcement actions and outstanding cost-share agreements executed by the department of economic development, see 2011 Acts, ch 113, §48-54, 56

#### SUBCHAPTER II

#### OFFICE OF RENEWABLE FUELS AND COPRODUCTS

##### 159A.2 Definitions.

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

1. “*Biodiesel*” and “*biodiesel blended fuel*” mean the same as defined in section 214A.1.
  2. “*Coordinator*” means the administrative head of the office of renewable fuels and coproducts appointed by the department as provided in section 159A.3.
  3. “*Coproduct*” means a product other than a renewable fuel which at least in part is derived from the processing of agricultural commodities, and which may include corn gluten feed, distillers grain, or solubles, or can be used as livestock feed or a feed supplement.
  4. “*Department*” means the department of agriculture and land stewardship.
  5. “*Ethanol blended gasoline*” means the same as defined in section 214A.1.
  6. “*Fund*” means the renewable fuels and coproducts fund established pursuant to section 159A.7.
  7. “*Office*” means the office of renewable fuels and coproducts created pursuant to section 159A.3.
  8. “*Renewable fuel*” means the same as defined in section 214A.1.
  9. “*Renewable fuels and coproducts activities*” means either of the following:
    - a. The research, development, production, promotion, marketing, or consumption of renewable fuels and coproducts.
    - b. The research, development, transfer, or use of technologies which directly or indirectly increase the supply or demand of renewable fuels and coproducts.
- 91 Acts, ch 254, §7; 94 Acts, ch 1119, §12; 2000 Acts, ch 1018, §1; 2004 Acts, ch 1086, §106; 2006 Acts, ch 1142, §73 – 75; 2010 Acts, ch 1031, §239; 2011 Acts, ch 113, §46, 56

Further definitions, see §159.1

Unnumbered paragraph 1 amended

##### 159A.3 Office of renewable fuels and coproducts.

1. An office of renewable fuels and coproducts is created within the department and shall be staffed by a coordinator who shall be appointed by the secretary. It shall be the policy of the office to further renewable fuels and coproducts activities. The office shall first further renewable fuels and coproducts activities based on the following considerations:
  - a. The price competitiveness of the renewable fuel or coproduct.
  - b. The production capacity and supply of the renewable fuel or coproduct.
  - c. The ease and safety of transporting and storing the renewable fuel or coproduct.
  - d. The degree to which the renewable fuel or coproduct is currently developed for ready transfer to current engine technology.
  - e. The degree to which the renewable fuel or coproduct is environmentally protective.
  - f. The degree to which the renewable fuel or coproduct provides economic development opportunities.
2. The duties of the office include, but are not limited to, the following:
  - a. Serving as advisor to the department regarding regulations, including federal and state standards, relating to oxygenates, as defined in section 214A.1.
  - b. Serving as advisor to the department regarding renewable fuels and coproducts programs.
  - c. Serving as monitor of regulations administered in the state, in other states, or by the

federal government. The office shall collect information and data prepared by state agencies related to these regulations, and provide referral and assistance to interested persons and agencies.

d. Cooperating with persons and agencies involved in renewable fuels and coproducts activities, including other states and the federal government, to standardize regulations and coordinate programs, in order to increase administrative effectiveness and reduce administrative duplication.

e. Implementing policies and procedures designed to facilitate communication between persons involved in renewable fuels and coproducts activities.

f. Assisting state or federal agencies, or assisting commercial enterprises or commodity organizations which are located in or desiring to locate in the state. The assistance may include support of public research relating to renewable fuels and coproducts activities.

g. Conducting studies relating to the viability of producing or using renewable fuels and coproducts, and methods and schedules required to ensure a practicable transition to the use of renewable fuels and coproducts.

h. Approving a renewable fuel which may be used as a flexible fuel powering a motor vehicle required to be purchased by state agencies.

3. a. A chief purpose of the office is to further the production and consumption of ethanol blended gasoline in this state. The office shall be the primary state agency charged with the responsibility to promote public consumption of ethanol blended gasoline.

b. The office shall promote the production and consumption of biodiesel and biodiesel blended fuel in this state.

4. The office and state entities, including the department, the economic development authority, the state department of transportation, and the state board of regents institutions, shall cooperate to implement this section.

91 Acts, ch 254, §8; 92 Acts, ch 1239, §33; 94 Acts, ch 1119, §13; 2003 Acts, ch 44, §41, 42; 2006 Acts, ch 1142, §76, 83; 2009 Acts, ch 108, §8, 41; 2010 Acts, ch 1031, §240 – 242; 2011 Acts, ch 25, §19; 2011 Acts, ch 118, §50, 85, 89

Code editor directives applied  
Subsection 2, paragraph h amended

#### **159A.6B Technical assistance.**

1. The office shall assist persons in revitalizing rural regions of this state, by providing technical assistance to new or existing renewable fuel production facilities, including the establishment and operation of facilities, and specifically facilities which create coproducts, including coproducts which support livestock production operations. The office shall consult with the Iowa corn growers association and the Iowa soybean association. The office shall provide planning assistance which may include evaluations of methods to most profitably manage these operations. The business planning assistance shall provide for adequate environmental protection of this state's natural resources from the operation of the facility.

2. The office may execute contracts in order to provide technical support and outreach services for purposes of assisting and educating interested persons as provided in this section. The office may also contract with a consultant to provide part or all of these services. The office may require that a person receiving assistance pursuant to this section contribute up to fifty percent of the amount required to support the costs of contracting with the consultant to provide assistance to the person. The office shall assist the person in completing any technical information required in order to receive assistance by the economic development authority pursuant to the value-added agriculture component of the economic development financial assistance program established pursuant to section 15G.112.

3. The office shall cooperate with the economic development authority and regents institutions or other universities and colleges in order to carry out this section.

94 Acts, ch 1119, §21; 2009 Acts, ch 41, §198; 2009 Acts, ch 108, §11, 41; 2009 Acts, ch 123, §29; 2011 Acts, ch 118, §50, 85, 86, 89

Code editor directives applied

**159A.8 through 159A.10** Reserved.

SUBCHAPTER III  
RENEWABLE FUEL INFRASTRUCTURE

**159A.11 Definitions.**

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

1. “*Biodiesel*”, “*biodiesel blended fuel*”, “*biodiesel fuel*”, “*E-85 gasoline*”, “*ethanol*”, “*ethanol blended gasoline*”, “*gasoline*”, “*motor fuel*”, “*retail dealer*”, and “*retail motor fuel site*” mean the same as defined in section 214A.1.

2. “*Department*” means the department of agriculture and land stewardship.

3. “*Infrastructure board*” means the renewable fuel infrastructure board as created in section 159A.13.

4. “*Infrastructure fund*” means the renewable fuel infrastructure fund created in section 159A.16.

5. “*Motor fuel pump*” and “*motor fuel blender pump*” or “*blender pump*” mean the same as defined in section 214.1.

6. “*Motor fuel storage and dispensing infrastructure*” or “*infrastructure*” means a tank and motor fuel pumps necessary to keep and dispense motor fuel at a retail motor fuel site, including but not limited to all associated equipment, dispensers, pumps, pipes, hoses, tubes, lines, fittings, valves, filters, seals, and covers.

7. “*Tank vehicle*” means the same as defined in section 321.1.

8. “*Terminal*” means a storage and distribution facility for motor fuel or a blend stock such as ethanol or biodiesel that is stored on-site or off-site in bulk and that is supplied to a motor vehicle, pipeline, or a marine vessel and from which storage and distribution facility the motor fuel or blend stock may be removed at a rack. “*Terminal*” does not include any of the following:

a. A retail motor fuel site.

b. A facility at which motor fuel, special fuel, or blend stocks are used in the manufacture of products other than motor fuel and from which no motor fuel or special fuel is removed.

9. “*Terminal operator*” means a person who has responsibility for, or physical control over, the operation of a terminal, including by ownership, contractual agreement, or appointment.

10. “*Underground storage tank fund board*” means the Iowa comprehensive petroleum underground storage tank fund board established pursuant to section 455G.4.

2006 Acts, ch 1142, §28; 2006 Acts, ch 1175, §3, 23

C2007, §15G.201

2008 Acts, ch 1169, §1, 2, 30; 2011 Acts, ch 113, §42, 55, 56; 2011 Acts, ch 118, §74, 75

CS2011, §159A.11

With respect to proposed amendments to former §15G.201 by 2011 Acts, ch 118, §74, 75, see Code editor’s note to §15G.201

Section transferred from §15G.201 in Code Supplement 2011 pursuant to directive in 2011 Acts, ch 113, §55, 56

Subsection 2 amended

**159A.12 Classification of renewable fuel.**

For purposes of this subchapter, ethanol blended fuel and biodiesel fuel shall be classified in the same manner as provided in section 214A.2.

2008 Acts, ch 1169, §3, 30

C2009, §15G.201A

2009 Acts, ch 41, §17; 2011 Acts, ch 113, §55, 56

CS2011, §159A.12

Section transferred from §15G.201A in Code Supplement 2011 pursuant to directive in 2011 Acts, ch 113, §55, 56

**159A.13 Renewable fuel infrastructure board.**

A renewable fuel infrastructure board is established within the department.

1. The department shall provide the infrastructure board with necessary facilities, items, and clerical support. The department shall perform administrative functions necessary for the management of the infrastructure board and the renewable fuel infrastructure programs as provided in sections 159A.14 and 159A.15, all under the direction of the infrastructure board.

2. The infrastructure board shall be composed of eleven members who shall be appointed by the governor as follows:

a. One person representing insurers who is knowledgeable about issues relating to underground storage tanks.

b. One person representing the petroleum industry who is knowledgeable about issues relating to petroleum refining, terminal operations, and petroleum or motor fuel distribution.

c. Nine persons based on nominations made by the titular heads of all of the following:

- (1) The agribusiness association of Iowa.
- (2) The Iowa corn growers association.
- (3) The Iowa farm bureau federation.
- (4) The Iowa biodiesel board.
- (5) The Iowa soybean association.
- (6) The petroleum marketers and convenience stores of Iowa.
- (7) The Iowa petroleum equipment contractors association.
- (8) The Iowa renewable fuels association.
- (9) The Iowa grocery industry association.

3. Appointments of voting members to the infrastructure board are subject to the requirements of sections 69.16 and 69.16A. In addition, the appointments shall be geographically balanced. The governor's appointees shall be confirmed by the senate, pursuant to section 2.32.

4. The members of the infrastructure board shall serve five-year terms beginning and ending as provided in section 69.19. However, the governor shall appoint initial members to serve for less than five years to ensure members serve staggered terms. A member is eligible for reappointment. A vacancy on the board shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

5. The infrastructure board shall elect a chairperson from among its members each year on a rotating basis as provided by the infrastructure board. The infrastructure board shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of six or more members.

6. The infrastructure board shall meet with three or more members of the underground storage tank fund board who shall represent the underground storage tank fund board. The representatives shall be available to advise the infrastructure board when the infrastructure board makes decisions regarding the awarding of financial incentives to a person under a renewable fuel infrastructure program provided in section 159A.14 or 159A.15.

7. Members of the infrastructure board are not entitled to receive compensation but shall receive reimbursement of expenses from the department as provided in section 7E.6.

8. Six members of the infrastructure board constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the infrastructure board. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the infrastructure board.

2006 Acts, ch 1142, §29

C2007, §15G.202

2011 Acts, ch 113, §43, 55, 56

CS2011, §159A.13

Section transferred from §15G.202 in Code Supplement 2011 pursuant to directive in 2011 Acts, ch 113, §55, 56  
Subsection 2, paragraph c, subparagraph (4) amended

#### **159A.14 Renewable fuel infrastructure program for retail motor fuel sites.**

A renewable fuel infrastructure program for retail motor fuel sites is established in the department under the direction of the renewable fuel infrastructure board created pursuant to section 159A.13.

1. The purpose of the program is to improve retail motor fuel sites by installing, replacing, or converting infrastructure to be used to store, blend, or dispense renewable fuel. The infrastructure shall be ethanol infrastructure or biodiesel infrastructure.

a. (1) Ethanol infrastructure shall be designed and used exclusively to do any of the following:

(a) Store and dispense E-85 gasoline.

(b) Store, blend, and dispense motor fuel from a motor fuel blender pump, as required in this subparagraph division. The ethanol infrastructure must provide for the storage of ethanol or ethanol blended gasoline, or for blending ethanol with gasoline. The ethanol infrastructure must at least include a motor fuel blender pump which dispenses different classifications of ethanol blended gasoline and allows E-85 gasoline to be dispensed at all times that the blender pump is operating.

(2) Biodiesel infrastructure shall be designed and used exclusively to do any of the following:

(a) Store and dispense biodiesel or biodiesel blended fuel.

(b) Blend or dispense biodiesel fuel from a motor fuel blender pump.

b. The infrastructure must be part of the premises of a retail motor fuel site operated by a retail dealer. The infrastructure shall not include a tank vehicle.

2. A person may apply to the department to receive financial incentives on a cost-share basis. The department shall forward the applications to the underground storage tank fund board as required by that board for evaluation and recommendation. The underground storage tank fund board may rank the applications with comments and shall forward them to the infrastructure board for approval or disapproval. The department shall award financial incentives on a cost-share basis to an eligible person whose application was approved by the infrastructure board.

3. The infrastructure board shall approve cost-share agreements executed by the department and persons that the infrastructure board determines are eligible as provided in this section, according to terms and conditions required by the infrastructure board. The infrastructure board shall determine the amount of the financial incentives to be awarded to a person participating in the program. In order to be eligible to participate in the program all of the following must apply:

a. The person must be an owner or operator of the retail motor fuel site.

b. The person must apply to the department in a manner and according to procedures required by the infrastructure board. The application must contain all information required by the infrastructure board and shall at least include all of the following:

(1) The name of the person and the address of the retail motor fuel site to be improved.

(2) A detailed description of the infrastructure to be installed, replaced, or converted, including but not limited to the model number of each installed, replaced, or converted motor fuel storage tank if available.

(3) A statement describing how the retail motor fuel site is to be improved, the total estimated cost of the planned improvement, and the date when the infrastructure will be first used.

(4) A statement certifying that the infrastructure shall only be used to comply with the provisions of this section and as specified in the cost-share agreement, unless granted a waiver by the infrastructure board pursuant to this section.

4. A retail motor fuel site which is improved using financial incentives must comply with federal and state standards governing new or upgraded motor fuel storage tanks used to store and dispense the renewable fuel. A site classified as a no further action site pursuant to a certificate issued by the department of natural resources under section 455B.474 shall retain its classification following modifications necessary to store and dispense the renewable fuel and the owner or operator shall not be required to perform a new site assessment unless a new release occurs or if a previously unknown or unforeseen risk condition should arise.

5. An award of financial incentives to a participating person shall be on a cost-share basis in the form of a grant. To participate in the program, an eligible person must execute a cost-share agreement with the department as approved by the infrastructure board in which the person contributes a percentage of the total costs related to improving the retail motor fuel site. A cost-share agreement shall be for a three-year period or a five-year period. A cost-share agreement shall include provisions for standard financial incentives or standard financial incentives and supplemental financial incentives as provided in this subsection. The

infrastructure board may approve multiple improvements to the same retail motor fuel site for the full amount available for both ethanol infrastructure and biodiesel infrastructure so long as the improvements for ethanol infrastructure and for biodiesel infrastructure are made under separate cost-share agreements.

a. (1) Except as provided in paragraph “b”, a participating person may be awarded standard financial incentives to make improvements to a retail motor fuel site. The standard financial incentives awarded to a participating person shall not exceed the following:

(a) For a three-year cost-share agreement, fifty percent of the actual cost of making the improvement or thirty thousand dollars, whichever is less.

(b) For a five-year cost-share agreement, seventy percent of the actual cost of making the improvement or fifty thousand dollars, whichever is less.

(2) The infrastructure board may approve multiple awards of standard financial incentives to make improvements to a retail motor fuel site so long as the total amount of the awards for ethanol infrastructure or biodiesel infrastructure does not exceed the limitations provided in subparagraph (1).

b. In addition to any standard financial incentives awarded to a participating person under paragraph “a”, the participating person may be awarded supplemental financial incentives to make improvements to a retail motor fuel site to do any of the following:

(1) Upgrade or replace a dispenser which is part of gasoline storage and dispensing infrastructure used to store and dispense E-85 gasoline as provided in section 455G.31. The participating person is only eligible to be awarded the supplemental financial incentives if the person installed the dispenser not later than sixty days after the date of the publication in the Iowa administrative bulletin of the state fire marshal’s order providing that a commercially available dispenser is listed as compatible for use with E-85 gasoline by an independent testing laboratory as provided in section 455G.31. The supplemental financial incentives awarded to the participating person shall not exceed seventy-five percent of the actual cost of making the improvement or thirty thousand dollars, whichever is less.

(2) To improve additional retail motor fuel sites owned or operated by a participating person within a twelve-month period as provided in the cost-share agreement. The supplemental financial incentives shall be used for the installation of an additional tank and associated infrastructure at each such retail motor fuel site. A participating person may be awarded supplemental financial incentives under this subparagraph and standard financial incentives under paragraph “a” to improve the same motor fuel site. The supplemental financial incentives awarded to the participating person shall not exceed twenty-four thousand dollars. The participating person shall be awarded the supplemental financial incentives on a cumulative basis according to the schedule provided in this subparagraph, which shall not exceed the following:

(a) For the second retail motor fuel site, six thousand dollars.

(b) For the third retail motor fuel site, six thousand dollars.

(c) For the fourth retail motor fuel site, six thousand dollars.

(d) For the fifth retail motor fuel site, six thousand dollars.

6. A participating person shall not use the infrastructure to store and dispense motor fuel other than the type of renewable fuel approved by the board in the cost-share agreement, unless one of the following applies:

a. The participating person is granted a waiver by the infrastructure board. The participating person shall store or dispense the motor fuel according to the terms and conditions of the waiver.

b. The renewable fuel infrastructure fund created in section 159A.16 is immediately repaid the total amount of moneys awarded to the participating person together with a monetary penalty equal to twenty-five percent of that awarded amount. The amount shall be deposited in the renewable fuel infrastructure fund created in section 159A.16.

7. A participating person who acts in violation of an agreement executed with the department pursuant to this section is subject to a civil penalty of not more than one thousand dollars a day for each day of the violation. The civil penalty shall be deposited into the general fund of the state.

C2007, §15G.203

2007 Acts, ch 126, §9; 2007 Acts, ch 211, §46; 2008 Acts, ch 1032, §128; 2008 Acts, ch 1169, §4 – 9, 30; 2009 Acts, ch 41, §263; 2011 Acts, ch 113, §55, 56

CS2011, §159A.14

Section transferred from §15G.203 in Code Supplement 2011 pursuant to directive in 2011 Acts, ch 113, §55, 56

### **159A.15 Renewable fuel infrastructure program for biodiesel terminal facilities.**

The department, under the direction of the renewable fuel infrastructure board created in section 159A.13, shall establish and administer a renewable fuel infrastructure program for terminal facilities that store and dispense biodiesel or biodiesel blended fuel. The infrastructure must be designed and shall be used exclusively to store and distribute biodiesel or biodiesel blended fuel. The department as directed by the infrastructure board shall provide a cost-share program for financial incentives.

1. A person may apply to the department to receive financial incentives on a cost-share basis. The department shall forward the applications to the underground storage tank fund board as required by that board for evaluation and recommendation. The underground storage tank fund board may rank the applications with comments and shall forward them to the infrastructure board for approval or disapproval. The department shall award financial incentives on a cost-share basis to an eligible person whose application was approved by the infrastructure board.

2. The department shall award financial incentives to a terminal operator participating in the program as directed by the infrastructure board. In order to be eligible to participate in the program, the terminal operator must apply to the department in a manner and according to procedures required by the infrastructure board. The application must contain information required by the infrastructure board and shall at least include all of the following:

- a. The name of the terminal operator and the address of the terminal to be improved.
- b. A detailed description of the infrastructure to be installed, replaced, or converted.
- c. A statement describing how the terminal is to be improved, the total estimated cost of the planned improvement, and the date when the infrastructure will be first used to store and distribute biodiesel or biodiesel blended fuel.
- d. A statement certifying that the infrastructure shall not be used to store or dispense motor fuel other than biodiesel or biodiesel blended fuel, unless granted a waiver by the infrastructure board pursuant to this section.

3. a. An award of financial incentives to a participating person shall be in the form of a grant. In order to participate in the program, an eligible person must execute a cost-share agreement with the department as approved by the infrastructure board in which the person contributes a percentage of the total costs related to improving the terminal. The financial incentives awarded to the participating person shall not exceed the following:

(1) For improvements to store, blend, or dispense biodiesel fuel from B-2 or higher but not as high as B-99, fifty percent of the actual cost of making the improvements or fifty thousand dollars, whichever is less.

(2) For improvements to store, blend, and dispense biodiesel fuel from B-99 to B-100, fifty percent of the actual cost of making the improvements or one hundred thousand dollars, whichever is less. However, a person shall not be awarded moneys under this subparagraph if the person has been awarded a total of eight hundred thousand dollars under this subparagraph during any period of time and pursuant to all cost-share agreements in which the person participates.

b. The infrastructure board may approve multiple awards to make improvements to a terminal so long as the total amount of the awards does not exceed the limitations provided in paragraph "a".

4. A participating terminal operator shall not use the infrastructure to store or dispense motor fuel other than biodiesel or biodiesel blended fuel, unless one of the following applies:

a. The participating terminal operator is granted a waiver by the infrastructure board. The participating terminal operator shall store or dispense the motor fuel according to the terms and conditions of the waiver.

b. The renewable fuel infrastructure fund created in section 159A.16 is immediately repaid

the total amount of moneys awarded to the participating terminal operator together with a monetary penalty equal to twenty-five percent of that awarded amount. The amount shall be deposited in the renewable fuel infrastructure fund created in section 159A.16.

c. A participating terminal operator who acts in violation of an agreement executed with the department pursuant to this section is subject to a civil penalty of not more than one thousand dollars a day for each day of the violation. The civil penalty shall be deposited into the general fund of the state.

2006 Acts, ch 1142, §31

C2007, §15G.204

2007 Acts, ch 126, §10; 2008 Acts, ch 1169, §10, 11, 30; 2011 Acts, ch 113, §55, 56

CS2011, §159A.15

Section transferred from §15G.204 in Code Supplement 2011 pursuant to directive in 2011 Acts, ch 113, §55, 56

#### **159A.16 Renewable fuel infrastructure fund.**

1. A renewable fuel infrastructure fund is created in the state treasury under the control of the department. The infrastructure fund is separate from the general fund of the state.

2. The renewable fuel infrastructure fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the infrastructure fund.

3. Moneys in the renewable fuel infrastructure fund are appropriated to the department exclusively to support and market the renewable fuel infrastructure programs as provided in sections 159A.14 and 159A.15, and as allocated in financial incentives by the renewable fuel infrastructure board created in section 159A.13. Up to fifty thousand dollars shall be allocated each fiscal year to the department to support the administration of the programs. The department may use up to one and one-half percent of the program funds to market the programs. Otherwise the moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except to allocate as financial incentives under the programs.

4. a. The recapture of awards or penalties, or other repayments of moneys originating from the renewable fuel infrastructure fund shall be deposited into the infrastructure fund.

b. Notwithstanding section 12C.7, interest or earnings on moneys in the infrastructure fund shall be credited to the infrastructure fund.

c. Notwithstanding section 8.33, unencumbered and unobligated moneys remaining in the infrastructure fund at the close of each fiscal year shall not revert but shall remain available in the infrastructure fund.

2006 Acts, ch 1175, §6, 23; 2006 Acts, ch 1185, §56

C2007, §15G.205

2008 Acts, ch 1122, §2; 2009 Acts, ch 41, §18; 2011 Acts, ch 113, §44, 55, 56

CS2011, §159A.16

Section transferred from §15G.205 in Code Supplement 2011 pursuant to directive in 2011 Acts, ch 113, §55, 56  
Subsection 4, paragraph c amended

## CHAPTER 161

### AGRICHEMICAL REMEDIATION

Chapter repealed by 2011 Acts, ch 46, §6  
 Executive council to allocate moneys for payment of any outstanding claim for remediation of a contaminated site as provided in former chapter 161 as it existed when agrichemical remediation board executed a remediation agreement with the claimant; 2011 Acts, ch 46, §5

## CHAPTER 161C

### WATER PROTECTION PROJECTS AND PRACTICES

This chapter not enacted as a part of this title;  
 transferred from chapter 467F in Code 1993

#### **161C.5 Organic nutrient management fund.** Repealed by 2011 Acts, ch 46, §1.

Moneys in organic nutrient management fund shall be retained by the department of agriculture and land stewardship for purposes of supporting its soil conservation division for the fiscal year beginning July 1, 2011, and ending June 30, 2012; 2011 Acts, ch 46, §2

#### **161C.6 Organic nutrient management program.** Repealed by 2011 Acts, ch 46, §1.

## CHAPTER 163

### INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

Definitions applicable to chapter; see §159.1

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### **163.2 Infectious or contagious diseases.**

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

1. "*Certificate of veterinary inspection*" or "*certificate*" means a legible record, made on an official form of the state of origin or the animal and plant health inspection service of the United States department of agriculture, and issued by an accredited veterinarian of the state of origin or a veterinarian in the employ of the animal and plant health inspection service, which shows that an animal listed on the form meets the health requirements of the state of destination.
2. "*Control*" means the prevention, suppression, or eradication of an infectious or contagious disease afflicting an animal within the state.
3. "*Department*" means the department of agriculture and land stewardship.
4. "*Foot and mouth disease*" means a virus of the family picornaviridae, genus aphthovirus, including any immunologically distinct serotypes.
5. "*Infectious or contagious disease*" means glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, tuberculosis, brucellosis, vesicular exanthema, scrapie, rinderpest, avian influenza or Newcastle disease as provided in chapter 165B, pseudorabies as provided in chapter 166D, or any other transmissible, transferable, or communicable disease so designated by the department.

6. “Move” or “movement”, except as provided in subchapter III, means to ship, transport, or deliver an animal.

[C24, 27, 31, 35, 39, §2644; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.2]

2001 Acts, ch 170, §1, 3; 2004 Acts, ch 1089, §1; 2004 Acts, ch 1163, §2; 2009 Acts, ch 133, §202; 2011 Acts, ch 84, §1, 5

2011 amendment to subsection 5 takes effect January 1, 2012; 2011 Acts, ch 84, §5

Subsection 5 amended

### **163.3A Veterinary emergency preparedness and response.**

1. The department may provide veterinary emergency preparedness and response services necessary to prevent or control a serious threat to the public health, public safety, or the state’s economy caused by the transmission of disease among livestock as defined in section 717.1 or agricultural animals as defined in section 717A.1. The services may include measures necessary to ensure that all such animals carrying disease are properly identified, segregated, treated, or destroyed as provided in this Code.

2. The services shall be performed under the direction of the department and may be part of measures authorized by the governor under a declaration or proclamation issued pursuant to chapter 29C. In such case, the department shall cooperate with the Iowa department of public health under chapter 135, and the department of public defense, homeland security and emergency management division, and local emergency management agencies as provided in chapter 29C.

3. The secretary or the secretary’s designee shall appoint veterinarians licensed pursuant to chapter 169 or persons in related professions or occupations who are qualified, as determined by the secretary, to serve on a voluntary basis as members of one or more veterinary emergency response teams. The secretary shall provide for the registration of persons as part of the appointment process. The secretary may cooperate with the Iowa board of veterinary medicine in implementing this section.

4. a. A registered member of an emergency response team who acts under the authority of the secretary shall be considered an employee of the state for purposes of defending a claim on account of damage to or loss of property or on account of personal injury or death under chapter 669. The registered member shall be afforded protection under section 669.21. The registered member shall also be considered an employee of the state for purposes of disability, workers’ compensation, and death benefits under chapter 85.

b. The department shall provide and update a list of the registered members of each emergency response team, including the members’ names and identifying information, to the department of administrative services. Upon notification of a compensable loss suffered by a registered member, the department of administrative services shall seek authorization from the executive council to pay as an expense from the appropriations addressed in section 7D.29 those costs associated with covered benefits.

2005 Acts, ch 151, §2; 2011 Acts, ch 131, §27, 158

Subsection 4, paragraph b amended

### **163.10 Quarantining or destroying animals.**

The department may quarantine or destroy any animal exposed to or afflicted with an infectious or contagious disease. However, cattle exposed to or infected with tuberculosis shall not be destroyed without the owner’s consent, unless there are sufficient moneys to reimburse the owner for the cattle, which may be paid as an expense authorized as provided in section 163.15, from moneys in the brucellosis and tuberculosis eradication fund created in section 165.18, or from moneys made available by the United States department of agriculture.

[C24, 27, 31, 35, 39, §2652; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.10]

2004 Acts, ch 1163, §3; 2011 Acts, ch 131, §28, 158

Section amended

### **163.15 Indemnifying owner.**

1. If the secretary of agriculture determines that the outbreak of an infectious or contagious disease among an animal population constitutes a threat to the general welfare or

the public health of the inhabitants of this state, the secretary shall formulate a program of eradication which shall include the condemnation and destroying of the animals exposed to or afflicted with the disease. The program of eradication shall provide for the indemnification of owners of the livestock under this section, if there are no other sources of indemnification. The program shall not be effective until the program has been approved by the executive council.

2. If an animal afflicted with an infectious or contagious disease is destroyed under a program of eradication as provided in this section, the owner shall be compensated according to one of the following methods:

a. (1) A determination of an indemnity amount as agreed to by appraisal. The determination shall be made by appraisers who shall be three competent and disinterested persons, including one who is appointed by the department, one who is appointed by the owner, and one who is appointed by agreement of the department and the owner. The appraisers shall report their appraisal under oath to the department. The appraisers shall receive compensation and expenses as provided for by the program.

(2) A claim for an indemnity filed by the owner shall not exceed the amount agreed upon by the majority decision of the appraisers. For an animal other than registered purebred stock the indemnity amount shall be based on current market prices. For registered purebred stock, the indemnity amount may exceed market prices by not more than fifty percent. The indemnity amount shall be less any amount of indemnification that the owner might be allowed from the United States department of agriculture. An indemnity shall not be allowed for an animal if the department of agriculture and land stewardship determines that the animal has been fed raw garbage as provided in section 163.26.

(3) A claim for an indemnity by the owner and a claim for compensation and expenses by the appraisers shall be filed with the department and submitted by the secretary of agriculture to the executive council for authorization of payment of the claim as an expense from the appropriations addressed in section 7D.29.

b. A formula established by rule adopted by the department that is effective as determined by the department in accordance with chapter 17A and applicable upon approval of the program of eradication by the executive council. The formula shall be applicable to indemnify owners if the executive council, upon recommendation by the secretary of agriculture, determines that an animal population in this state is threatened with infection from an exceptionally contagious disease.

(1) An owner shall be paid an indemnity amount based on the formula, only if the owner elects to be paid under the formula in lieu of the determination by appointed appraisers as otherwise provided in this section.

(2) The formula shall provide for the payment of the fair market value of an animal based on market prices paid for similar animals according to categories or criteria established by the department, which may include payment based on the species, breed, type, weight, sex, age, purebred status, and condition of the animal. The department may provide for deductions based on other compensation received by the owner for the destruction of the animals. The department may exclude a claim if the person would be ineligible to receive compensation by three appointed appraisers as provided in this section.

(3) If an owner elects to be paid an indemnity amount based on a method that provides either a determination by appointed appraisers or pursuant to a formula, the owner shall not be entitled to revoke the election, unless otherwise provided by the department. An owner's decision to delay or refuse to make an election under this section shall not affect the condemnation and destruction of afflicted animals under the program of eradication.

(4) The executive council may authorize payment under the provisions of this paragraph "b" as an expense from the appropriations addressed in section 7D.29.

[SS15, §2538-1a – 8a; C24, 27, 31, 35, 39, §2657; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.15]

2002 Acts, ch 1101, §1; 2004 Acts, ch 1163, §7, 8; 2011 Acts, ch 131, §29 – 32, 158

Subsection 2, paragraph a, subparagraph (3) amended

Subsection 2, paragraph a, subparagraph (4) stricken

Subsection 2, paragraph b, unnumbered paragraph 1 amended

Subsection 2, paragraph b, subparagraph (4) amended

SUBCHAPTER III  
MOVEMENT OF SWINE

**163.30 Swine dealer licensing and fees — swine movement.**

1. This section shall apply to all swine moved interstate and intrastate, except swine moved directly to slaughter or to a livestock market for sale directly to a slaughtering establishment for immediate slaughter.

2. When used in this subchapter:

a. “Dealer” means any person who is engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent or who claims to be so engaged, but does not include the owner or operator of a farm who does not claim to be so engaged and who sells or exchanges only those swine which have been kept by the person solely for feeding or breeding purposes.

b. “Move” or “movement” means to ship, transport, or deliver swine by land, water, or air, except that “move” or “movement” does not mean a relocation.

c. “Relocate” or “relocation” means to ship, transport, or deliver swine by land, water, or air, to different premises, if the ownership of the swine does not change, the prior and new premises are located within the state, and the shipment, transportation, or delivery between the prior and new premises occurs within the state.

d. “Separate and apart” means a manner of holding swine so as not to have physical contact with other swine on the premises.

3. A person shall not act as a dealer unless the department issues the person a dealer’s license. The person must be licensed as a dealer regardless of whether the swine originate in this state or another jurisdiction or the person resides in this state or another jurisdiction. The jurisdiction may be in another state or a foreign nation.

a. The fee for a dealer’s license is five dollars each year. A license expires on the first day of July following the date of issue. A license shall be numbered and the dealer shall retain the number from year to year.

b. To be issued a license, an applicant must file a surety bond with the department. The applicant shall file a standard surety bond of ten thousand dollars with the secretary named as trustee, for the use and benefit of anyone damaged by a violation of this section, except that the bond shall not be required for dealers who are bonded in the same or a greater amount than required pursuant to the federal Packers and Stockyards Act. In addition, the department may require that a licensee file evidence of financial responsibility with the department prior to a license being issued or renewed as provided in section 202C.2.

c. Each employee or agent doing business by buying for resale, selling, or exchanging feeder swine in the name of a licensed dealer shall be required to secure a permit issued by the department showing the person is employed by or represents a licensed dealer. All such permits shall be issued upon application forms furnished by the department at a cost of three dollars per annum, and shall expire on the first day of July following the date of issue.

d. A permittee shall not represent more than one dealer. Failure of a licensee or permittee to comply with this chapter or a rule made pursuant to this chapter is cause for revocation by the secretary of the permit or license after notice to the alleged offender and the holding of a hearing by the secretary. Rules shall be made in accordance with chapter 17A. A rule, the violation of which is made the basis for revocation, except temporary emergency rules, shall first have been approved after public hearing as provided in section 17A.4 after giving twenty days’ notice of the hearing by mailing the notice, by ordinary mail, to every person filing a request for notice accompanied by an addressed envelope with prepaid postage. Any person may file such a request to be listed with any agency for notice for the time and place for all hearings on proposed rules, which request shall be accompanied by a remittance of five dollars. Such fee shall be added to the operating fund of the department. The listing shall expire semiannually on January 1 and July 1.

4. a. All swine moved shall be individually identified with a distinctive and easily discernible ear tag affixed in either ear of the animal or other identification acceptable to

the department, which has been specified by rule promulgated under the department's rulemaking authority. The department shall make ear tags available at convenient locations within each county and shall sell such tags at a price not exceeding the cost to producers and others to comply with this section.

b. Every seller, dealer and market operator shall keep a record of the ear tag numbers, or other approved identification, and the farm of origin of swine moved by or through that person, which records shall be made available by that person to any appropriate representative of the department or the United States department of agriculture.

5. All swine moved shall be accompanied by a certificate of veterinary inspection issued by the state of origin and prepared and signed by a veterinarian. The certificate shall show the point of origin, the point of destination, individual identification, immunization status, and, when required, any movement permit number assigned to the shipment by the department. All such movement of swine shall be completed within seventy-two hours unless an extension of time for movement is granted by the department.

a. However, swine may be moved intrastate directly to an approved state, federal, or auction market without identification or certification, if the swine are to be identified and certificated at the state, federal, or auction market.

b. Registered swine for exhibition or breeding purposes which can be individually identified by an ear notch or tattoo or other method approved by the department are excepted from the identification requirement.

c. Native Iowa swine moved from farm to farm shall be excepted from the identification requirement if the owner transferring possession of the feeder pigs executes a written agreement with the person taking possession of the feeder pigs. The agreement shall provide that the feeder pigs shall not be commingled with other swine for a period of thirty days. The owner transferring possession shall be responsible for making certain that the agreement is executed and for providing a copy of the agreement to the person taking possession.

6. The department may combine a certificate of veterinary inspection with a certificate of inspection required under chapter 166D.

7. The department may require issuance of movement permits on certain categories of swine moved, prior to their movement, pursuant to departmental rule. The rule shall be promulgated when in the judgment of the secretary, such movements would otherwise threaten or imperil the eradication of hog cholera in Iowa.

8. All swine moved shall be quarantined separate and apart from other swine located at the Iowa farm of destination for thirty days beginning with their arrival at such premises, or if such incoming swine are not held separate and apart, all swine on such premises shall be thus quarantined, except animals moving from such premises directly to slaughter.

9. There can only be one transfer by a dealer, involving not more than two markets, prior to quarantine.

10. The use of anti-hog-cholera serum or antibody concentrate shall be in accordance with rules issued by the department.

11. All swine found by a registered veterinarian to have any infectious or contagious disease after delivery to any livestock sale barn or auction market for resale other than for slaughter, shall be immediately returned to the consignor's premises to be quarantined separate and apart for fifteen days. Such swine shall not be moved from such premises for any purpose unless a certificate of veterinary inspection accompanies the movement or unless they are sent to slaughter. This subsection shall in no way supersede the requirements of sections 163A.2 and 163A.3.

[C62, 66, §163.30; C71, §163.30 – 163.33; C73, 75, 77, 79, 81, §163.30]

87 Acts, ch 115, §28; 91 Acts, ch 32, §2; 97 Acts, ch 183, § 1, 13; 98 Acts, ch 1056, §2; 2003 Acts, ch 90, §1; 2003 Acts, ch 108, §41; 2004 Acts, ch 1101, §27; 2004 Acts, ch 1163, §11, 12; 2009 Acts, ch 133, §203, 204; 2010 Acts, ch 1069, §21; 2011 Acts, ch 34, §37; 2011 Acts, ch 46, §7

Subsection 3, paragraph c amended  
Subsection 5, paragraph a amended

**163.32 Exhibitions.**

1. As used in this section, “*exhibition*” means an exhibit, demonstration, show, or competition involving swine which occurs as follows:

a. As part of an event on the Iowa state fairgrounds under the control of the Iowa state fair authority under chapter 173.

b. A fair event under the control of a fair under chapter 174.

c. An event classified as an exhibition by rules adopted by the department.

2. This section applies to a swine which is moved from a premises to the location where an exhibition occurs.

3. The sponsor of an exhibition must retain a veterinarian licensed pursuant to chapter 169 to supervise the health of swine moved to the location of the exhibition. The sponsor of the exhibition shall submit an exhibition report to the department on a form and according to procedures required by the department. The exhibition report must contain information required by the department which must at least include all of the following:

a. The name of the exhibition and the address of its location.

b. The name and address of the veterinarian.

c. The date that the exhibition occurred.

d. The name and address of the owner of the swine.

e. The address of the premises from which the swine was moved to the exhibition. The exhibition report must also include the address of the premises to which the swine was moved after the exhibition if such premises is a different premises.

2011 Acts, ch 84, §2, 5

Section takes effect January 1, 2012; 2011 Acts, ch 84, §5

NEW section

## CHAPTER 166D

### PSEUDORABIES CONTROL

**166D.2 Definitions.**

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

1. “*Advisory committee*” means the state pseudorabies advisory committee composed of swine producers and other representatives of the swine industry, appointed pursuant to section 166D.3.

2. “*Approved premises*” means a dry lot facility located in an area with confirmed cases of pseudorabies infection, which is certified by the department to receive, feed, and move or relocate infected swine as provided in section 166D.10B.

3. “*Approved premises permit*” means a permit issued by the department necessary for a person to own and operate an approved premises.

4. “*Breeding swine*” means swine over six months of age.

5. “*Certificate of inspection*” means a document approved by the United States department of agriculture or the department of agriculture and land stewardship, and issued by a licensed veterinarian prior to the interstate or intrastate movement of swine or to the relocation of swine. The certificate of inspection must state all of the following:

a. The number, description, and identification of the swine to be moved.

b. Whether the swine to be moved are known to be infected with or exposed to pseudorabies.

c. The farm of origin.

d. The purpose for moving the swine.

e. The point of destination of the swine.

f. The consignor and each consignee of the swine.

g. Additional information as required by state or federal law.

6. “*Certificate of veterinary inspection*” means the same as defined in section 163.2.

7. “*Cleanup plan*” means a herd cleanup plan or feeder pig cooperator herd cleanup plan as provided in section 166D.8.

8. “*Concentration point*” means a location or facility where swine are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of swine from various sources. “*Concentration point*” includes a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a livestock dealer’s yard, truck, or facility.

9. “*Cull swine*” means mature swine fed for purposes of direct slaughter. However, “*cull swine*” does not include swine kept for purposes of breeding or reproduction.

10. “*Differentiable test*” means a laboratory procedure approved by the department to diagnose pseudorabies. The procedure must be capable of recognizing and distinguishing between vaccine-exposed and field-pseudorabies-virus-exposed swine.

11. “*Differentiable vaccinate*” means a swine which has only been exposed to a differentiable vaccine.

12. “*Differentiable vaccine*” means a vaccine which has a licensed companion differentiable test, and includes a modified-live differentiable vaccine.

13. “*Direct movement*” means movement of swine to a destination without unloading the swine in route, without contact with swine of lesser pseudorabies vaccinate status, and without contact with infected or exposed livestock.

14. “*Epidemiologist*” means a state or federal veterinarian designated to investigate and diagnose suspected pseudorabies in livestock. The epidemiologist must have had special training in the diagnosis and epidemiology of pseudorabies.

15. “*Exhibition*” means the same as defined in section 163.32.

16. “*Exposed*” means an animal that has not been kept separate and apart or isolated from livestock infected with pseudorabies, including all swine in a known infected herd.

17. “*Exposed livestock*” means livestock that have been in contact with livestock infected with pseudorabies, including all livestock in a known infected herd. However, livestock other than swine that have not been exposed to a clinical case of the disease for a period of ten consecutive days shall not be considered exposed livestock. Swine released from quarantine are no longer considered exposed.

18. “*Farm of origin*” means a location where the swine were born, or on which the swine have been located for at least ninety consecutive days immediately prior to movement.

19. “*Feeder pig*” means an immature swine fed for purposes of direct slaughter which weighs one hundred pounds or less.

20. “*Feeder pig cooperator herd*” means a swine herd not currently determined to be pseudorabies negative, that has not experienced clinical signs of pseudorabies in the last six months, that is capable of segregating offspring at weaning into separate and apart production facilities, and has implemented an approved pseudorabies eradication plan.

21. “*Feeder swine*” means swine fed for purposes of direct slaughter, including feeder pigs and cull swine. However, “*feeder swine*” does not include swine kept for purposes of breeding or reproduction.

22. “*Fixed concentration point*” means a concentration point which is a permanent location where swine are assembled for purposes of sale and movement to a slaughtering establishment as provided in section 166D.12.

23. “*Herd*” means a group of swine as established by departmental rule.

24. “*Herd cleanup plan*” means a plan to eliminate pseudorabies from a swine herd. The plan must be developed by an epidemiologist in consultation with the herd owner and the owner’s veterinary practitioner. The plan must be approved and signed by the epidemiologist, the owner, and the practitioner. The plan must be approved and filed with the department.

25. “*Herd of unknown status*” means all swine except swine which are part of a known infected herd, swine known to have been exposed to pseudorabies, or swine which are part of a noninfected herd.

26. “*Infected*” means infected with pseudorabies as determined by an epidemiologist whose diagnosis is supported by test results.

27. “*Infected herd*” means a herd that is known to contain infected swine, a herd

containing swine exhibiting clinical signs of pseudorabies, or a herd that is infected according to an epidemiologist.

28. “*Inspection service*” means the animal and plant health inspection service, United States department of agriculture.

29. “*Isolation*” means separation of swine within a physical barrier in a manner to prevent swine from gaining access to swine outside the barrier, including excrement or discharges from swine outside the barrier. Swine in isolation must not share a building with a ventilation system common to other swine. Swine in isolation must not be maintained within ten feet of other swine.

30. “*Isowean feeder pig*” means a feeder pig that weighs twenty pounds or less.

31. “*Known infected herd*” means a herd in which swine have been determined by an epidemiologist to be infected.

32. “*Licensed pseudorabies vaccine*” means a pseudorabies virus vaccine produced under license from the United States secretary of agriculture under the federal Virus-Serum-Toxin Act of March 4, 1913, 21 U.S.C. § 151 et seq.

33. “*Livestock*” means swine, cattle, sheep, goats, horses, ostriches, rheas, or emus.

34. “*Monitored herd*” means a herd of swine, including a feeder swine herd, which has been determined within the past twelve months not to be infected, according to a statistical sampling.

35. “*Move*” or “*movement*” means the same as defined in section 163.30.

36. “*Noninfected herd*” means a herd which is one of the following:

a. A qualified pseudorabies negative herd.

b. A pseudorabies monitored herd.

c. A herd in which the animals have been individually tested negative within the past thirty days.

d. A herd which originates from an area with little or no incidence of pseudorabies as determined by the department based upon epidemiological studies and information relating to the area.

e. A qualified differentiable negative herd.

37. “*Nonvaccinate*” means a swine which has not been exposed to a pseudorabies vaccine.

38. “*Pseudorabies*” means the contagious, infectious, and communicable disease of livestock and other animals known as Aujeszky’s disease, mad itch, or infectious bulbar paralysis.

39. “*Pseudorabies eradication plan*” means a written herd management program which is based on accepted statistical and epidemiological evaluation and designed to eradicate pseudorabies from the swine herds in a given area.

40. “*Qualified differentiable negative herd*” means a herd in which one hundred percent of the herd’s breeding swine have been vaccinated and have reacted negatively to a differentiable test and which have been retested, as provided in this chapter.

41. “*Qualified negative herd*” means a herd in which one hundred percent of the herd’s breeding swine have reacted negatively to a test, and have not been vaccinated, and which is retested as provided in this chapter.

42. “*Quarantined herd*” means a herd in which pseudorabies infected or exposed swine are bred, reared, or fed under the supervision and control of the department, as provided in section 166D.9.

43. “*Reaction*” means a result determined by an approved laboratory procedure designed to recognize pseudorabies virus infection or a nondifferentiable vaccinated animal.

44. “*Relocate*” or “*relocation*” means the same as defined in section 163.30.

45. “*Relocation record*” means a record as maintained by the owner of swine in a form and containing information as required by the rules adopted by the department, which indicates a relocation of swine as provided in section 166D.10.

46. “*Restricted movement*” means swine which are moved or relocated as provided in section 166D.10A.

47. “*Separate and apart*” means to hold swine so that neither the swine nor organic material originating from the swine has physical contact with other animals.

48. “*Slaughtering establishment*” means a slaughtering establishment operated under

the provision of the federal Meat Inspection Act, 21 U.S.C. § 601 et seq., or a slaughtering establishment which has been inspected by the state.

49. “*Stage II county*” means a county designated by the department as in stage II of the national pseudorabies eradication program.

50. “*Statistical sampling*” means a test based on at least a ninety percent probability of detecting at least a ten percent incidence of positive reaction within a herd.

51. “*Test*” means a serum neutralization (SN) test, virus isolation test, ELISA test, or other test approved by the department and performed by a laboratory approved by the department.

52. “*Transportation certificate*” means a written document evidencing that the movement or relocation of swine complies with the requirements of this chapter, and which may be a transportation certificate as provided in chapter 172B, or another document approved by the department, including but not limited to one or more types of forms covering different circumstances, as prescribed by the department.

89 Acts, ch 280, §2; 90 Acts, ch 1091, §1 – 3; 92 Acts, ch 1163, §42; 95 Acts, ch 43, §5; 97 Acts, ch 183, §2 – 6, 13; 2000 Acts, ch 1110, §1 – 4, 25; 2001 Acts, ch 24, §34; 2004 Acts, ch 1163, §26; 2010 Acts, ch 1061, §37; 2011 Acts, ch 84, §3, 5

Further definitions, see §159.1

Subsection 15 takes effect January 1, 2012; 2011 Acts, ch 84, §5

NEW subsection 15 and former subsections 15 – 51 renumbered as 16 – 52

#### **166D.13 Exhibition of swine.**

1. Swine from an infected herd shall not be displayed or shown at any exhibition.
2. Animals infected shall not be shown or displayed at an exhibition.
3. Rules controlling exhibition movement requirements may be adopted by the department in addition to the requirements of this section.

89 Acts, ch 280, §13; 98 Acts, ch 1056, §12; 2011 Acts, ch 84, §4, 5

2011 amendment striking former subsection 2 takes effect January 1, 2012; 2011 Acts, ch 84, §5

Subsection 2 stricken and subsections 3 and 4 renumbered as 2 and 3

## CHAPTER 173

### STATE FAIR

#### **173.1 State fair authority.**

The Iowa state fair authority is established as a public instrumentality of the state. The authority is not an agency of state government. However, the authority is considered a state agency and its employees state employees for the purposes of chapters 17A, 20, 91B, 97B, 509A, and 669. The authority is established to conduct an annual state fair and exposition on the Iowa state fairgrounds and to conduct other interim events consistent with its rules. The powers of the authority are vested in the Iowa state fair board. The Iowa state fair board consists of the following:

1. The governor of the state, the secretary of agriculture, and the president of the Iowa state university of science and technology or their qualified representatives.
2. Two district directors from each state fair board district to be elected at a convention as provided in section 173.4.
3. A president and vice president to be elected by the state fair board from the elected directors.
4. A treasurer to be elected by the board from the elected directors.
5. A secretary to be appointed by the board who shall serve as a nonvoting member.

[S13, §1657-c; C24, 27, 31, 35, §2873; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.1; 81 Acts, ch 67, §1]

86 Acts, ch 1245, §625, 626; 87 Acts, ch 233, §225; 91 Acts, ch 248, §1, 2; 95 Acts, ch 13, §2; 98 Acts, ch 1114, §1; 2001 Acts, ch 29, §1; 2010 Acts, ch 1069, §22; 2011 Acts, ch 131, §130, 158

Subsection 4 amended

**173.11 Treasurer.**

The board shall elect a treasurer who shall hold office for one year, and the treasurer shall:

1. Keep a correct account of the receipts and disbursements of all moneys belonging to the board.
2. Make payments on all warrants signed by the president and secretary from any funds available for such purpose.
3. Administer the foundation fund under the control of the Iowa state fair foundation, in its capacity as the board of the Iowa state fair foundation, as directed by the board. The treasurer shall administer the fund in accordance with procedures of the treasurer of state, and maintain a correct account of receipts and disbursements of assets of the foundation fund.

[R60, §1700; C73, §1104; C97, §1654; S13, §1657-o; C24, 27, 31, 35, 39, §2883; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.11]

91 Acts, ch 132, §1; 91 Acts, ch 248, §7; 2011 Acts, ch 79, §3

Subsection 3 amended

**173.12 Salary of treasurer.** Repealed by 2011 Acts, ch 131, § 131, 158.

**173.14 Functions of the board.**

The state fair board has the custody and control of the state fairgrounds, including the buildings and equipment on it belonging to the state, and may:

1. Hold an annual fair and exposition on those grounds. All revenue generated by the fair and any interim uses shall be retained solely by the board.
2. Prepare premium lists and establish rules of exhibitors for the fair which shall be published by the board not later than sixty days prior to the opening of the fair.
3. Grant a written permit to persons as it deems proper to sell fruit, provisions, and other lawful articles under rules the board prescribes.
4. Appoint, as the president deems necessary, security personnel and peace officers qualified according to standards adopted by the board.
5. Take and hold property by gift, devise, or bequest for fair purposes. The president, secretary, and treasurer of the board shall have custody and control of the property, subject to the action of the board. Those officers shall give bonds as required in the case of executors, to be approved by the board and filed with the secretary of state.
6. Erect and repair buildings on the grounds and make other necessary improvements.
7. Grant written permission to persons to use the fairgrounds when the fair is not in progress.
8. Take, acquire, hold, and dispose of property by deed, gift, devise, bequest, lease, or eminent domain. The title to real estate acquired under this subsection and improvements erected on the real estate shall be taken and held in the name of the state of Iowa and shall be under the custody and control of the board. In the exercise of the power of eminent domain the board shall proceed in the manner provided in chapters 6A and 6B.
9. Solicit and accept contributions from private sources for the purpose of financing and supporting the fair.
10. Make an agreement with the department of public safety to provide for security during the annual fair and exposition and interim events.
11. Administer the Iowa state fair foundation created in section 173.22 in its capacity as the board of the Iowa state fair foundation.
  - a. The board shall administer the foundation fund by authorizing all payments from the foundation fund. The board on behalf of the foundation fund may contract, sue and be sued, and adopt rules necessary to carry out the provisions of this subsection, but the board in administering the foundation fund shall not in any manner, directly or indirectly, pledge the credit of the state.

b. The board shall administer the Iowa state fairgrounds trust fund as trustees of an institutional endowment fund as provided in section 173.22A.

[R60, §1702; C73, §1106; C97, §1655; S13, §1657-i, -j, -r; C24, 27, 31, 35, 39, §2886; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.14]

83 Acts, ch 195, §23; 86 Acts, ch 1244, §28; 87 Acts, ch 233, §228; 88 Acts, ch 1055, §1; 91 Acts, ch 132, §2; 91 Acts, ch 248, §8; 2011 Acts, ch 79, §4

Subsection 11 amended

### **173.22 Iowa state fair foundation — foundation fund.**

1. An Iowa state fair foundation is established under the authority of the Iowa state fair board.

2. A foundation fund is created within the state treasury composed of moneys appropriated or available to and obtained or accepted by the foundation. The foundation fund shall include moneys credited to the fund as provided in section 422.12D.

3. The foundation may solicit or accept gifts, including donations and bequests. A gift, to the greatest extent possible, shall be used according to the expressed desires of the person providing the gift.

4. Moneys in the foundation fund shall be used to support foundation activities, including foundation administration, or capital projects or major maintenance improvements at the Iowa state fairgrounds or to property under the control of the board.

5. a. Foundation moneys credited to the foundation fund may be expended on a matching basis with public moneys or Iowa state fair authority receipts. All interest earned on moneys in the foundation fund shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

b. The auditor of state shall conduct regular audits of the foundation fund and shall make a certified report relating to the condition of the foundation fund to the treasurer of the state, and to the treasurer and secretary of the state fair board.

91 Acts, ch 132, §3; 93 Acts, ch 144, §1, 6; 94 Acts, ch 1199, §3 – 6; 2011 Acts, ch 79, §5

Section amended

### **173.22A Iowa state fairgrounds trust fund.**

1. An Iowa state fairgrounds trust fund is created as an endowment fund under the authority and in the custody of the Iowa state fair board in its capacity as the board of the Iowa state fair foundation. The Iowa state fairgrounds trust fund is not part of the state treasury. The fund shall be composed exclusively of gifts accepted by the board in trust from private donors or testators. The board may accept these gifts in trust and shall fulfill its duties as trustee of gifts accepted notwithstanding section 633.63. The trust beneficiaries shall include all future attendees of events held on the Iowa state fairgrounds. The fund shall be an endowment fund to be used exclusively for the maintenance and improvement of the Iowa state fairgrounds and for no other purpose. The board shall decline any gifts not consistent with these purposes.

2. Moneys in the Iowa state fairgrounds trust fund shall not be deposited in the state treasury, but shall be held separate and apart from both the state fair's operating moneys and the state fair foundation fund established in section 173.22. The board as trustee shall hold only legal title to these moneys, which shall not form any part of the general fund of the state. The moneys shall not be subject to appropriation by the general assembly or subject to transfer pursuant to chapter 8. The moneys are not and shall not be deemed public funds for any purpose. The fund shall be an institutional endowment fund within the meaning of and subject to chapter 540A. The fund shall not be subject to audit by the auditor of state, but shall be audited annually by a certified public accountant. The annual audit shall be delivered to the auditor of state, who may include it in any further report that the auditor of state deems appropriate. However, an annual audit shall be a confidential record to the extent required in section 22.7, subsection 52. The moneys may be held in perpetuity, subject to the provisions for release or modification of restrictions on the moneys as provided in chapter 540A.

2011 Acts, ch 79, §6

NEW section

## CHAPTER 175

### AGRICULTURAL DEVELOPMENT

#### **175.3 Establishment of authority.**

1. *a.* The agricultural development authority is established within the department of agriculture and land stewardship. The authority is constituted as a public instrumentality and agency of the state exercising public and essential governmental functions.

*b.* The authority is established to undertake programs which assist beginning farmers in purchasing agricultural land and agricultural improvements and depreciable agricultural property for the purpose of farming, and programs which provide financing to farmers for permanent soil and water conservation practices on agricultural land within the state or for the acquisition of conservation farm equipment, and programs to assist farmers within the state in financing operating expenses and cash flow requirements of farming. The authority shall also develop programs to assist qualified agricultural producers within the state with financing other capital requirements or operating expenses.

*c.* The powers of the authority are vested in and exercised by a board of ten members with nine members appointed by the governor subject to confirmation by the senate. The secretary of agriculture or the secretary's designee shall serve as an ex officio nonvoting member. No more than five appointed members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent financial institutions experienced in agricultural lending, the real estate sales industry, farmers, beginning farmers, average taxpayers, local government, soil and water conservation district officials, agricultural educators, and other persons specially interested in family farm development.

2. The appointed members of the authority shall be appointed by the governor for terms of six years except that, of the first appointments, three members shall be appointed for terms of two years and three members shall be appointed for a term of four years. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. An appointed member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. An appointed member of the authority may also serve as a member of the Iowa finance authority.

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

4. The appointed members of the authority are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The appointed members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two members so request.

7. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds, or other obligations or to implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state. Upon termination of the

existence of the authority, title to all property owned by the authority including any net earnings shall vest in the state.

[C81, §175.3; 82 Acts, ch 1243, §3]

83 Acts, ch 101, §32; 85 Acts, ch 15, §3; 86 Acts, ch 1026, §3; 86 Acts, ch 1027, §2; 86 Acts, ch 1245, §629; 87 Acts, ch 23, §4; 90 Acts, ch 1256, §34; 96 Acts, ch 1029, §1; 2003 Acts, ch 137, §2; 2007 Acts, ch 215, §89, 90; 2011 Acts, ch 13, §1; 2011 Acts, ch 131, §55, 158

Confirmation, see §2.32

Subsection 1, paragraphs a and c amended

### **175.37 Agricultural assets transfer tax credit — agreement.**

1. An agricultural assets transfer tax credit is allowed under this section. The tax credit is allowed against the taxes imposed in chapter 422, division II, as provided in section 422.11M, and in chapter 422, division III, as provided in section 422.33, to facilitate the transfer of agricultural assets from a taxpayer to a beginning farmer.

2. In order to qualify for the tax credit, the taxpayer must meet qualifications established by rules adopted by the authority. At a minimum, the taxpayer must comply with all of the following:

a. Be a person who may acquire or otherwise obtain or lease agricultural land in this state pursuant to chapter 9H or 9I. However, the taxpayer must not be a person who may acquire or otherwise obtain or lease agricultural land exclusively because of an exception provided in one of those chapters or in a provision of another chapter of this Code including but not limited to chapter 10, 10D, or 501, or section 15E.207.

b. Execute an agricultural assets transfer agreement with a beginning farmer as provided in this section.

3. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

4. The tax credit is allowed only for agricultural assets that are subject to an agricultural assets transfer agreement. The agreement shall provide for the lease of agricultural land including any improvements and may provide for the rental of agricultural equipment as defined in section 322F.1.

a. The agreement may be made on a cash basis or on a commodity share basis which includes a share of the crops or livestock produced on the agricultural land. The agreement must be in writing.

b. The agreement shall be for at least two years, but not more than five years. The agreement or that part of the agreement providing for the lease may be renewed by the beginning farmer for a term of at least two years, but not more than five years. An agreement does not include a lease or the rental of equipment intended as a security.

5. The tax credit shall be calculated based on the gross amount paid to the taxpayer under the agricultural assets transfer agreement.

a. Except as provided in paragraph "b", the tax credit shall equal five percent of the amount paid to the taxpayer under the agreement.

b. The tax credit shall equal fifteen percent of the amount paid to the taxpayer from crops or animals sold under an agreement in which the payment is exclusively made from the sale of crops or animals.

6. In order to qualify as a beginning farmer, a person must be eligible to receive financial assistance under section 175.12.

7. A tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. A tax credit shall not be transferable to any other person other than the taxpayer's estate or trust upon the taxpayer's death.

8. A taxpayer shall not claim a tax credit under this section unless a tax credit certificate issued by the authority is attached to the taxpayer's tax return for the tax year for which

the tax credit is claimed. The authority must review and approve an application for a tax credit as provided by rules adopted by the authority. The application must include a copy of the agricultural assets transfer agreement. The authority may approve an application and issue a tax credit certificate to a taxpayer who has previously been allowed a tax credit under this section. The authority may require that the parties to an agricultural assets transfer agreement provide additional information as determined relevant by the authority. The authority shall review an application for a tax credit which includes the renewal of an agricultural assets transfer agreement to determine that the parties to the renewed agreement meet the same qualifications as required for an original application. However, the authority shall not approve an application or issue a certificate to a taxpayer if any of the following applies:

a. The taxpayer is at fault for terminating a prior agricultural assets transfer agreement as determined by the authority.

b. The taxpayer is any of the following:

(1) A party to a pending administrative or judicial action, including a contested case proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(2) Classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

c. The beginning farmer is responsible for managing or maintaining agricultural land and other agricultural assets that are greater than necessary to adequately support a beginning farmer as determined by the authority according to rules which shall be adopted by the authority.

d. The agricultural assets are being leased or rented at a rate which is substantially higher or lower than the market rate for similar agricultural assets leased or rented within the same community, as determined by the authority.

9. A taxpayer or the beginning farmer may terminate an agricultural assets transfer agreement as provided in the agreement or by law. The taxpayer must immediately notify the authority of the termination.

a. If the authority determines that the taxpayer is not at fault for the termination, the authority shall not issue a tax credit certificate to the taxpayer for a subsequent tax year based on the approved application. Any prior tax credit is allowed as provided in this section. The taxpayer may apply for and be issued another tax credit certificate for the same agricultural assets as provided in this section for any remaining tax years for which a certificate was not issued.

b. If the authority determines that the taxpayer is at fault for the termination, any prior tax credit allowed under this section is disallowed. The tax credit shall be recaptured and the amount of the tax credit shall be immediately due and payable to the department of revenue. If a taxpayer does not immediately notify the authority of the termination, the taxpayer shall be conclusively deemed at fault for the termination.

10. The amount of tax credit certificates that may be issued pursuant to this section shall not exceed six million dollars in any fiscal year. The authority shall issue the tax credit certificates on a first-come, first-served basis.

2006 Acts, ch 1161, §2, 7; 2007 Acts, ch 22, §45; 2009 Acts, ch 135, §2, 3; 2011 Acts, ch 118, §32, 89

Section takes effect January 1, 2007, and applies to tax years beginning on or after that date; 2006 Acts, ch 1161, §7

Subsection 10 applies to agricultural assets transfer agreements executed on or after July 1, 2009; 2009 Acts, ch 135, §3

Subsection 2, paragraph a amended

## CHAPTER 184

### IOWA EGG COUNCIL

#### 184.6 Composition of council.

The Iowa egg council established under this chapter shall be composed of seven members. Each member must be a natural person who is a resident of this state and a producer or an officer, equity owner, or employee of a producer. A producer shall not be represented by more than two members of the council. Two persons shall represent large producers, two persons shall represent medium producers, and three persons shall represent small producers. The council shall adopt rules pursuant to chapter 17A establishing classifications for large, medium, and small producers. The following persons or their designees shall serve as ex officio nonvoting members:

1. The secretary.
2. The director of the economic development authority.
3. The chairperson of the poultry science section of the department of animal science at Iowa state university of science and technology.

[C75, 77, 79, 81, §196A.5]

95 Acts, ch 7, §7; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §6, 13

C99, §184.6

2003 Acts, ch 15, §1; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 185

### IOWA SOYBEAN ASSOCIATION

#### 185.3 Board established — elections.

The Iowa soybean association board of directors shall administer this chapter.

1. a. The board shall consist of directors who are producers residing in Iowa at the time of the election. The directors shall be elected as follows:

(1) Four directors shall be elected from producers from the state at large.

(2) One director per district shall be elected from producers from each district in the state. However, two directors shall be elected from the producers from a district if more than an average of twenty-five million bushels of soybeans were produced in that district in the three years prior to the election.

b. A producer shall be entitled to vote in the election regardless of whether the producer is a member of the association.

2. The following persons shall serve on the board as nonvoting, ex officio directors:

a. The secretary or the secretary's designee.

b. The dean of the college of agriculture and life sciences of Iowa state university of science and technology or the dean's designee.

c. The director of the economic development authority or the director's designee.

d. Any other person that the board appoints.

[C73, 75, 77, 79, 81, §185.3]

2005 Acts, ch 82, §6; 2008 Acts, ch 1031, §40; 2008 Acts, ch 1032, §33; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 185C

### CORN PROMOTION BOARD

#### **185C.10 Ex officio nonvoting members.**

The following persons shall serve on the board as ex officio, nonvoting members:

1. The secretary or the secretary's designee.
2. The dean of the college of agriculture and life sciences of Iowa state university of science and technology or the dean's designee.
3. The director of the economic development authority or the director's designee.
4. Two representatives of first purchaser organizations appointed by the board.

[C77, 79, 81, §185C.10]

86 Acts, ch 1100, §22; 94 Acts, ch 1146, §34; 2004 Acts, ch 1024, §3; 2008 Acts, ch 1032, §34; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **185C.29 Remission of excess funds.**

1. After the direct and indirect costs incurred by the secretary and the costs of elections, referendums, necessary board expenses, and administrative costs have been paid, at least seventy-five percent of the remaining moneys from a state assessment deposited in the corn promotion fund shall be used to carry out the purposes of the board as provided in section 185C.11.

2. The Iowa corn promotion board shall not expend any funds on political activity, and it shall be a condition of any allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

[C77, 79, 81, §185C.29]

89 Acts, ch 198, §18; 2004 Acts, ch 1024, §7; 2007 Acts, ch 126, §40; 2011 Acts, ch 34, §38

Subsection 1 amended

## CHAPTER 192

### GRADE "A" MILK INSPECTION

#### **192.109 Certification of grade "A" label.**

The department of agriculture and land stewardship shall annually survey and certify all milk labeled grade "A" pasteurized and grade "A" raw milk for pasteurization, and, in the event a survey shows the requirements for production, processing, and distribution for such grade are not being complied with, the fact thereof shall be certified by the department to the secretary of agriculture who shall proceed with the provisions of section 192.107 for suspending the permit of the violator or who, if the secretary did not issue such permit, shall withdraw the grade "A" declared on the label.

[C71, 73, 75, 77, 79, 81, §192.31]

CS91, §192.109

2011 Acts, ch 89, §1

Continuing effectiveness of rules, regulations, forms, orders, or directives promulgated by department of public health until amended, repealed, or supplemented by department of agriculture and land stewardship; effect on administrative hearing or court proceeding arising out of pending enforcement action or cause of action or statute of limitations relating to action taken by department of public health; transfer of personnel; replacement of signs and related items; 2011 Acts, ch 89, §2

Section amended

## CHAPTER 196

### EGG HANDLERS

For future transition of powers and duties from the department of inspections and appeals to the department of agriculture and land stewardship under this chapter and related administrative rules, see 2011 Acts, ch 16

#### 196.1 Definitions.

Unless the context otherwise requires:

1. “*Candling*” means the careful examination of each shell egg and the elimination of those eggs determined unfit for human consumption.
2. “*Consumer*” means a person who buys eggs for personal consumption.
3. “*Department*” means the department of inspections and appeals, as established in section 10A.102.
4. “*Egg handler*” or “*handler*” means a person who buys or sells eggs, or uses eggs in the preparation of human food. “*Egg handler*” or “*handler*” does not include a retailer, a consumer, an establishment, or a producer who sells eggs as provided in section 196.4.
5. “*Establishment*” means any place in which eggs are offered or sold as human food for consumption by its employees, students, patrons, customers, residents, inmates or patients or as an ingredient in food offered or sold in a form ready for immediate consumption.
6. “*Grading*” means classifying each shell egg by weight and grading in accordance with egg grading standards approved by the United States government as of July 1, 1985, pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq.
7. “*Nest run eggs*” means eggs which have not been denatured, candled, graded, processed or labeled.
8. “*Package*” means the same as defined in section 189.1.
9. “*Producer*” means a person who owns layer type chickens.
10. “*Retailer*” means a person who sells eggs directly to consumers except a producer who sells eggs under the provisions of section 196.4.

[C24, 27, 31, 35, 39, §3107; C46, 50, 54, §196.7; C58, 62, 66, 71, 73, 75, §196.3, 196.11; C77, 79, 81, §196.1]

85 Acts, ch 195, §20; 95 Acts, ch 7, §1, 2

Further definitions, see §189.1

For future amendment to subsection 3, effective July 1, 2012, see 2011 Acts, ch 16, §2, 5

## CHAPTER 200A

### BULK DRY ANIMAL NUTRIENT PRODUCTS

#### 200A.10 Examinations.

1. The department shall maintain a laboratory with the equipment and employees necessary to conduct examinations of bulk dry animal nutrient products and to effectively administer and enforce this chapter.

2. The department, or a person authorized as an agent by the department, shall examine bulk products distributed in this state. An examination may include taking samples, conducting inspections and tests, and analyzing the bulk product.

98 Acts, ch 1145, §10; 2011 Acts, ch 46, §3

Subsection 3 stricken

## CHAPTER 203C

### WAREHOUSES FOR AGRICULTURAL PRODUCTS

This chapter not enacted as a part of this title;  
transferred from chapter 543 in Code 1993

#### **203C.37 Issuance of a license and payment of fees.**

1. *a.* Upon the filing of an application pursuant to section 203C.7 and compliance with the terms and conditions of this chapter including rules of the department, the department shall issue the applicant a warehouse operator's license. The license expires at the end of the third calendar month following the close of the warehouse operator's fiscal year. A warehouse operator's license may be renewed annually by the filing of a renewal application on a form prescribed by the department pursuant to section 203C.7. An application for renewal must be received by the department on or before the end of the third calendar month following the close of the warehouse operator's fiscal year.

*b.* The department shall not approve an application for the issuance or renewal of a warehouse operator's license unless the applicant pays all of the following fees:

(1) For the issuance of a license, all of the following:

(a) A license fee imposed under section 203C.33.

(b) A participation fee imposed under section 203D.3A, and any delinquent participation fee imposed under a previous license as provided in that section.

(2) For the renewal of a license, all of the following:

(a) A renewal fee imposed under section 203C.33.

(b) A participation fee imposed under section 203D.3A, and any delinquent participation fee as provided in that section.

3. The failure of a warehouse operator to file a renewal application and to pay a renewal fee as provided for in section 203C.33 and any delinquent participation fee as provided in section 203D.3A, on or before the end of the third calendar month following the close of the licensee's fiscal year shall cause a license to expire.

4. A warehouse license that has expired may be reinstated by the department upon receipt of a proper renewal application, the renewal fee and the reinstatement fee as provided for in section 203C.33, and any delinquent participation fee as provided in section 203D.3A. The applicant must file the renewal application and pay the fees to the department within thirty days from the date that the warehouse license expires.

5. The department may cancel the license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter.

6. *a.* The department shall refund a fee paid by a person to the department under this section if the department does not issue the person a license or renew the person's license.

*b.* The department shall prorate a fee paid by a person to the department under this section for the issuance or renewal of a license for less than a full year.

[C71, 73, 75, 77, 79, 81, §543.37; 81 Acts, ch 180, §28]

84 Acts, ch 1100, §5; 92 Acts, ch 1239, §76

C93, §203C.37

2010 Acts, ch 1082, §4; 2011 Acts, ch 34, §159, 170

Section not amended; section history updated

## CHAPTER 203D

### GRAIN DEPOSITORS AND SELLERS INDEMNIFICATION

This chapter not enacted as a part of this title;  
transferred from chapter 543A in Code 1993

#### **203D.1 Definitions.**

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

1. "Board" means the Iowa grain indemnity fund board created in section 203D.4.

2. “*Credit-sale contract*” means the same as defined in section 203.1.
  3. “*Department*” means the department of agriculture and land stewardship.
  4. “*Depositor*” means a person who deposits grain in a licensed warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt issued by a licensed warehouse, or who is lawfully entitled to possession of the grain.
  5. “*First point of sale*” means the initial transfer of title to grain from a person who has produced the grain or caused the grain to be produced to the first purchaser of the grain for consideration, conditional or otherwise, in any manner or by any means.
  6. “*Fund*” means the grain depositors and sellers indemnity fund created in section 203D.3.
  7. “*Grain*” means wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products, as defined in the Grain Standards Act, but does not include agricultural products other than bulk grain.
  8. “*Grain dealer*” means the same as defined in section 203.1.
  9. “*Licensed grain dealer*” means a person who has obtained a license to engage in the business of a grain dealer pursuant to section 203.3.
  10. “*Licensed warehouse*” means the same as defined in section 203C.1.
  11. “*Licensed warehouse operator*” means the same as in section 203C.1.
  12. “*Licensee*” means a licensed grain dealer or licensed warehouse operator.
  13. “*Loss*” means the amount of a claim held by a seller or depositor against a grain dealer or warehouse operator which has not been recovered through other legal and equitable remedies including the liquidation of assets.
  14. “*Purchased grain*” means grain which is entered in the company-owned paid position as evidenced on the grain dealer’s daily position record.
  15. “*Seller*” means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, but excludes a person who executes a credit-sale contract as a seller as provided in section 203.15. However, “*seller*” does not include any of the following:
    - a. A person licensed as a grain dealer in any jurisdiction who sells grain to a licensed grain dealer.
    - b. A person who sells grain that is not produced in this state unless such grain is delivered to a licensed grain dealer at a location in this state as the first point of sale.
  16. “*Warehouse operator*” means the same as defined in section 203C.1.
- 86 Acts, ch 1152, §31  
 C87, §543A.1  
 87 Acts, ch 147, §8 – 10; 89 Acts, ch 143, §901, 902  
 C93, §203D.1  
 2008 Acts, ch 1083, §13, 14; 2009 Acts, ch 41, §81; 2009 Acts, ch 133, §78; 2010 Acts, ch 1082, §5; 2011 Acts, ch 34, §39  
 NEW unnumbered paragraph 1

## CHAPTER 207

### COAL MINING

This chapter not enacted as a part of this title;  
 transferred from chapter 83 in Code 1993

#### 207.1 Policy.

1. It is the policy of this state to provide for the rehabilitation and conservation of land affected by coal mining and preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety, and general welfare of the people of this state.
2. The general assembly finds and declares that because the federal Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, codified at 30 U.S.C. ch. 25, subch.

IV, provides for a permit system to regulate the mining of coal and reclamation of the mining sites and provides that permits may be issued by states which are authorized to implement the provisions of that Act, it is in the interest of the people of Iowa to enact the provisions of this chapter in order to authorize the state to implement the provisions of the federal Surface Mining Control and Reclamation Act of 1977 and federal regulations and guidelines issued pursuant to that Act.

[C79, §83A.12(2); C81, §83.1]

C93, §207.1

2006 Acts, ch 1010, §61; 2011 Acts, ch 34, §40

Subsection 2 amended

### **207.3 Mining license.**

1. A person shall not engage in a surface coal mining operation without first obtaining a license from the division. Licenses shall be issued upon application submitted on a form provided by the division and accompanied by a fee of fifty dollars. An applicant shall furnish on the form information necessary to identify the applicant. Licenses expire on December 31 following the date of issuance and shall be renewed by the division upon application submitted within thirty days prior to the expiration date and accompanied by a fee of ten dollars.

2. The division may, after notification to the committee, commence proceedings to suspend, revoke, or refuse to renew a license of a licensee for repeated or willful violation of any of the provisions of this chapter or of the federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 801 et seq.

3. The hearing shall be held pursuant to chapter 17A not less than fifteen nor more than thirty days after the mailing or service of the notice. If the licensee is found to have willfully or repeatedly violated any of the provisions of this chapter or of the federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 801 et seq., the committee may affirm or modify the proposed suspension, revocation, or refusal to renew the license.

4. Suspension or revocation of a license shall become effective thirty days after the mailing or service of the decision to the licensee. If the committee finds the license should not be renewed, the renewal fee shall be refunded and the license shall expire on the expiration date or thirty days after mailing or service of the decision to the licensee, whichever is later.

[C79, §83A.12(1); C81, §83.3]

C93, §207.3

2011 Acts, ch 34, §41

Subsections 2 and 3 amended

### **207.16 Release of performance bonds or deposits.**

1. Each operator upon completion of any reclamation work required by this chapter shall apply to the division in writing for approval of the work. The division shall promulgate rules consistent with Pub. L. No. 95-87, § 519, codified at 30 U.S.C. § 1269, regarding procedures and requirements to release performance bonds or deposits.

2. The division may release in whole or part the bonds or deposits if the division is satisfied the reclamation covered by the bonds or deposits or portions thereof has been accomplished as required by this chapter according to stages determined by the division by rule. When the operator has completed successfully all surface coal mining and reclamation activities, the remaining portion of the bond shall be released upon the expiration of the period specified for operator responsibility in the rules promulgated pursuant to section 207.7. A bond shall not be fully released until all reclamation requirements of this chapter are fully met.

3. A person with a valid legal interest which might be adversely affected by release of the bond or a federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or which is authorized to develop and enforce environmental standards with respect to such operations may file written objections to the proposed release from bond to the division within sixty days after the last publication as required by rule of a notice of a request for bond release by the operator. If written objections are filed and a hearing is requested,

the division shall inform all the interested parties of the time and place of the hearing, and hold a public hearing as a contested case in the locality of the coal mining operation or at the state capital, at the request of the objectors, within thirty days of the request. The date, time, and location shall be advertised by the division in a newspaper of general circulation in the locality for two consecutive weeks.

[C81, §83.16]

C93, §207.16

2006 Acts, ch 1010, §63; 2011 Acts, ch 34, §42

Subsection 1 amended

#### **207.19 Surface effects of underground coal mining operations.**

1. The provisions of this chapter shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The division shall promulgate such modifications in its rules to allow for such distinct differences and still fulfill the purposes of this chapter and be consistent with the requirements of Pub. L. No. 95-87, § 516, codified at 30 U.S.C. § 1266, and the permanent regulations issued pursuant to that Act.

2. In order to protect the stability of the land, the division shall suspend underground coal mining under urbanized areas, cities, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the administrator finds imminent danger to inhabitants of the urbanized areas, cities, and communities.

[C81, §83.19]

C93, §207.19

2006 Acts, ch 1010, §64; 2011 Acts, ch 34, §43

Section amended

#### **207.21 Abandoned mine reclamation program.**

1. The division shall participate in the abandoned mine reclamation program under Pub. L. No. 95-87, Tit. IV, codified at 30 U.S.C. ch. 25, subch. IV. There is established an abandoned mine reclamation fund under the control of the division.

2. a. Lands and water eligible for reclamation or drainage abatement expenditures under this section include the following:

(1) Lands which were mined for coal or affected by such mining, waste banks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal laws.

(2) Coal lands and water damaged by coal mining processes and abandoned after August 3, 1977, if they were mined for coal or affected by coal mining processes and if either of the following occurred:

(a) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and April 10, 1981, and any moneys for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

(b) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and November 5, 1990, and the surety of the mining operator became insolvent during that period and, as of November 5, 1990, moneys immediately available from proceedings relating to the insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

b. If requested by the governor, the division may fill voids and seal tunnels, shafts, and entryways resulting from any previous noncoal mining operation, and may reclaim surface impacts of any such noncoal underground or surface mines that were mined prior to August 3, 1977, and which constitute an extreme danger to the public health, safety, general

welfare, or property. Sites and areas designated for remedial action pursuant to the federal Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 7901 et seq., or which have been listed for remedial action pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., are not eligible for expenditures under this section.

3. Expenditure of moneys from the abandoned mine reclamation fund on eligible lands and water for the purpose of this program shall reflect the following priorities in the order stated:

a. The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.

b. The protection of public health, safety, and general welfare from adverse effects of coal mining practices.

c. The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water, excluding channelization, woodland, fish and wildlife, recreation resources, and agricultural productivity.

d. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices.

e. The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this section for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

4. a. The division shall submit to the secretary a state reclamation plan and annual projects to carry out the purposes of this program. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of Pub. L. No. 95-87, Tit. IV, codified at 30 U.S.C. ch. 25, subch. IV.

b. The division may annually submit to the secretary an application with such information as determined by the secretary for the support of the state program and implementation of specific reclamation projects.

c. The costs for each proposed project under this program shall include actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction and inspection costs, and other necessary administrative expenses.

d. The division shall prepare and submit annual and other reports as required by the secretary.

5. The division in participating in the abandoned mine reclamation program under Pub. L. No. 95-87, Tit. IV, codified at 30 U.S.C. ch. 25, subch. IV, shall have the following additional powers:

a. To engage in any work and to do all things necessary or expedient, including promulgation of rules, to implement and administer the provisions of this program.

b. To engage in cooperative projects with any other governmental unit provided that such cooperative projects shall be under a cooperative agreement conducted according to the provisions of chapter 28E.

c. To request the attorney general to seek injunctive relief to restrain any interference with the exercise of the right to enter or to conduct work under this program.

d. To construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

[C81, §83.21]

C93, §207.21

97 Acts, ch 115, §1, 2; 2010 Acts, ch 1061, §180; 2011 Acts, ch 34, §44 – 46

Subsection 1 amended

Subsection 4, paragraph a amended  
Subsection 5, unnumbered paragraph 1 amended

### **207.22 Acquisition and reclamation of land.**

1. *a.* The division, pursuant to a state program approved by the secretary, may take action as provided in paragraph “*b*” of this subsection if it finds all of the following:

(1) Land or water resources have been adversely affected by past coal mining practices.  
(2) The adverse effects are at a stage where in the public interest action to restore, reclaim, abate, control, or prevent should be taken.

(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available, or will not give permission for the United States, this state, political subdivisions, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

*b.* Upon giving notice by mail to the owners if known or by posting notice upon the premises and advertising once in a local newspaper of general circulation if not known, the division may enter upon the property adversely affected by past coal mining practices and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and not as an act of condemnation of property or trespass. The moneys expended for the work and the benefits accruing to the property shall be chargeable against such property and shall mitigate or offset any claim on or any action brought by an owner of any interest in the property for any alleged damages because of the entry. This provision does not create new rights of action or eliminate existing immunities.

2. The division may enter upon a property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and not as an act of condemnation of property or trespass.

3. The division pursuant to an approved state program may acquire any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the secretary determines that acquisition of the land is necessary to successful reclamation and that:

*a.* The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open spaces benefits and that permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

*b.* Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of Pub. L. No. 95-87, Tit. IV, codified at 30 U.S.C. ch. 25, subch. IV, or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effect of past coal mining practices.

4. Title to all lands acquired pursuant to this section shall be in the name of this state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

5. If land acquired pursuant to this section is deemed to be suitable for industrial, commercial, agricultural, residential, or recreational development, the division with authorization from the secretary may sell the land by public sale under a system of competitive bidding, at not less than fair market value and under rules promulgated to insure that the lands are put to proper use consistent with local land use plans.

6. The division if requested after appropriate public notice shall hold a public hearing with the appropriate notice, in the county of the lands acquired pursuant to this section. The

hearings shall be held at a time that affords local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands.

7. The division may cooperate with the secretary in acquiring land by purchase, donation, or condemnation to assist the housing of people disabled as the result of employment in the mines or incidental work, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as determined by the secretary. The fund provided under this section shall not be used to pay the actual construction costs of housing.

[C81, §83.22]

C93, §207.22

2002 Acts, ch 1119, §145; 2010 Acts, ch 1061, §180; 2011 Acts, ch 34, §47; 2011 Acts, ch 131, §56, 158

Subsection 3, paragraph b amended

## CHAPTER 214A

### MOTOR FUEL

Department of agriculture and land stewardship to establish and administer programs for auditing motor fuel production and processing, motor fuel screening and testing, and inspection of motor fuel sold by dealers; 2006 Acts, ch 1175, §22; 2008 Acts, ch 1189, §16; 2009 Acts, ch 175, §3; 2010 Acts, ch 1191, §3; 2011 Acts, ch 128, §3, 48, 60

#### 214A.2 Tests and standards.

1. The department shall adopt rules pursuant to chapter 17A for carrying out this chapter. The rules may include but are not limited to specifications relating to motor fuel, including but not limited to renewable fuel such as ethanol blended gasoline, biodiesel, biodiesel blended fuel, and motor fuel components such as an oxygenate. In the interest of uniformity, the department shall adopt by reference other specifications relating to tests and standards for motor fuel, including renewable fuel and motor fuel components, established by the United States environmental protection agency and A.S.T.M. international.

2. Octane number shall conform to the average of values obtained from the A.S.T.M. international D2699 research method and the A.S.T.M. international D2700 motor method.

a. Octane number for regular grade leaded gasoline shall follow the specifications of A.S.T.M. international but shall not be less than eighty-eight.

b. Octane number for premium grade leaded gasoline shall follow the specifications of A.S.T.M. international but shall not be less than ninety-three.

c. Octane number for regular grade unleaded gasoline shall follow the specifications of A.S.T.M. international but shall not be less than eighty-seven.

d. Octane number for premium grade unleaded gasoline shall follow the specifications of A.S.T.M. international but shall not be less than ninety.

3. a. For motor fuel advertised for sale or sold as gasoline by a dealer, the motor fuel must meet requirements for that type of motor fuel and its additives established by the United States environmental protection agency including as provided under 42 U.S.C. § 7545.

b. If the motor fuel is advertised for sale or sold as ethanol blended gasoline, the motor fuel must comply with departmental standards which shall meet all of the following requirements:

(1) Ethanol must be an agriculturally derived ethyl alcohol that meets A.S.T.M. international specification D4806 for denatured fuel ethanol for blending with gasoline for use as automotive spark-ignition engine fuel, or a successor A.S.T.M. international specification, as established by rules adopted by the department.

(2) Gasoline blended with ethanol must meet any of the following requirements:

(a) For the gasoline, A.S.T.M. international specification D4814.

(b) For the ethanol blended gasoline, A.S.T.M. international specification D4814.

(c) For the gasoline, A.S.T.M. international specification D4814 except for distillation, if,

for E-10 or a classification below E-10, the ethanol blended gasoline meets the requirements of A.S.T.M. international specification D4814.

(3) For ethanol blended gasoline, at least nine percent by volume must be fuel grade ethanol. In addition, the following applies:

(a) For the period beginning on September 16 and ending on May 31 of each year, the state grants a waiver of one pound per square inch from the A.S.T.M. international D4814 Reid vapor pressure requirement.

(b) For the period beginning on June 1 and ending on September 15 of each year the United States environmental protection agency must grant a one pound per square inch waiver for ethanol blended conventional gasoline with at least nine but not more than ten percent by volume of ethanol pursuant to 40 C.F.R. § 80.27.

(4) For standard ethanol blended gasoline, it must be ethanol blended gasoline classified as any of the following:

(a) E-9 or E-10, if the ethanol blended gasoline meets the standards for that classification as otherwise provided in this paragraph “b”.

(b) Higher than E-10, if authorized by the department pursuant to approval for the use of that classification of ethanol blended gasoline in this state by the United States environmental protection agency, by granting a waiver or the adoption of regulations.

(5) E-85 gasoline must be an agriculturally derived ethyl alcohol that meets A.S.T.M. international specification D5798, described as a fuel blend for use in ground vehicles with automotive spark-ignition engines, or a successor A.S.T.M. international specification, as established by rules adopted by the department.

4. a. For motor fuel advertised for sale or sold as diesel fuel by a dealer, the motor fuel must meet requirements for that type of motor fuel and its additives established by the United States environmental protection agency including as provided under 42 U.S.C. § 7545.

b. If the motor fuel is advertised for sale or sold as biodiesel or biodiesel blended fuel, the motor fuel must comply with departmental standards which shall comply with specifications adopted by A.S.T.M. international for biodiesel or biodiesel blended fuel, to every extent applicable as determined by rules adopted by the department.

(1) Biodiesel must conform to A.S.T.M. international specification D6751 or a successor A.S.T.M. international specification as established by rules adopted by the department. The specification shall apply to biodiesel before it leaves its place of manufacture.

(2) At least one percent of biodiesel blended fuel by volume must be biodiesel.

(3) The biodiesel may be blended with diesel fuel whose sulfur, aromatic, lubricity, and cetane levels do not comply with A.S.T.M. international specification D975 grades 1-D or 2-D, low sulfur 1-D or 2-D, or ultra-low sulfur grades 1-D or 2-D, provided that the finished biodiesel blended fuel meets A.S.T.M. international specification D975 or a successor A.S.T.M. international specification as established by rules adopted by the department.

(4) Biodiesel blended fuel classified as B-6 or higher but not higher than B-20 must conform to A.S.T.M. international specification D7467 or a successor A.S.T.M. international specification as established by rules adopted by the department.

5. Ethanol blended gasoline shall be designated E-xx where “xx” is the volume percent of ethanol in the ethanol blended gasoline and biodiesel fuel shall be designated B-xx where “xx” is the volume percent of biodiesel.

6. Motor fuel shall not contain more than trace amounts of MTBE, as provided in section 214A.18.

[C31, 35, §5093-d2; C39, §5095.02; C46, 50, 54, 58, 62, 66, 71, §323.2; C73, 75, 77, 79, 81, §214A.2; 82 Acts, ch 1131, §1, ch 1170, §1]

84 Acts, ch 1083, §1; 85 Acts, ch 76, §2 – 5; 85 Acts, ch 195, §23; 89 Acts, ch 75, §2; 90 Acts, ch 1252, §14; 91 Acts, ch 87, §1; 2000 Acts, ch 1224, §28; 2003 Acts, ch 167, §1, 4; 2004 Acts, ch 1086, §106; 2006 Acts, ch 1142, §6 – 8, 83; 2006 Acts, ch 1175, §8, 23; 2008 Acts, ch 1169, §17, 18, 30; 2009 Acts, ch 41, §263; 2009 Acts, ch 179, §118; 2010 Acts, ch 1031, §247; 2011 Acts, ch 113, §1

Subsection 4, paragraph b, NEW subparagraph (4)

**214A.20 Retail dealers — limitation on liability.**

1. A retail dealer is not liable for damages caused by the use of incompatible motor fuel dispensed at the retail dealer's retail motor fuel site, if all of the following applies:

a. The incompatible motor fuel complies with the specifications for a type of motor fuel as provided in section 214A.2.

b. The incompatible motor fuel is selected by a person other than the retail dealer, including an employee or agent of the retail dealer.

c. The incompatible motor fuel is dispensed from a motor fuel pump that correctly labels the type of fuel dispensed.

2. For purposes of this section, a motor fuel is incompatible with a motor according to the manufacturer of the motor.

2011 Acts, ch 113, §2

NEW section

## CHAPTER 216A

### DEPARTMENT OF HUMAN RIGHTS

For transition provisions concerning the reorganization of the department of human rights, see 2010 Acts, ch 1031, §169, 170

#### SUBCHAPTER 1

#### ADMINISTRATION

**216A.6 Confidentiality of individual client advocacy records.**

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

a. "Advocacy services" means services in which a department staff member writes or speaks in support of a client or a client's cause or refers a person to another service to help alleviate or solve a problem.

b. "Individual client advocacy records" means those files or records which pertain to problems divulged by a client to the department or any related papers or records which are released to the department about a client for the purpose of assisting the client.

2. Information pertaining to clients receiving advocacy services shall be held confidential, including but not limited to the following:

a. Names and addresses of clients receiving advocacy services.

b. Information about a client reported on the initial advocacy intake form and all documents, information, or other material relating to the advocacy issues or to the client which could identify the client, or divulge information about the client.

c. Information concerning the social or economic conditions or circumstances of particular clients who are receiving or have received advocacy services.

d. Department, or division, or office evaluations of information about a person seeking or receiving advocacy services.

e. Medical or psychiatric data, including diagnoses and past histories of disease or disability, concerning a person seeking or receiving advocacy services.

f. Legal data, including records which represent or constitute the work product of an attorney, which are related to a person seeking or receiving advocacy services.

3. Information described in subsection 2 shall not be disclosed or used by any person or agency except for purposes of administration of advocacy services, and shall not be disclosed to or used by a person or agency outside the department except upon consent of the client as evidenced by a signed release.

4. This section does not restrict the disclosure or use of information regarding the cost, purpose, number of clients served or assisted, and results of an advocacy program

administered by the department, and other general and statistical information, so long as the information does not identify particular clients or persons provided with advocacy services.

88 Acts, ch 1106, §1

C89, §601K.6

C93, §216A.6

2011 Acts, ch 34, §48

Subsection 2, paragraph d amended

## SUBCHAPTER 6

### DIVISION OF COMMUNITY ACTION AGENCIES

#### **216A.96 Duties of community action agency.**

A community action agency shall:

1. Plan and implement strategies to alleviate the conditions of poverty and encourage self-sufficiency for citizens in its service area and in Iowa. In doing so, an agency shall plan for a community action program by establishing priorities among projects, activities, and areas to provide for the most efficient use of possible resources.

2. Obtain and administer assistance from available sources on a common or cooperative basis, in an attempt to provide additional opportunities to low-income persons.

3. Establish effective procedures by which the concerned low-income persons and area residents may influence the community action programs affecting them by providing for methods of participation in the implementation of the community action programs and by providing technical support to assist persons to secure assistance available from public and private sources.

4. Encourage and support self-help, volunteer, business, labor, and other groups and organizations to assist public officials and agencies in supporting a community action program by providing private resources, developing new employment opportunities, encouraging investments in areas of concentrated poverty, and providing methods by which low-income persons can work with private organizations, businesses, and institutions in seeking solutions to problems of common concern.

86 Acts, ch 1245, §1245

C87, §601K.96

C93, §216A.96

2010 Acts, ch 1031, §129, 130, 170; 2011 Acts, ch 34, §49

Unnumbered paragraph 1 amended

#### **216A.97 Administration.**

A community action agency may administer the components of a community action program when the program is consistent with plans and purposes and applicable law. The community action programs may be projects which are eligible for assistance from any source. The programs shall be developed to meet local needs and may be designed to meet eligibility standards of a federal or state program.

86 Acts, ch 1245, §1246

C87, §601K.97

C93, §216A.97

2010 Acts, ch 1031, §131, 170; 2011 Acts, ch 34, §50

Section amended

#### **216A.98 Audit.**

Each community action agency shall be audited annually but shall not be required to obtain a duplicate audit to meet the requirements of this section. In lieu of an audit by the auditor of state, the community action agency may contract with or employ a certified public accountant to conduct the audit, pursuant to the applicable terms and conditions prescribed by sections

11.6, 11.14, and 11.19 and an audit format prescribed by the auditor of state. Copies of each audit shall be furnished to the division in a manner prescribed by the division.

86 Acts, ch 1245, §1247

C87, §601K.98

89 Acts, ch 264, §9

C93, §216A.98

2010 Acts, ch 1031, §132, 170; 2011 Acts, ch 75, §36

Section amended

## SUBCHAPTER 9

### DIVISION OF CRIMINAL AND JUVENILE JUSTICE PLANNING

#### **216A.133A Public safety advisory board — duties.**

1. A public safety advisory board is established whose membership shall be determined by the criminal and juvenile justice planning advisory council and shall consist of current members of the council. Any actions taken by the board shall be considered separate and distinct from the council.

2. The purpose of the board is to provide the general assembly with an analysis of current and proposed criminal code provisions.

3. The duties of the board shall consist of the following:

a. Reviewing and making recommendations relating to current sentencing provisions. In reviewing such provisions the board shall consider the impact on all of the following:

(1) Potential disparity in sentencing.

(2) Truth in sentencing.

(3) Victims.

(4) The proportionality of specific sentences.

(5) Sentencing procedures.

(6) Costs associated with the implementation of criminal code provisions, including costs to the judicial branch, department of corrections, and judicial district departments of correctional services, costs for representing indigent defendants, and costs incurred by political subdivisions of the state.

(7) Best practices related to the department of corrections including recidivism rates, safety and efficient use of correctional staff, and compliance with correctional standards set by the federal government and other jurisdictions.

(8) Best practices related to the Iowa child death review team established in section 135.43 and the Iowa domestic abuse death review team established in section 135.109.

b. Reviewing and making recommendations relating to proposed legislation, in accordance with paragraph "a", as set by rule by the general assembly or as requested by the executive or judicial branch proposing such legislation.

c. Providing expertise and advice to the legislative services agency, the department of corrections, the judicial branch, and others charged with formulating fiscal, correctional, or minority impact statements.

d. Reviewing data supplied by the division, the department of management, the legislative services agency, the Iowa supreme court, and other departments or agencies for the purpose of determining the effectiveness and efficiency of the collection of such data.

4. The board may call upon any department, agency, or office of the state, or any political subdivision of the state, for information or assistance as needed in the performance of its duties. The information or assistance shall be furnished to the extent that it is within the resources and authority of the department, agency, office, or political subdivision. This section does not require the production or opening of any records which are required by law to be kept private or confidential.

5. The board shall report to the general assembly's standing committees on government oversight all sources of funding by December 1 of each year.

6. Membership on the board shall be bipartisan as provided in section 69.16 and gender balanced as provided in section 69.16A.

7. Meetings of the board shall be open to the public as provided in chapter 21.

8. Members of the board shall receive reimbursement from the state for actual and necessary expenses incurred in the performance of their official duties. Members may also be eligible to receive compensation as provided in section 7E.6.

2010 Acts, ch 1193, §155; 2011 Acts, ch 34, §51

Subsection 5 amended

## CHAPTER 217

### DEPARTMENT OF HUMAN SERVICES

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **217.6 Rules and regulations — organization of department.**

1. The director is hereby authorized to recommend to the council for adoption such rules and regulations as are necessary to carry into practice the programs of the various divisions and to establish such divisions and to assign or reassign duties, powers, and responsibilities within the department, all with the approval of the council on human services, within the department as the director deems necessary and appropriate for the proper administration of the duties, functions and programs with which the department is charged. Any action taken, decision made, or administrative rule adopted by any administrator of a division may be reviewed by the director. The director, upon such review, may affirm, modify, or reverse any such action, decision, or rule.

2. The rules and regulations adopted for the public benefits and programs administered by the department of human services shall apply the residency eligibility restrictions required by federal and state law.

3. The director shall organize the department of human services into divisions to carry out in efficient manner the intent of this chapter. The department of human services may be initially divided into the following divisions of responsibility: the division of child and family services, the division of mental health and disability services, the division of administration, and the division of planning, research and statistics.

4. If the department of human services requires or requests a service consumer, service provider, or other person to maintain required documentation in electronic form, the department shall accept such documentation submitted by electronic means and shall not require a physical copy of the documentation unless required by state or federal law.

[C71, 73, 75, 77, 79, 81, §217.6; 81 Acts, ch 78, §20, 22]

83 Acts, ch 96, §64, 159; 94 Acts, ch 1170, §27; 2006 Acts, ch 1115, §21; 2010 Acts, ch 1031, §406; 2011 Acts, ch 34, §52; 2011 Acts, ch 122, §19, 23

See Code editor's note on simple harmonization  
Section amended

**217.20 Trips to other states.** Repealed by 2011 Acts, ch 127, § 56, 89. See § 8A.512A.

##### **217.34 Debt setoff.**

The investigations division of the department of inspections and appeals and the department of human services shall provide assistance to set off against a person's or provider's income tax refund or rebate any debt which has accrued through written contract, nonpayment of premiums pursuant to section 249A.3, subsection 2, paragraph "a", subparagraph (1), or section 249J.8, subsection 1, subrogation, departmental recoupment procedures, or court judgment and which is in the form of a liquidated sum due and

owing the department of human services. The department of inspections and appeals, with approval of the department of human services, shall adopt rules under chapter 17A necessary to assist the department of administrative services in the implementation of the setoff under section 8A.504 in regard to money owed to the state for public assistance overpayments or nonpayment of premiums as specified in this section. The department of human services shall adopt rules under chapter 17A necessary to assist the department of administrative services in the implementation of the setoff under section 8A.504, in regard to collections by the child support recovery unit and the foster care recovery unit.

83 Acts, ch 96, §160; 83 Acts, ch 153, §2; 89 Acts, ch 250, §1; 2003 Acts, ch 145, §209; 2011 Acts, ch 120, §2

Section amended

## CHAPTER 218

### INSTITUTIONS GOVERNED BY HUMAN SERVICES DEPARTMENT

#### **218.22 Record privileged.**

Except with the consent of the administrator in charge of an institution, or on an order of a court of record, the record provided in section 218.21 shall be accessible only to the administrator of the division of the department of human services in control of such institution, the director of the department of human services and to assistants and proper clerks authorized by such administrator or the administrator's director. The administrator of the division of such institution is authorized to permit the division of library services of the department of education and the historical division of the department of cultural affairs to copy or reproduce by any photographic, photostatic, microfilm, microcard or other process which accurately reproduces a durable medium for reproducing the original and to destroy in the manner described by law such records of residents designated in section 218.21.

[S13, §2727-a22; C24, 27, 31, 35, 39, §3305; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.22]

83 Acts, ch 96, §157, 159, 160; 93 Acts, ch 48, §11; 2011 Acts, ch 132, §40, 106

Section amended

#### **218.85 Uniform system of accounts.**

The director of human services through the administrators in control of the institutions shall install in all the institutions the most modern, complete, and uniform system of accounts, records, and reports possible. The system shall be prescribed by the director of the department of administrative services as authorized in section 8A.502, subsection 13, and, among other matters, shall clearly show the detailed facts relative to the handling and uses of all purchases.

[S13, §2727-a13; C24, 27, 31, 35, 39, §3286; C46, §217.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.85]

83 Acts, ch 96, §157, 159; 89 Acts, ch 284, §5; 2000 Acts, ch 1112, §27; 2003 Acts, ch 145, §212

Requirement of auditor of state, §11.5

Section not amended; internal reference change applied

## CHAPTER 225B

### PREVENTION OF DISABILITIES

Chapter repealed effective July 1, 2012;  
see §225B.8

#### **225B.8 Repeal.**

This chapter is repealed July 1, 2012.

2000 Acts, ch 1228, §40, 46; 2001 Acts, ch 191, §36; 2006 Acts, ch 1184, §105; 2011 Acts, ch 129, §89, 156

Section amended

## CHAPTER 225C

### MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, OR BRAIN INJURY

County participation in funding for services to persons with  
disabilities; §249A.26  
Review of out-of-state placements;  
98 Acts, ch 1155, §3

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### **225C.5 Mental health and disability services commission.**

1. A mental health and disability services commission is created as the state policy-making body for the provision of services to persons with mental illness, mental retardation or other developmental disabilities, or brain injury. The commission's voting members shall be appointed to three-year staggered terms by the governor and are subject to confirmation by the senate. Commission members shall be appointed on the basis of interest and experience in the fields of mental health, mental retardation or other developmental disabilities, and brain injury, in a manner so as to ensure adequate representation from persons with disabilities and individuals knowledgeable concerning disability services. The department shall provide staff support to the commission, and the commission may utilize staff support and other assistance provided to the commission by other persons. The commission shall meet at least four times per year. The membership of the commission shall consist of the following persons who, at the time of appointment to the commission, are active members of the indicated groups:

a. Three members shall be members of a county board of supervisors selected from nominees submitted by the county supervisor affiliate of the Iowa state association of counties.

b. Two members shall be selected from nominees submitted by the director.

c. One member shall be an active board member of a community mental health center selected from nominees submitted by the Iowa association of community providers.

d. One member shall be an active board member of an agency serving persons with a developmental disability selected from nominees submitted by the Iowa association of community providers.

e. One member shall be a board member or employee of a provider of mental health or developmental disabilities services to children.

f. Two members shall be administrators of the central point of coordination process established in accordance with section 331.440 selected from nominees submitted by the community services affiliate of the Iowa state association of counties.

g. One member shall be selected from nominees submitted by the state's council of the association of federal, state, county, and municipal employees.

h. Three members shall be service consumers or family members of service consumers. Of these members, one shall be a service consumer, one shall be a parent of a child service consumer, and one shall be a parent or other family member of a person admitted to and living at a state resource center.

i. Two members shall be selected from nominees submitted by service advocates. Of these members, one shall be an active member of a statewide organization for persons with brain injury.

j. One member shall be an active board member of an agency serving persons with a substance abuse problem selected from nominees submitted by the Iowa behavioral health association.

k. One member shall be a military veteran who is knowledgeable concerning the behavioral and mental health issues of veterans.

l. In addition to the voting members, the membership shall include four members of the general assembly with one member designated by each of the following: the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives. A legislative member serves for a term as provided in section 69.16B in an ex officio, nonvoting capacity and is eligible for per diem and expenses as provided in section 2.10.

2. The three-year terms shall begin and end as provided in section 69.19. Vacancies on the commission shall be filled as provided in section 2.32. A member shall not be appointed for more than two consecutive three-year terms.

3. Members of the commission shall qualify by taking the oath of office prescribed by law for state officers. At its first meeting of each year, the commission shall organize by electing a chairperson and a vice chairperson for terms of one year. Commission members are entitled to a per diem as specified in section 7E.6 and reimbursement for actual and necessary expenses incurred while engaged in their official duties, to be paid from funds appropriated to the department.

[C66, 71, 73, 75, 77, §225B.2, 225B.3, 225B.6; C79, 81, §225B.3; S81, §225C.4; 81 Acts, ch 78, §5, 20]

90 Acts, ch 1256, §39; 94 Acts, ch 1170, §14; 2002 Acts, ch 1146, §1; 2002 Acts, 2nd Ex, ch 1003, §238, 262; 2003 Acts, ch 101, §3, 4; 2004 Acts, ch 1090, §5, 33; 2008 Acts, ch 1156, §30, 58; 2008 Acts, ch 1187, §51; 2009 Acts, ch 106, §7, 14; 2010 Acts, ch 1031, §383; 2010 Acts, ch 1106, §2; 2011 Acts, ch 34, §53

Confirmation, see §2.32

Subsection 1, paragraph k amended

### **225C.6 Duties of commission.**

1. To the extent funding is available, the commission shall perform the following duties:

a. Advise the administrator on the administration of the overall state disability services system.

b. Adopt necessary rules pursuant to chapter 17A which relate to disability programs and services, including but not limited to definitions of each disability included within the term "disability services" as necessary for purposes of state, county, and regional planning, programs, and services.

c. Adopt standards for community mental health centers, services, and programs as recommended under section 230A.16. The administrator shall determine whether to grant, deny, or revoke the accreditation of the centers, services, and programs.

d. Adopt standards for the provision under medical assistance of individual case management services.

e. Unless another governmental body sets standards for a service available to persons with disabilities, adopt state standards for that service. The commission shall review the licensing standards used by the department of human services or department of inspections and appeals for those facilities providing disability services.

f. Assure that proper reconsideration and appeal procedures are available to persons aggrieved by decisions, actions, or circumstances relating to accreditation.

g. Adopt necessary rules for awarding grants from the state and federal government as well as other moneys that become available to the division for grant purposes.

h. Annually submit to the governor and the general assembly:

(1) A report concerning the activities of the commission.

(2) Recommendations formulated by the commission for changes in law.

i. By January 1 of each odd-numbered year, submit to the governor and the general assembly an evaluation of:

(1) The extent to which services to persons with disabilities are actually available to persons in each county in the state and the quality of those services.

(2) The effectiveness of the services being provided by disability service providers in this state and by each of the state mental health institutes established under chapter 226 and by each of the state resource centers established under chapter 222.

j. Advise the administrator, the council on human services, the governor, and the general assembly on budgets and appropriations concerning disability services.

k. Coordinate activities with the governor's developmental disabilities council and the mental health planning council, created pursuant to federal law. The commission shall work with other state agencies on coordinating, collaborating, and communicating concerning activities involving persons with disabilities.

l. Identify basic financial eligibility standards for disability services. The standards shall include but are not limited to the following:

(1) A financial eligibility standard providing that a person with an income equal to or less than one hundred fifty percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, is eligible for disability services paid with public funding. However, a county may apply a copayment requirement for a particular disability service to a person with an income equal to or less than one hundred fifty percent of the federal poverty level, provided the disability service and the copayment amount both comply with rules adopted by the commission applying uniform standards with respect to copayment requirements. A person with an income above one hundred fifty percent of the federal poverty level may be eligible subject to a copayment or other cost-sharing arrangement subject to limitations adopted in rule by the commission.

(2) A requirement that a person who is eligible for federally funded services and other support must apply for the services and support.

(3) Resource limitations that are derived from the federal supplemental security income program limitations. A person with resources above the federal supplemental security income program limitations may be eligible subject to limitations adopted in rule by the commission. If a person does not qualify for federally funded services and other support but meets income, resource, and functional eligibility requirements, the following types of resources shall be disregarded:

(a) A retirement account that is in the accumulation stage.

(b) A burial, medical savings, or assistive technology account.

m. Identify disability services outcomes and indicators to support the ability of eligible persons with a disability to live, learn, work, and recreate in communities of the persons' choice. The identification duty includes but is not limited to responsibility for identifying, collecting, and analyzing data as necessary to issue reports on outcomes and indicators at the county and state levels.

2. Notwithstanding section 217.3, subsection 6, the commission may adopt the rules authorized by subsection 1, pursuant to chapter 17A, without prior review and approval of those rules by the council on human services.

3. If the executive branch creates a committee, task force, council, or other advisory body to consider disability services policy or program options involving children or adult consumers, the commission is designated to receive and consider any report, findings, recommendations, or other work product issued by such body. The commission may address the report, findings, recommendations, or other work product in fulfilling the commission's

functions and to advise the department, council on human services, governor, and general assembly concerning disability services.

[C66, 71, 73, 75, 77, §225B.4, 225B.7; C79, 81, §225B.3(2); S81, §225C.5; 81 Acts, ch 78, §6, 20]

83 Acts, ch 96, §157, 159; 88 Acts, ch 1245, §1; 94 Acts, ch 1170, §15; 98 Acts, ch 1181, §15; 99 Acts, ch 160, §4, 5; 2000 Acts, ch 1112, §51; 2001 Acts, ch 74, §14; 2001 Acts, ch 155, §28; 2002 Acts, ch 1146, §2, 3, 25; 2006 Acts, ch 1115, §6, 13; 2007 Acts, ch 218, §118; 2010 Acts, ch 1031, §375; 2011 Acts, ch 34, §54

Subsection 1, paragraph k amended

## CHAPTER 226

### STATE MENTAL HEALTH INSTITUTES

#### **226.9C Net general fund appropriation — dual diagnosis program.**

1. The state mental health institute at Mount Pleasant shall operate the dual diagnosis mental health and substance abuse program on a net budgeting basis in which fifty percent of the actual per diem and ancillary services costs are chargeable to the patient's county of legal settlement or as a state case, as appropriate. Subject to the approval of the department, revenues attributable to the dual diagnosis program for each fiscal year shall be deposited in the mental health institute's account and are appropriated to the department for the dual diagnosis program, including but not limited to all of the following revenues:

- a. Moneys received by the state from billings to counties under section 230.20.
- b. Moneys received from billings to the Medicare program.
- c. Moneys received from a managed care contractor providing services under contract with the department or any private third-party payor.
- d. Moneys received through client participation.
- e. Any other revenues directly attributable to the dual diagnosis program.

2. The following additional provisions are applicable in regard to the dual diagnosis program:

a. A county may split the charges between the county's mental health, mental retardation, and developmental disabilities services fund created pursuant to section 331.424A and the county's budget for substance abuse expenditures.

b. If an individual is committed to the custody of the department of corrections at the time the individual is referred for dual diagnosis treatment, the department of corrections shall be charged for the costs of treatment.

c. Prior to an individual's admission for dual diagnosis treatment, the individual shall have been screened through a county's central point of coordination process implemented pursuant to section 331.440 to determine the appropriateness of the treatment.

d. A county shall not be chargeable for the costs of treatment for an individual enrolled in and authorized by or decertified by a managed behavioral care plan under the medical assistance program.

e. Notwithstanding section 8.33, state mental health institute revenues related to the dual diagnosis program that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available up to the amount which would allow the state mental health institute to meet credit obligations owed to counties as a result of year-end per diem adjustments for the dual diagnosis program.

2005 Acts, ch 175, §96

For future amendment to subsection 2, paragraph c, effective July 1, 2012, see 2011 Acts, ch 121, §51, 62  
Section not amended; footnote added

## CHAPTER 228

### DISCLOSURE OF MENTAL HEALTH AND PSYCHOLOGICAL INFORMATION

#### 228.6 Compulsory disclosures.

1. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information if and to the extent necessary, to meet the requirements of section 229.24, 229.25, 230.20, 230.21, 230.25, 230.26, 230A.13, 232.74, or 232.147, or to meet the compulsory reporting or disclosure requirements of other state or federal law relating to the protection of human health and safety.

2. Mental health information acquired by a mental health professional pursuant to a court-ordered examination may be disclosed pursuant to court rules.

3. Mental health information may be disclosed by a mental health professional if and to the extent necessary, to initiate or complete civil commitment proceedings under chapter 229.

4. *a.* Mental health information may be disclosed in a civil or administrative proceeding in which an individual eighteen years of age or older or an individual's legal representative or, in the case of a deceased individual, a party claiming or defending through a beneficiary of the individual, offers the individual's mental or emotional condition as an element of a claim or a defense.

*b.* Mental health information may be disclosed in a criminal proceeding pursuant to section 622.10, subsection 4.

5. An individual eighteen years of age or older or an individual's legal representative or any other party in a civil, criminal, or administrative action, in which mental health information has been or will be disclosed, may move the court to denominate, style, or caption the names of all parties as "JOHN OR JANE DOE" or otherwise protect the anonymity of all of the parties.

86 Acts, ch 1082, §6; 2011 Acts, ch 8, §1, 3

Subsection 4 amended

## CHAPTER 229

### HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS

#### 229.1 Definitions.

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

1. "*Administrator*" means the administrator of the department of human services assigned, in accordance with section 218.1, to control the state mental health institutes, or that administrator's designee.

2. "*Auditor*" means the county auditor or the auditor's designee.

3. "*Central point of coordination process*" means the same as defined in section 331.440.

4. "*Chemotherapy*" means treatment of an individual by use of a drug or substance which cannot legally be delivered or administered to the ultimate user without a physician's prescription or medical order.

5. "*Chief medical officer*" means the medical director in charge of a public or private hospital, or that individual's physician-designee. This chapter does not negate the authority otherwise reposed by law in the respective superintendents of each of the state hospitals for persons with mental illness, established by chapter 226, to make decisions regarding the appropriateness of admissions or discharges of patients of that hospital, however it is the intent of this chapter that if the superintendent is not a licensed physician the decisions by the superintendent shall be corroborated by the chief medical officer of the hospital.

6. "*Clerk*" means the clerk of the district court.

7. "*Hospital*" means either a public hospital or a private hospital.

8. “*Licensed physician*” means an individual licensed under the provisions of chapter 148 to practice medicine and surgery or osteopathic medicine and surgery.

9. “*Mental illness*” means every type of mental disease or mental disorder, except that it does not refer to mental retardation as defined in section 222.2, subsection 5, or to insanity, diminished responsibility, or mental incompetency as the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules.

10. “*Patient*” means a person who has been hospitalized or ordered hospitalized to receive treatment pursuant to section 229.14.

11. “*Private hospital*” means any hospital or institution not directly supported by public funds, or a part thereof, which is equipped and staffed to provide inpatient care to persons with mental illness.

12. “*Psychiatric advanced registered nurse practitioner*” means an individual currently licensed as a registered nurse under chapter 152 or 152E who holds a national certification in psychiatric health care and who is registered with the board of nursing as an advanced registered nurse practitioner.

13. “*Public hospital*” means:

- a. A state mental health institute established by chapter 226; or
- b. The state psychiatric hospital established by chapter 225; or
- c. Any other publicly supported hospital or institution, or part of such hospital or institution, which is equipped and staffed to provide inpatient care to persons with mental illness, except the Iowa medical and classification center established by chapter 904.

14. “*Qualified mental health professional*” means an individual experienced in the study and treatment of mental disorders in the capacity of:

- a. A psychologist certified under chapter 154B; or
- b. A registered nurse licensed under chapter 152; or
- c. A social worker licensed under chapter 154C.

15. “*Respondent*” means any person against whom an application has been filed under section 229.6, but who has not been finally ordered committed for full-time custody, care, and treatment in a hospital.

16. “*Serious emotional injury*” is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other qualified mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.

17. “*Seriously mentally impaired*” or “*serious mental impairment*” describes the condition of a person with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person’s hospitalization or treatment, and who because of that illness meets any of the following criteria:

- a. Is likely to physically injure the person’s self or others if allowed to remain at liberty without treatment.
- b. Is likely to inflict serious emotional injury on members of the person’s family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.
- c. Is unable to satisfy the person’s needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.

[R60, §1468; C73, §1434; C97, §2298; C24, 27, 31, 35, 39, §3580; C46, 50, 54, 58, 62, 66, §229.40; C71, 73, 75, §229.40, 229.44; C77, §229.1, 229.44; C79, 81, §229.1; 82 Acts, ch 1100, §7]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1323, §2; 85 Acts, ch 21, §35; 87 Acts, ch 90, §1; 89 Acts, ch 275, §1; 95 Acts, ch 24, §1; 96 Acts, ch 1035, §12; 96 Acts, ch 1129, §57, 113; 96 Acts, ch 1183, §18; 97 Acts, ch 169, §15; 2000 Acts, ch 1112, §37; 2002 Acts, ch 1119, §107; 2004 Acts, ch 1090, §33; 2008 Acts, ch 1082, §4; 2008 Acts, ch 1088, §112

For future amendment to subsection 12, effective July 1, 2012, see 2011 Acts, ch 121, §52, 62

Section not amended; footnote added

**229.15 Periodic reports required.**

1. Not more than thirty days after entry of an order for continued hospitalization of a patient under section 229.14, subsection 1, paragraph “b”, and thereafter at successive intervals of not more than sixty days continuing so long as involuntary hospitalization of the patient continues, the chief medical officer of the hospital shall report to the court which entered the order. The report shall be submitted in the manner required by section 229.14, shall state whether the patient’s condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will be required to remain at the hospital. The chief medical officer may at any time report to the court a finding as stated in section 229.14, subsection 1, and the court shall act upon the finding as required by section 229.14, subsection 2.

2. Not more than sixty days after the entry of a court order for treatment of a patient pursuant to a report issued under section 229.14, subsection 1, paragraph “c”, and thereafter at successive intervals as ordered by the court but not to exceed ninety days so long as that court order remains in effect, the medical director of the facility or the psychiatrist or psychiatric advanced registered nurse practitioner treating the patient shall report to the court which entered the order. The report shall state whether the patient’s condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will require treatment by the facility. If at any time the patient without good cause fails or refuses to submit to treatment as ordered by the court, the medical director shall at once so notify the court, which shall order the patient hospitalized as provided by section 229.14, subsection 2, paragraph “d”, unless the court finds that the failure or refusal was with good cause and that the patient is willing to receive treatment as provided in the court’s order, or in a revised order if the court sees fit to enter one. If at any time the medical director reports to the court that in the director’s opinion the patient requires full-time custody, care, and treatment in a hospital, and the patient is willing to be admitted voluntarily to the hospital for these purposes, the court may enter an order approving hospitalization for appropriate treatment upon consultation with the chief medical officer of the hospital in which the patient is to be hospitalized. If the patient is unwilling to be admitted voluntarily to the hospital, the procedure for determining involuntary hospitalization, as set out in section 229.14, subsection 2, paragraph “d”, shall be followed.

3. *a.* A psychiatric advanced registered nurse practitioner treating a patient previously hospitalized under this chapter may complete periodic reports pursuant to this section on the patient if the patient has been recommended for treatment on an outpatient or other appropriate basis pursuant to section 229.14, subsection 1, paragraph “c”, and if a psychiatrist licensed pursuant to chapter 148 personally evaluates the patient on at least an annual basis.

*b.* An advanced registered nurse practitioner who is not certified as a psychiatric advanced registered nurse practitioner but who meets the qualifications set forth in the definition of a mental health professional in section 228.1 on July 1, 2008, may complete periodic reports pursuant to paragraph “a”.

4. When a patient has been placed in an alternative facility other than a hospital pursuant to a report issued under section 229.14, subsection 1, paragraph “d”, a report on the patient’s condition and prognosis shall be made to the court which placed the patient, at least once every six months, unless the court authorizes annual reports. If an evaluation of the patient is performed pursuant to section 227.2, subsection 4, a copy of the evaluation report shall be submitted to the court within fifteen days of the evaluation’s completion. The court may in its discretion waive the requirement of an additional report between the annual evaluations. If the administrator exercises the authority to remove residents from a county care facility or other county or private institution under section 227.6, the administrator shall promptly notify each court which placed in that facility any resident so removed.

5. *a.* When in the opinion of the chief medical officer the best interest of a patient would be served by a convalescent or limited leave, the chief medical officer may authorize the leave and, if authorized, shall promptly report the leave to the court. When in the opinion of the chief medical officer the best interest of a patient would be served by a transfer to a different hospital for continued full-time custody, care, and treatment, the chief medical officer shall

promptly send a report to the court. The court shall act upon the report in accordance with section 229.14A.

b. This subsection shall not be construed to add to or restrict the authority otherwise provided by law for transfer of patients or residents among various state institutions administered by the department of human services. If a patient is transferred under this subsection, the treatment provider to whom the patient is transferred shall be provided with copies of relevant court orders by the former treatment provider.

6. Upon receipt of any report required or authorized by this section the court shall furnish a copy to the patient's attorney, or alternatively to the advocate appointed as required by section 229.19. The court shall examine the report and take the action thereon which it deems appropriate. Should the court fail to receive any report required by this section or section 229.14 at the time the report is due, the court shall investigate the reason for the failure to report and take whatever action may be necessary in the matter.

[C77, 79, 81, §229.15; 81 Acts, ch 78, §20, 37; 82 Acts, ch 1228, §2]

83 Acts, ch 96, §157, 159; 92 Acts, ch 1165, §5; 2000 Acts, ch 1112, §38; 2001 Acts, ch 155, §34, 35; 2008 Acts, ch 1082, §5, 6; 2009 Acts, ch 133, §85

For future amendment to subsection 3, paragraph a, effective July 1, 2012, see 2011 Acts, ch 121, §53, 62  
Section not amended; footnote added

### **229.21 Judicial hospitalization referee — appeals to district court.**

1. The chief judge of each judicial district may appoint at least one judicial hospitalization referee for each county within the district. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall be chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the office. The referee shall hold office at the pleasure of the chief judge of the judicial district and receive compensation at a rate fixed by the supreme court. If the referee expects to be absent for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

2. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of chronic substance abusers under sections 125.75 to 125.94 is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge, district associate judge, or magistrate who is admitted to the practice of law in this state is accessible, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 125.77. The referee shall discharge all of the duties imposed upon the court by sections 229.7 to 229.22 or sections 125.75 to 125.94 in the proceeding so initiated. Subject to the provisions of subsection 4, orders issued by a referee, in discharge of duties imposed under this section, shall have the same force and effect as if ordered by a district judge. However, any commitment to a facility regulated and operated under chapter 135C, shall be in accordance with section 135C.23.

3. a. Any respondent with respect to whom the magistrate or judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a chronic substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 125.82, may appeal from the magistrate's or referee's finding to a judge of the district court by giving the clerk notice in writing, within ten days after the magistrate's or referee's finding is made, that an appeal is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian, or attorney.

b. An order of a magistrate or judicial hospitalization referee with a finding that the respondent is seriously mentally impaired or a chronic substance abuser shall include the following notice, located conspicuously on the face of the order:

NOTE: The respondent may appeal from this order to a judge of the district court by giving written notice of the appeal to the clerk of the district court within ten days after the date of this order. The appeal may be signed by the respondent or by the respondent's next friend,

guardian, or attorney. For a more complete description of the respondent's appeal rights, consult section 229.21 of the Code of Iowa or an attorney.

c. When appealed, the matter shall stand for trial de novo. Upon appeal, the court shall schedule a hospitalization or commitment hearing before a district judge at the earliest practicable time.

d. Any respondent with respect to whom the magistrate or judicial hospitalization referee has held a placement hearing and has entered a placement order may appeal the order to a judge of the district court. The request for appeal must be given to the clerk in writing within ten days of the entry of the magistrate's or referee's order. The request for appeal shall be signed by the respondent, or the respondent's next friend, guardian, or attorney.

4. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, the appellant shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11 or section 125.81, in which case the appellant shall be detained as provided in that section until the hospitalization or commitment hearing before the district judge. If the appellant is in the custody of a hospital or facility at the time of service of the notice of appeal, the appellant shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill or a substance abuser. In that case, the appellant shall remain in custody of the hospital or facility until the hospitalization or commitment hearing before the district court.

5. The hospitalization or commitment hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate order entered, as prescribed by sections 229.12 and 229.13 or sections 125.82 and 125.83. If the judge orders the appellant hospitalized or committed for a complete psychiatric or substance abuse evaluation, jurisdiction of the matter shall revert to the judicial hospitalization referee.

[C97, §2267, 2268; C24, 27, 31, 35, 39, §3560, 3561; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.17, 229.18; C77, 79, 81, §229.21; 82 Acts, ch 1212, §27]

85 Acts, ch 195, §25; 87 Acts, ch 190, §2; 90 Acts, ch 1085, §20; 91 Acts, ch 108, §6; 92 Acts, ch 1165, §6; 98 Acts, ch 1181, §23; 99 Acts, ch 144, §3, 4; 2001 Acts, ch 155, §38

For future amendments to this section, effective July 1, 2012, see 2011 Acts, ch 121, §54 - 56, 62  
Section not amended; footnote added

### **229.22 Hospitalization — emergency procedure.**

1. The procedure prescribed by this section shall not be used unless it appears that a person should be immediately detained due to serious mental impairment, but that person cannot be immediately detained by the procedure prescribed in sections 229.6 and 229.11 because there is no means of immediate access to the district court.

2. a. In the circumstances described in subsection 1, any peace officer who has reasonable grounds to believe that a person is mentally ill, and because of that illness is likely to physically injure the person's self or others if not immediately detained, may without a warrant take or cause that person to be taken to the nearest available facility or hospital as defined in section 229.11, subsection 1, paragraphs "b" and "c". A person believed mentally ill, and likely to injure the person's self or others if not immediately detained, may be delivered to a facility or hospital by someone other than a peace officer. Upon delivery of the person believed mentally ill to the facility or hospital, the examining physician may order treatment of that person, including chemotherapy, but only to the extent necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The peace officer who took the person into custody, or other party who brought the person to the facility or hospital, shall describe the circumstances of the matter to the examining physician. If the person is a peace officer, the peace officer may do so either in person or by written report. If the examining physician finds that there is reason to believe that the person is seriously mentally impaired, and because of that impairment is likely

to physically injure the person's self or others if not immediately detained, the examining physician shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. The magistrate shall, based upon the circumstances described by the examining physician, give the examining physician oral instructions either directing that the person be released forthwith or authorizing the person's detention in an appropriate facility. A peace officer from the law enforcement agency that took the person into custody, if available, during the communication with the magistrate, may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any oral or written order issued under this subsection require the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The magistrate may also give oral instructions and order that the detained person be transported to an appropriate facility.

b. If the magistrate orders that the person be detained, the magistrate shall, by the close of business on the next working day, file a written order with the clerk in the county where it is anticipated that an application may be filed under section 229.6. The order may be filed by facsimile if necessary. A peace officer from the law enforcement agency that took the person into custody, if no request was made under paragraph "a", may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any written order issued under this paragraph require the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The order shall state the circumstances under which the person was taken into custody or otherwise brought to a facility or hospital, and the grounds supporting the finding of probable cause to believe that the person is seriously mentally impaired and likely to injure the person's self or others if not immediately detained. The order shall also include any law enforcement agency notification requirements if applicable. The order shall confirm the oral order authorizing the person's detention including any order given to transport the person to an appropriate facility. A peace officer from the law enforcement agency that took the person into custody may also request an order, separate from the written order, requiring the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The clerk shall provide a copy of the written order or any separate order to the chief medical officer of the facility or hospital to which the person was originally taken, to any subsequent facility to which the person was transported, and to any law enforcement department or ambulance service that transported the person pursuant to the magistrate's order.

c. If an arrest warrant has been issued for or charges are pending against the person, but no court order exists requiring notification to a law enforcement agency under paragraph "a" or "b", and if the peace officer delivers the person to a facility or hospital and the peace officer notifies the facility or hospital in writing on a form prescribed by the department of public safety that the facility or hospital notify the law enforcement agency about the discharge of the person prior to discharge, the facility or hospital shall do all of the following:

(1) Notify the dispatch of the law enforcement agency that employs the peace officer by telephone prior to the discharge of the person from the facility or hospital.

(2) Notify the law enforcement agency that employs the peace officer by electronic mail prior to the discharge of the person from the facility or hospital.

3. The chief medical officer of the facility or hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours from the time such order is dated, excluding Saturdays, Sundays and holidays, unless the order is sooner dismissed by a magistrate. The facility or hospital may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is likely to result in physical injury to the person's self or others if allowed to continue, but may not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility or hospital and released from custody not later than the expiration of that period, unless an application for the person's involuntary hospitalization is sooner filed with the clerk pursuant to section 229.6. Prior to such discharge the facility or hospital shall, if required by this section, notify the law enforcement agency requesting such notification about the discharge of the person. The law enforcement agency shall retrieve the person no later than six hours after notification

from the facility or hospital but in no circumstances shall the detention of the person exceed the period of time prescribed for detention by this subsection. The detention of any person by the procedure and not in excess of the period of time prescribed by this section shall not render the peace officer, physician, facility, or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, facility, or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure the person's self or others if not immediately detained, or if the facility or hospital was required to notify a law enforcement agency by this section, and the law enforcement agency requesting notification prior to discharge retrieved the person no later than six hours after the notification, and the detention prior to the retrieval of the person did not exceed the period of time prescribed for detention by this subsection.

4. The cost of hospitalization at a public hospital of a person detained temporarily by the procedure prescribed in this section shall be paid in the same way as if the person had been admitted to the hospital by the procedure prescribed in sections 229.6 to 229.13.

5. The department of public safety shall prescribe the form to be used when a law enforcement agency desires notification under this section from a facility or hospital prior to discharge of a person admitted to the facility or hospital and for whom an arrest warrant has been issued or against whom charges are pending. The form shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and regulations promulgated in accordance with that Act and published in 45 C.F.R. pts. 160-64.

6. A facility or hospital, which has been notified by a peace officer or a law enforcement agency by delivery of a form as prescribed by the department of public safety indicating that an arrest warrant has been issued for or charges are pending against a person admitted to the facility or hospital, that does not notify the law enforcement agency about the discharge of the person as required by subsection 2, paragraph "c", shall pay a civil penalty as provided in section 805.8C, subsection 8.

[C77, 79, 81, §229.22]

95 Acts, ch 24, §2; 2003 Acts, ch 68, §3, 4; 2009 Acts, ch 41, §227; 2010 Acts, ch 1103, §1, 2; 2011 Acts, ch 34, §55

Subsection 2, paragraph a amended

### **229.39 Status of persons hospitalized under former law.**

1. Each person admitted or committed to a hospital for treatment of mental illness on or before December 31, 1975 who remained so hospitalized, or was on convalescent leave or was receiving care in another facility on transfer from such hospitalization, on or after January 1, 1976 shall be considered to have been hospitalized under this chapter, and its provisions shall apply to each such person on and after the effective date of this section, except as otherwise provided by subsection 3.

2. Hospitalization of a person for treatment of mental illness, either voluntary or involuntary, on or before December 31, 1975 does not constitute a finding nor equate with nor raise a presumption of incompetency, nor cause the person hospitalized to be deemed a person of unsound mind nor a person under legal disability for any purpose, including but not limited to the circumstances enumerated in section 229.27, subsection 1. This subsection does not invalidate any specific declaration of incompetence of a person hospitalized if the declaration was made pursuant to a separate procedure authorized by law for that purpose, and did not result automatically from the person's hospitalization.

3. Where a person was hospitalized involuntarily for treatment of mental illness on or before December 31, 1975 and remained so hospitalized, or was on convalescent leave or was receiving care in another facility on transfer from such hospitalization, on or after January 1, 1976, but was subsequently discharged prior to July 1, 1978, this section shall not be construed to require:

a. The filing after July 1, 1978, of any report relative to that person's status which would have been required to be filed prior to said date if that person had initially been hospitalized under this chapter as amended by 1975 Iowa Acts, ch. 139, sections 1 to 30.

b. That legal proceedings be taken under this chapter, as so amended, to clarify the status of the person so hospitalized, unless that person or the district court considers such proceedings necessary in a particular case to appropriately conclude the matter.

[C79, 81, §229.39]

2011 Acts, ch 34, §56

Subsection 3, paragraph a amended

## CHAPTER 230

### SUPPORT OF PERSONS WITH MENTAL ILLNESS

#### **230.15 Personal liability.**

A person with mental illness and a person legally liable for the person's support remain liable for the support of the person with mental illness as provided in this section. Persons legally liable for the support of a person with mental illness include the spouse of the person, any person bound by contract for support of the person, and, with respect to persons with mental illness under eighteen years of age only, the father and mother of the person. The county auditor, subject to the direction of the board of supervisors, shall enforce the obligation created in this section as to all sums advanced by the county. The liability to the county incurred by a person with mental illness or a person legally liable for the person's support under this section is limited to an amount equal to one hundred percent of the cost of care and treatment of the person with mental illness at a state mental health institute for one hundred twenty days of hospitalization. This limit of liability may be reached by payment of the cost of care and treatment of the person with mental illness subsequent to a single admission or multiple admissions to a state mental health institute or, if the person is not discharged as cured, subsequent to a single transfer or multiple transfers to a county care facility pursuant to section 227.11. After reaching this limit of liability, a person with mental illness or a person legally liable for the person's support is liable to the county for the care and treatment of the person with mental illness at a state mental health institute or, if transferred but not discharged as cured, at a county care facility in an amount not in excess of the average minimum cost of the maintenance of an individual who is physically and mentally healthy residing in the individual's own home, which standard shall be established and may from time to time be revised by the department of human services. A lien imposed by section 230.25 shall not exceed the amount of the liability which may be incurred under this section on account of a person with mental illness.

A substance abuser or chronic substance abuser is legally liable for the total amount of the cost of providing care, maintenance, and treatment for the substance abuser or chronic substance abuser while a voluntary or committed patient. When a portion of the cost is paid by a county, the substance abuser or chronic substance abuser is legally liable to the county for the amount paid. The substance abuser or chronic substance abuser shall assign any claim for reimbursement under any contract of indemnity, by insurance or otherwise, providing for the abuser's care, maintenance, and treatment in a state hospital to the state. Any payments received by the state from or on behalf of a substance abuser or chronic substance abuser shall be in part credited to the county in proportion to the share of the costs paid by the county. Nothing in this section shall be construed to prevent a relative or other person from voluntarily paying the full actual cost or any portion of the care and treatment of any person with mental illness, substance abuser, or chronic substance abuser as established by the department of human services.

[R60, §1488; C73, §1433; C97, §2297; C24, 27, 31, 35, 39, §3595; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.15; 82 Acts, ch 1260, §114 – 116]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1001, §17; 90 Acts, ch 1085, §21; 96 Acts, ch 1129, §60

For future amendment to unnumbered paragraph 2, effective July 1, 2012, see 2011 Acts, ch 121, §57, 62

Section not amended; footnote added

## CHAPTER 230A

### COMMUNITY MENTAL HEALTH CENTERS

#### **230A.1 Establishment and support of community mental health centers.**

A county or affiliated counties, by action of the board or boards of supervisors, with approval of the administrator of the division of mental health and disability services of the department of human services, may establish a community mental health center under this chapter to serve the county or counties. This section does not limit the authority of the board or boards of supervisors of any county or group of counties to continue to expend money to support operation of the center, and to form agreements with the board of supervisors of any additional county for that county to join in supporting and receiving services from or through the center.

[C66, 71, 73, §230.24; C75, 77, 79, 81, S81, §230A.1; 81 Acts, ch 78, §20, 41, ch 117, §1029] 83 Acts, ch 123, §87, 209; 94 Acts, ch 1170, §40; 98 Acts, ch 1181, §1; 2006 Acts, ch 1115, §26

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.2 Services offered.**

A community mental health center established or operating as authorized by section 230A.1 may offer to residents of the county or counties it serves any or all of the mental health services defined in the comprehensive state mental health and disability services plan under section 225C.6B.

[C75, 77, 79, 81, §230A.2; 82 Acts, ch 1117, §3] 94 Acts, ch 1170, §41; 2004 Acts, ch 1090, §9; 2010 Acts, ch 1031, §363

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.3 Forms of organization.**

Each community mental health center established or continued in operation as authorized by section 230A.1 shall be organized and administered in accordance with one of the following alternative forms:

1. Direct establishment of the center by the county or counties supporting it and administration of the center by an elected board of trustees, pursuant to sections 230A.4 to 230A.11.

2. Establishment of the center by a nonprofit corporation providing services to the county or counties on the basis of an agreement with the board or boards of supervisors, pursuant to sections 230A.12 and 230A.13.

[C75, 77, 79, 81, §230A.3] 98 Acts, ch 1181, §2, 5; 99 Acts, ch 96, §25

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.4 Trustees — qualifications — manner of selection.**

When the board or boards of supervisors of a county or affiliated counties decides to directly establish a community mental health center under this chapter, the supervisors, acting jointly in the case of affiliated counties, shall appoint a board of community mental health center trustees to serve until the next succeeding general election. The board of trustees shall consist of at least seven members each of whom shall be a resident of the county or one of the counties served by the center. An employee of the center is not eligible for the office of community mental health center trustee. At the first general election following establishment of the center, all members of the board of trustees shall be elected. They shall assume office on the second day of the following January which is not a Sunday or legal holiday, and shall at once divide themselves by lot into three classes of as nearly equal size as possible. The first class shall serve for terms of two years, the second class for terms of four years, and the third class for terms of six years. Thereafter, a member shall be elected to the board of trustees for

a term of six years at each general election to succeed each member whose term will expire in the following year.

[C75, 77, 79, 81, S81, §230A.4; 81 Acts, ch 117, §1030]

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.5 Election of trustees.**

The election of community mental health center trustees shall take place at the general election on ballots which shall not reflect a nominee's political affiliation. Nomination shall be made by petition in accordance with chapter 45. The petition form shall be furnished by the county commissioner of elections, signed by eligible electors of the county or affiliated counties equal in number to one percent of the vote cast therein for president of the United States or governor, as the case may be, in the last previous general election, and shall be filed with the county commissioner of elections. A plurality shall be sufficient to elect community mental health center trustees, and no primary election for that office shall be held.

[C75, 77, 79, 81, §230A.5]

91 Acts, ch 129, §23

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.6 Vacancies.**

Vacancies on the community mental health center board of trustees shall be filled by appointment in accordance with sections 69.11 and 69.12, by the remaining trustees, except that if the offices of more than half of the members of the board are vacant at any one time the vacancies shall be filled by the board of supervisors or boards of supervisors acting jointly in the case of affiliated counties. The office of any trustee who is absent from four consecutive regular board meetings, without prior excuse, may be declared vacant by the board of trustees and filled in accordance with this section.

[C75, 77, 79, 81, §230A.6]

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.7 Organization — meetings — quorum.**

The members of the board of community mental health center trustees shall qualify by taking the usual oath of office within ten days after their appointment or prior to the beginning of the term to which they were elected, as the case may be. At the initial meeting following appointment of a board of trustees or of a majority of the members of a board, and at the first meeting in January after each biennial general election, the board shall organize by election of one of the trustees as chairperson, one as secretary and one as treasurer. The secretary and treasurer shall each file with the chairperson a surety bond in a penal sum set by the board of trustees and with sureties approved by the board for the use and benefit of the center, the reasonable cost of which shall be paid from the operating funds of the center. No other members of the board shall be required to post bond. The board shall meet at least once each month. One half plus one of the members of the board shall constitute a quorum.

[C75, 77, 79, 81, §230A.7]

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.8 Duties of secretary.**

1. The secretary shall report to the county auditor and treasurer the names of the chairperson, secretary and treasurer of the community mental health center board of trustees as soon as practicable after each has qualified.

2. The secretary shall keep a complete record of all proceedings of the board of trustees.

3. The secretary shall draw warrants on the funds of the center, which shall be countersigned by the chairperson of the board of trustees, after claims are certified by the board.

4. The secretary shall file with the board of trustees, on or before the tenth day of each

month, a complete statement of all receipts and disbursements from the center's funds during the preceding month and the balance remaining on hand at the close of the month.

[C75, 77, 79, 81, §230A.8]

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

### **230A.9 Duties of treasurer.**

1. The treasurer of the community mental health center shall receive the funds made available to the center by the county or counties it serves, and any other funds which may be made available to the center, and shall disburse the center's funds upon warrants drawn as required by section 230A.8, subsection 3.

2. The treasurer shall keep an accurate account of all receipts and disbursements and shall register all orders drawn and reported to the treasurer by the secretary, showing the number, date, to whom drawn, the purpose and amount.

3. At intervals specified by the county board of supervisors, not less often than once each ninety days, the county treasurer of each county served by the center shall notify the chairperson of the center's board of trustees of all amounts due the center from the county which have not previously been paid over to the treasurer of the center. The chairperson shall then file a claim for payment as specified in section 331.504, subsection 7, sections 331.506, and 331.554. Section 331.504, subsection 8 notwithstanding, the claims shall not include information which in any manner identifies an individual who is receiving or has received treatment at the center.

[C75, 77, 79, 81, S81, §230A.9; 81 Acts, ch 117, §1209]

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

### **230A.10 Powers and duties of trustees.**

The community mental health center board of trustees shall:

1. Have authority to adopt bylaws and rules for its own guidance and for the government of the center.

2. Employ a director and staff for the center, fix their compensation, and have control over the director and staff.

3. Designate at least one of the trustees to visit and review the operation of the center at least once each month.

4. Procure and pay premiums on insurance policies required for the prudent management of the center, including but not limited to public liability, professional malpractice liability, workers' compensation and vehicle liability, any of which may include as additional insureds the board of trustees and employees of the center.

5. Establish, with approval of the board or joint boards of supervisors of the county or counties served by the center, standards to be followed in determining whether and to what extent persons seeking services from the center shall be considered able to pay the cost of the services received.

6. Establish, with approval of the board or joint boards of supervisors of the county or counties served by the center, policies regarding whether the services of the center will be made available to persons who are not residents of the county or counties served by the center, and if so upon what terms.

7. Purchase or lease a site for the center, and provide and equip suitable quarters for the center.

8. Prepare and approve plans and specifications for all center buildings and equipment, and advertise for bids as required by law for county buildings before making any contract for the construction of any building or purchase of equipment.

9. File with the board of supervisors within thirty days after the close of each budget year, a report covering their proceedings with reference to the center and a statement of all receipts and expenditures during the preceding budget year.

10. Accept property by gift, devise, bequest or otherwise; and, if the board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of trustees, and apply the proceeds thereof,

or property received in exchange therefor, to the purposes enumerated in subsection 7, or to purchase equipment.

11. There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 349.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job classification and category, but not by listing names of individual employees. The names, addresses, salaries and job classification of all employees paid in whole or in part from public funds shall be a public record and open to inspection at reasonable times as designated by the board of trustees.

12. Recruit, promote, accept and use local financial support for the community mental health center from private sources such as community service funds, business, industrial and private foundations, voluntary agencies and other lawful sources.

13. Accept and expend state and federal funds available directly to the community mental health center for all or any part of the cost of any service the center is authorized to provide.

14. Enter into a contract with an affiliate, which may be an individual or a public or private group, agency, or corporation, organized and operating on either a profit or a nonprofit basis, for any of the services described in section 230A.2, to be provided by the affiliate to residents of the county or counties served by the community mental health center who are patients or clients of the center and are referred by the center to the affiliate for service.

[C75, 77, 79, 81, §230A.10]

83 Acts, ch 101, §41

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.11 Trustees — reimbursement — restrictions.**

1. No community mental health center trustee shall receive any compensation for services in that office, but the trustee shall be reimbursed for actual and necessary personal expenses incurred in the performance of the trustee's duties. An itemized and verified statement of any such expenses may be filed with the secretary of the board of trustees, and shall be allowed upon approval by the board.

2. No trustee shall have, directly or indirectly, any pecuniary interest in the purchase or sale of any commodities or supplies procured for or disposed of by the center.

[C75, 77, 79, 81, §230A.11]

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.12 Center organized as nonprofit corporation — agreement with county.**

Each community mental health center established or continued in operation pursuant to section 230A.3 shall be organized under the Iowa nonprofit corporation Act appearing as chapter 504A, Code and Code Supplement 2003, except that a community mental health center organized after January 1, 2005, and a community mental health center continued in operation after July 1, 2005, shall be organized under the revised Iowa nonprofit corporation Act appearing as chapter 504, and except that a community mental health center organized under former chapter 504 prior to July 1, 1974, and existing under the provisions of chapter 504, Code 1989, shall not be required by this chapter to adopt the Iowa nonprofit corporation Act or the revised Iowa nonprofit corporation Act if it is not otherwise required to do so by law. The board of directors of each such community mental health center shall enter into an agreement with the county or affiliated counties which are to be served by the center, which agreement shall include but need not be limited to the period of time for which the agreement is to be in force, what services the center is to provide for residents of the county or counties to be served, standards the center is to follow in determining whether and to what extent persons seeking services from the center shall be considered able to pay the cost of the services received, and policies regarding availability of the center's services to persons who are not residents of the county or counties served by the center. The board of directors, in addition to exercising the powers of the board of directors of a nonprofit corporation, may:

1. Recruit, promote, accept and use local financial support for the community mental

health center from private sources such as community service funds, business, industrial and private foundations, voluntary agencies, and other lawful sources.

2. Accept and expend state and federal funds available directly to the community mental health center for all or any part of the cost of any service the center is authorized to provide.

3. Enter into a contract with an affiliate, which may be an individual or a public or private group, agency or corporation, organized and operating on either a profit or a nonprofit basis, for any of the services described in section 230A.2, to be provided by the affiliate to residents of the county or counties served by the community mental health center who are patients or clients of the center and are referred by the center to the affiliate for service.

[C75, 77, 79, 81, §230A.12]

83 Acts, ch 101, §42; 98 Acts, ch 1181, §3; 2003 Acts, ch 108, §44; 2004 Acts, ch 1049, §182, 192

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

### **230A.13 Annual budget.**

The board of directors of each community mental health center which is organized as a nonprofit corporation shall prepare an annual budget for the center and, when satisfied with the budget, submit it to the auditor or auditors of the county or affiliated counties served by the center, at the time and in the manner prescribed by chapter 24. The budget shall be subject to review by and approval of the board of supervisors of the county which is served by the center or, in the case of a center serving affiliated counties, by the board of supervisors of each county, acting separately, to the extent the budget is to be financed by taxes levied by that county or by funds allocated to that county by the state which the county may by law use to help support the center.

Release of administrative and diagnostic information, as defined in section 228.1, and demographic information necessary for aggregated reporting to meet the data requirements established by the department of human services, division of mental health and disability services, relating to an individual who receives services from a community mental health center through the applicable central point of coordination process, may be made a condition of support of that center by any county under this section.

[C75, 77, 79, 81, §230A.13]

83 Acts, ch 101, §43; 96 Acts, ch 1183, §27; 2004 Acts, ch 1090, §33; 2006 Acts, ch 1115, §27

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

### **230A.14 Support of center — federal funds.**

The board of supervisors of any county served by a community mental health center established or continued in operation as authorized by section 230A.1 may expend money from county funds or federal matching funds designated by the board of supervisors for that purpose, without a vote of the electorate of the county, to pay the cost of any services described in section 230A.2 which are provided by the center or by an affiliate under contract with the center, or to pay the cost of or grant funds for establishing, reconstructing, remodeling, or improving any facility required for the center.

[C75, 77, 79, 81, §230A.14]

83 Acts, ch 123, §88, 209; 92 Acts, ch 1241, §70

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

### **230A.15 Comprehensive community mental health program.**

A community mental health center established or operating as authorized by section 230A.1, or which a county or group of counties has agreed to establish or support pursuant to that section, may, with approval of the board or boards of supervisors of the county or counties supporting or establishing the center, undertake to provide a comprehensive community mental health program for the county or counties. A center providing a comprehensive community mental health program shall, at a minimum, make available to

residents of the county or counties it serves all of the mental health services described in the comprehensive state mental health and disability services plan under section 225C.6B.

[C75, 77, 79, 81, §230A.15; 82 Acts, ch 1117, §4]

2010 Acts, ch 1031, §364

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

#### **230A.16 Establishment of standards.**

The administrator of the division of mental health and disability services of the department of human services shall recommend and the mental health and disability services commission shall adopt standards for community mental health centers and comprehensive community mental health programs, with the overall objective of ensuring that each center and each affiliate providing services under contract with a center furnishes high quality mental health services within a framework of accountability to the community it serves. The standards shall be in substantial conformity with those of the psychiatric committee of the joint commission on accreditation of health care organizations and other recognized national standards for evaluation of psychiatric facilities unless in the judgment of the administrator of the division of mental health and disability services, with approval of the mental health and disability services commission, there are sound reasons for departing from the standards. When recommending standards under this section, the administrator of the division shall designate an advisory committee representing boards of directors and professional staff of community mental health centers to assist in the formulation or revision of standards. At least a simple majority of the members of the advisory committee shall be lay representatives of community mental health center boards of directors. At least one member of the advisory committee shall be a member of a county board of supervisors. The standards recommended under this section shall include requirements that each community mental health center established or operating as authorized by section 230A.1 shall:

1. Maintain and make available to the public a written statement of the services it offers to residents of the county or counties it serves, and employ or contract for services with affiliates employing specified minimum numbers of professional personnel possessing specified appropriate credentials to assure that the services offered are furnished in a manner consistent with currently accepted professional standards in the field of mental health.

2. Unless it is governed by a board of trustees elected or selected under sections 230A.5 and 230A.6, be governed by a board of directors which adequately represents interested professions, consumers of the center's services, socioeconomic, cultural, and age groups, and various geographical areas in the county or counties served by the center.

3. Arrange for the financial condition and transactions of the community mental health center to be audited once each year by the auditor of state. However, in lieu of an audit by state accountants, the local governing body of a community mental health center organized under this chapter may contract with or employ certified public accountants to conduct the audit, pursuant to the applicable terms and conditions prescribed by sections 11.6, 11.14, and 11.19 and audit format prescribed by the auditor of state. Copies of each audit shall be furnished by the accountant to the administrator of the division of mental health and disability services and the board of supervisors supporting the audited community mental health center.

4. Adopt and implement procedural rules ensuring that no member of the center's board of directors, or board of trustees receives from the center information which identifies or is intended to permit the members of the board to identify any person who is a client of that center.

[C75, 77, 79, 81, S81, §230A.16; 81 Acts, ch 78, §20, 42]

89 Acts, ch 264, §6; 94 Acts, ch 1170, §42, 43; 2004 Acts, ch 1090, §10; 2006 Acts, ch 1115, §28, 29; 2010 Acts, ch 1031, §389; 2011 Acts, ch 75, §37

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Subsection 3 amended

**230A.17 Review and evaluation.**

The administrator of the division of mental health and disability services of the department of human services may review and evaluate any community mental health center upon the recommendation of the mental health and disability services commission, and shall do so upon the written request of the center's board of directors, its chief medical or administrative officer, or the board of supervisors of any county from which the center receives public funds. The cost of the review shall be paid by the division.

[C75, 77, 79, 81, S81, §230A.17; 81 Acts, ch 78, §20, 43]

94 Acts, ch 1170, §44; 2004 Acts, ch 1090, §11; 2006 Acts, ch 1115, §30; 2010 Acts, ch 1031, §389

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

**230A.18 Report of review and evaluation.**

Upon completion of a review made pursuant to section 230A.17, the review shall be submitted to the board of directors and chief medical or administrative officer of the center. If the review concludes that the center fails to meet any of the standards established pursuant to section 230A.16, subsection 1, and that the response of the center to this finding is unsatisfactory, these conclusions shall be reported to the mental health and disability services commission which may forward the conclusions to the board of directors of the center and request an appropriate response within thirty days. If no response is received within thirty days, or if the response is unsatisfactory, the commission may call this fact to the attention of the board of supervisors of the county or counties served by the center, and in doing so shall indicate what corrective steps have been recommended to the center's board of directors.

[C75, 77, 79, 81, S81, §230A.18; 81 Acts, ch 78, §20, 44]

94 Acts, ch 1170, §45; 2004 Acts, ch 1090, §12; 2010 Acts, ch 1031, §389

For future repeal of this section, effective July 1, 2012, see 2011 Acts, ch 121, §22, 23  
Section not amended; footnote added

**230A.101 through 230A.111 Reserved.**

For future text of these sections, effective July 1, 2012, see 2011 Acts, ch 121, §11 – 21, 23

## CHAPTER 231

### DEPARTMENT ON AGING — OLDER IOWANS

#### SUBCHAPTER I

#### FINDINGS, POLICY, AND DEFINITIONS

**231.4 Definitions.**

1. For purposes of this chapter, unless the context otherwise requires:
  - a. “*Administrative action*” means an action or decision made by an owner, employee, or agent of a long-term care facility, or by a governmental agency, which affects the service provided to residents covered in this chapter.
  - b. “*Assisted living program*” means a program which provides assisted living as defined pursuant to section 231C.2 and which is certified under chapter 231C.
  - c. “*Commission*” means the commission on aging.
  - d. “*Department*” means the department on aging.
  - e. “*Director*” means the director of the department on aging.
  - f. “*Elder group home*” means elder group home as defined in section 231B.1 which is certified under chapter 231B.
  - g. “*Equivalent support*” means in-kind contributions of services, goods, volunteer support

time, administrative support, or other support reasonably determined by the department as equivalent to a dollar amount.

*h.* “*Federal Act*” means the Older Americans Act of 1965, 42 U.S.C. § 3001 et seq., as amended.

*i.* “*Home and community-based services*” means a continua of services available in an individual’s home or community which include but are not limited to case management, homemaker, home health aide, personal care, adult day, respite, home delivered meals, nutrition counseling, and other medical and social services which contribute to the health and well-being of individuals and their ability to reside in a home or community-based care setting.

*j.* “*Legal representative*” means a tenant’s legal representative as defined in section 231B.1 or 231C.2, or a guardian, conservator, or attorney in fact of a resident.

*k.* “*Long-term care facility*” means a long-term care unit of a hospital or a facility licensed under section 135C.1 whether the facility is public or private.

*l.* “*Older individual*” means an individual who is sixty years of age or older.

*m.* “*Resident*” means a resident or tenant of a long-term care facility, assisted living program, or elder group home, excluding facilities licensed primarily to serve persons with mental retardation or mental illness.

*n.* “*Unit of general purpose local government*” means a political subdivision of the state whose authority is general and not limited to one function or combination of related functions.

2. For the purposes of this chapter, “*focal point*”, “*greatest economic need*”, and “*greatest social need*” mean as those terms are defined in the federal Act.

86 Acts, ch 1245, §1004

C87, §249D.4

C93, §231.4

2003 Acts, ch 141, §2; 2005 Acts, ch 45, §3; 2009 Acts, ch 23, §15; 2010 Acts, ch 1062, §3, 4; 2011 Acts, ch 25, §143

Code editor directive applied

## SUBCHAPTER VI PROGRAMS

### **231.51 Older American community service employment program.**

1. The department shall direct and administer the older American community service employment program as authorized by the federal Act in coordination with the department of workforce development and the economic development authority.

2. The purpose of the program is to foster individual economic self-sufficiency and to increase the number of participants placed in unsubsidized employment in the public and private sectors while maintaining the community service focus of the program.

3. Funds appropriated to the department from the United States department of labor shall be distributed to local projects in accordance with federal requirements.

4. The department shall require such uniform reporting and financial accounting by area agencies on aging and local projects as may be necessary to fulfill the purposes of this section.

86 Acts, ch 1245, §1019

C87, §249D.51

C93, §231.51

96 Acts, ch 1186, §23; 2002 Acts, ch 1058, §1; 2005 Acts, ch 45, §13; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **231.62 Alzheimer’s disease services and training.**

1. The department shall regularly review trends and initiatives to address the long-term living needs of Iowans to determine how the needs of persons with Alzheimer’s disease and similar forms of irreversible dementia can be appropriately met.

2. The department shall act within the funding available to the department to expand

and improve training and education of persons who regularly deal with persons with Alzheimer's disease and similar forms of irreversible dementia. Such persons shall include but are not limited to law enforcement personnel, long-term care resident's advocates, state employees with responsibilities for oversight or monitoring of agencies providing long-term care services, and workers and managers in services providing direct care to such persons, such as nursing facilities and other long-term care settings, assisted living programs, elder group homes, residential care facilities, adult day facilities, and home health care services. The actions shall include but are not limited to adopting rules.

3. The department shall adopt rules to implement all of the following training and education provisions:

a. Standards for initial hours of training for direct care staff, which shall require at least eight hours of classroom instruction and at least eight hours of supervised interactive experiences.

b. Standards for continuing and in-service education for direct care staff, which shall require at least eight hours annually.

c. Standards which provide for assessing the competency of those who have received training.

d. A standard curriculum model for the training and education. The curriculum model shall include but is not limited to the diagnosis process; progression of the disease; skills for communicating with persons with the disease, family members and friends, and caregivers; daily life skills; caregiver stress; the importance of building relationships and understanding personal histories; expected challenging behaviors; nonpharmacologic interventions; and medication management.

e. A certification process which shall be implemented for the trainers and educators who use the standard curriculum model.

4. The department shall conduct a statewide campaign to educate health care providers regarding tools and techniques for early detection of Alzheimer's disease and similar forms of irreversible dementia so that patients and their families will better understand the progression of such disease.

5. Within the funding available, the department shall provide funding for public awareness efforts and educational efforts for agencies providing long-term care services, direct care workers, caregivers, and state employees with responsibilities for providing oversight or monitoring of agencies providing long-term care services. The department shall work with local Alzheimer's disease association chapters and other stakeholders in providing the funding.

2008 Acts, ch 1140, §2; 2011 Acts, ch 34, §57

Subsection 3, unnumbered paragraph 1 amended

## CHAPTER 231C

### ASSISTED LIVING PROGRAMS

Senior living program, see chapter 249H

Retirement facilities, see chapter 523D

Continuation of effectiveness of rules, regulations, forms, orders, and directives promulgated by the former department of elder affairs under prior law, and validity of licenses, certifications, and permits issued by the department of elder affairs; schedule for updating Iowa administrative code to correspond to administration of chapter by department of inspections and appeals; 2007 Acts, ch 215, §206

#### 231C.2 Definitions.

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

1. "Adult day services" means adult day services as defined in section 231D.1.
2. "Assisted living" means provision of housing with services which may include but are not limited to health-related care, personal care, and assistance with instrumental activities

of daily living to three or more tenants in a physical structure which provides a homelike environment. “Assisted living” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “Assisted living” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. “Assisted living” includes twenty-four hours per day response staff to meet scheduled and unscheduled or unpredictable needs in a manner that promotes maximum dignity and independence and provides supervision, safety, and security.

3. “Assisted living program” or “program” means an entity that provides assisted living.

4. “Department” means the department of inspections and appeals or the department’s designee.

5. “Governmental unit” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.

6. “Health-related care” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.

7. “Instrumental activities of daily living” means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, cooking, housekeeping, chores, and traveling within the community.

8. “Medication setup” means assistance with various steps of medication administration to support a tenant’s autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.

9. “Occupancy agreement” means a written agreement entered into between an assisted living program and a tenant that clearly describes the rights and responsibilities of the assisted living program and a tenant, and other information required by rule. “Occupancy agreement” may include a separate signed lease and signed service agreement.

10. “Personal care” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and housekeeping that are essential to the health and welfare of the tenant.

11. “Recognized accrediting entity” means a nationally recognized accrediting entity that the department recognizes as having specific assisted living program standards equivalent to the standards established by the department for assisted living programs.

12. “Significant change” means a major decline or improvement in the tenant’s status which does not normally resolve itself without further interventions by staff or by implementing standard disease-related clinical interventions that have an impact on the tenant’s mental, physical, or functional health status.

13. “Substantial compliance” means a level of compliance with this chapter and rules adopted pursuant to this chapter such that any identified insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm. “Substantial compliance” constitutes compliance with the rules of this chapter.

14. “Tenant” means an individual who receives assisted living services through a certified assisted living program.

15. “Tenant advocate” means the office of long-term care resident’s advocate established in section 231.42.

16. “Tenant’s legal representative” means a person appointed by the court to act on behalf of a tenant or a person acting pursuant to a power of attorney.

96 Act, ch 1192, §2; 2000 Acts, ch 1004, §14, 22; 2003 Acts, ch 165, §19; 2003 Acts, ch 166, §8, 9; 2005 Acts, ch 60, §3 – 5, 21; 2005 Acts, ch 179, §121; 2007 Acts, ch 215, §161; 2009 Acts, ch 156, §11; 2011 Acts, ch 83, §1

**231C.5 Written occupancy agreement required.**

1. An assisted living program shall not operate in this state unless a written occupancy agreement, as prescribed in subsection 2, is executed between the assisted living program and each tenant or the tenant's legal representative, prior to the tenant's occupancy, and unless the assisted living program operates in accordance with the terms of the occupancy agreement. The assisted living program shall deliver to the tenant or the tenant's legal representative a complete copy of the occupancy agreement and all supporting documents and attachments and shall deliver, at least thirty days prior to any changes, a written copy of changes to the occupancy agreement if any changes to the copy originally delivered are subsequently made.

2. An assisted living program occupancy agreement shall clearly describe the rights and responsibilities of the tenant and the program. The occupancy agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

a. A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

b. (1) A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the assisted living program.

(2) The occupancy agreement shall specifically include a statement regarding each of the following:

(a) Whether the program requires disclosure of a tenant's personal financial information for occupancy or continued occupancy.

(b) The program's policy regarding the continued tenancy of a tenant following exhaustion of private resources.

(c) Contact information for the department of human services and the senior health insurance information program to assist tenants in accessing third-party payment sources.

c. The procedure followed for nonpayment of fees.

d. Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.

e. The term of the occupancy agreement.

f. A statement that the assisted living program shall notify the tenant or the tenant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the occupancy agreement with the following exceptions:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the assisted living program.

g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.

i. The internal appeals process provided relative to an involuntary transfer.

j. The program's policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy.

k. A statement of the prohibition against retaliation as prescribed in section 231C.13.

l. The emergency response policy.

m. The staffing policy which specifies if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

n. In dementia-specific assisted living programs, a description of the services and programming provided to meet the life skills and social activities of tenants.

o. The refund policy.

p. A statement regarding billing and payment procedures.

3. Occupancy agreements and related documents executed by each tenant or the tenant's

legal representative shall be maintained by the assisted living program in program files from the date of execution until three years from the date the occupancy agreement is terminated. A copy of the most current occupancy agreement shall be provided to members of the general public, upon request. Occupancy agreements and related documents shall be made available for on-site inspection to the department upon request and at reasonable times.

96 Acts, ch 1192, §5; 2003 Acts, ch 166, §12; 2005 Acts, ch 60, §11, 21; 2007 Acts, ch 215, §168; 2011 Acts, ch 83, §2

Subsection 2, paragraph b amended

#### **231C.11A Voluntary cessation of program operations — decertification.**

1. The department shall adopt rules regarding the voluntary cessation of program operations of an assisted living program, including decertification. The rules shall address notification of the tenants, tenant legal representatives, the department, and the tenant advocate at least ninety days prior to the anticipated date of cessation of program operations; the requirements for the safe and orderly transfer or transition of all tenants; and monitoring of the program during the process and after cessation of program operations.

2. Within seven days following provision of notice of cessation of program operations, the assisted living program shall hold a meeting and invite all tenants, tenant legal representatives, families of tenants, representatives of the department, and the tenant advocate to discuss the pending cessation of the program and to answer any questions. The department and the tenant advocate shall have access to attend the meeting and provide information to the tenants regarding their legal rights.

3. The tenant advocate shall monitor the decertification process and shall undertake any investigations necessary to ensure that the rights of tenants are protected during the process and after cessation of program operations. The tenant advocate shall assist tenants during the transition, including assisting tenants in finding necessary and appropriate service providers if the assisted living program is unable to provide such necessary and appropriate services during the transition period. The assisted living program shall cooperate with the tenant advocate by providing contact information for service providers within a thirty-mile radius of the program.

4. Following cessation of program operations and decertification, the department shall retain authority to monitor the decertified program to ensure that the entity does not continue to act as an uncertified assisted living program or other unlicensed, uncertified, or unregistered entity otherwise regulated by the state following decertification. If a decertified assisted living program continues to or subsequently acts in a manner that meets the definition of assisted living pursuant to section 231C.2, the decertified program is subject to the criminal penalties and injunctive relief provisions of section 231C.15, and any other penalties applicable by law.

2011 Acts, ch 83, §3

NEW section

## CHAPTER 232

### JUVENILE JUSTICE

For provisions concerning court orders under this chapter which impose terms and conditions on the parent, guardian, or custodian of a child, see §232.106

#### DIVISION II

#### JUVENILE DELINQUENCY PROCEEDINGS

##### PART 4

##### JUDICIAL PROCEEDINGS

#### **232.51 Disposition of child with mental illness or mental retardation.**

1. If the evidence received at an adjudicatory or a dispositional hearing indicates that the child is mentally ill, the court may direct the juvenile court officer or the department to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the juvenile court and such proceedings in the juvenile court shall adhere to the requirements of chapter 229.

2. If the evidence received at an adjudicatory or a dispositional hearing indicates that the child is mentally retarded, the court may direct the juvenile court officer or the department to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the juvenile court and such proceedings shall adhere to the requirements of chapter 222.

3. *a.* If prior to the adjudicatory or dispositional hearing on the pending delinquency petition, the child is committed as a child with a mental illness or mental retardation and is ordered into a residential facility, institution, or hospital for inpatient treatment, the delinquency proceeding shall be suspended until such time as the juvenile court either terminates the civil commitment order or the child is released from the residential facility, institution, or hospital for purposes of receiving outpatient treatment.

*b.* During any time that the delinquency proceeding is suspended pursuant to this subsection, any time limits for speedy adjudicatory hearings and continuances shall be tolled.

*c.* This subsection shall not apply to waiver hearings held pursuant to section 232.45.

[C79, 81, §232.51]

83 Acts, ch 186, §10055, 10201; 86 Acts, ch 1186, §5; 96 Acts, ch 1129, §62; 2011 Acts, ch 10, §1

Section amended

#### DIVISION III

#### CHILD IN NEED OF ASSISTANCE PROCEEDINGS

##### PART 2

##### CHILD ABUSE REPORTING, ASSESSMENT, AND REHABILITATION

#### **232.68 Definitions.**

The definitions in section 235A.13 are applicable to this part 2 of division III. As used in sections 232.67 through 232.77 and 235A.12 through 235A.24, unless the context otherwise requires:

1. "Child" means any person under the age of eighteen years.

2. a. “Child abuse” or “abuse” means:

(1) Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.

(2) Any mental injury to a child’s intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child’s ability to function within the child’s normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.

(3) The commission of a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5, the commission of a sexual offense under this subparagraph includes any sexual offense referred to in this subparagraph with or to a person under the age of eighteen years.

(4) (a) The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child’s health and welfare when financially able to do so or when offered financial or other reasonable means to do so.

(b) For the purposes of subparagraph division (a), failure to provide for the adequate supervision of a child means the person failed to provide proper supervision of a child that a reasonable and prudent person would exercise under similar facts and circumstances and the failure resulted in direct harm or created a risk of harm to the child.

(c) A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this provision shall not preclude a court from ordering that medical service be provided to the child where the child’s health requires it.

(5) The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this subparagraph include an act or omission referred to in this subparagraph with or to a person under the age of eighteen years.

(6) An illegal drug is present in a child’s body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.

(7) The person responsible for the care of a child has, in the presence of the child, as defined in section 232.2, subsection 6, paragraph “p”, manufactured a dangerous substance, as defined in section 232.2, subsection 6, paragraph “p”, or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

(8) The commission of bestiality in the presence of a minor under section 717C.1 by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child.

(9) Knowingly allowing a person custody or control of, or unsupervised access to a child or minor, after knowing the person is required to register or is on the sex offender registry under chapter 692A for a violation of section 726.6.

(10) The person responsible for the care of the child has knowingly allowed the child access to obscene material as defined in section 728.1 or has knowingly disseminated or exhibited such material to the child.

b. “Child abuse” or “abuse” shall not be construed to hold a victim responsible for failing to prevent a crime against the victim.

2A. “Child protection worker” means an individual designated by the department to perform an assessment in response to a report of child abuse.

3. “Confidential access to a child” means access to a child, during an assessment of an alleged act of child abuse, who is alleged to be the victim of the child abuse. The access may be accomplished by interview, observation, or examination of the child. As used in this subsection and this part:

a. “*Interview*” means the verbal exchange between the child protection worker and the child for the purpose of developing information necessary to protect the child. A child protection worker is not precluded from recording visible evidence of abuse.

b. “*Observation*” means direct physical viewing of a child under the age of four by the child protection worker where the viewing is limited to the child’s body other than the genitalia and pubes. “*Observation*” also means direct physical viewing of a child aged four or older by the child protection worker without touching the child or removing an article of the child’s clothing, and doing so without the consent of the child’s parent, custodian, or guardian. A child protection worker is not precluded from recording evidence of abuse obtained as a result of a child’s voluntary removal of an article of clothing without inducement by the child protection worker. However, if prior consent of the child’s parent or guardian, or an ex parte court order, is obtained, “*observation*” may include viewing the child’s unclothed body other than the genitalia and pubes.

c. “*Physical examination*” means direct physical viewing, touching, and medically necessary manipulation of any area of the child’s body by a physician licensed under chapter 148.

4. “*Department*” means the state department of human services and includes the local, county, and service area offices of the department.

5. “*Health practitioner*” includes a licensed physician and surgeon, osteopathic physician and surgeon, dentist, optometrist, podiatric physician, or chiropractor; a resident or intern in any of such professions; a licensed dental hygienist, a registered nurse or licensed practical nurse; a physician assistant; and an emergency medical care provider certified under section 147A.6.

6. “*Mental health professional*” means a person who meets the following requirements:

a. Holds at least a master’s degree in a mental health field, including but not limited to psychology, counseling, nursing, or social work; or is licensed to practice medicine pursuant to chapter 148.

b. Holds a license to practice in the appropriate profession.

c. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals used in providing appropriate mental health services for those individuals.

7. “*Person responsible for the care of a child*” means:

a. A parent, guardian, or foster parent.

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

8. “*Registry*” means the central registry for child abuse information established in section 235A.14.

[C66, 71, 73, 75, 77, §235A.2; C79, 81, §232.68]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1207, §1, 2; 85 Acts, ch 173, §2; 86 Acts, ch 1177, §1; 87 Acts, ch 153, §1, 2; 89 Acts, ch 24, §1; 89 Acts, ch 89, §16; 89 Acts, ch 230, §3, 4; 93 Acts, ch 76, §1; 93 Acts, ch 93, §2; 94 Acts, ch 1130, §1, 2; 95 Acts, ch 41, §24; 95 Acts, ch 108, §17; 95 Acts, ch 182, §7; 96 Acts, ch 1092, §2; 97 Acts, ch 35, §4, 5, 25; 97 Acts, ch 176, §1; 2001 Acts, ch 46, §2; 2001 Acts, ch 131, §1; 2003 Acts, ch 44, §49; 2004 Acts, ch 1116, §6; 2005 Acts, ch 158, §20; 2008 Acts, ch 1088, §113 – 115; 2009 Acts, ch 119, §64; 2010 Acts, ch 1151, §2; 2011 Acts, ch 28, §1, 2

Subsection 2, unnumbered paragraph 1 and paragraphs a – c editorially redesignated as paragraph a and subparagraphs (1) – (3)

Subsection 2, paragraph d amended and editorially redesignated as paragraph a, subparagraph (4), subparagraph divisions (a) – (c)

Subsection 2, paragraphs e – j editorially redesignated as subparagraphs (5) – (10) of paragraph a

Subsection 2, NEW paragraph b

**232.69 Mandatory and permissive reporters — training required.**

1. The classes of persons enumerated in this subsection shall make a report within twenty-four hours and as provided in section 232.70, of cases of child abuse. In addition, the classes of persons enumerated in this subsection shall make a report of abuse of a child who is under twelve years of age and may make a report of abuse of a child who is twelve years of age or older, which would be defined as child abuse under section 232.68, subsection 2, paragraph “a”, subparagraph (3) or (5), except that the abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child.

a. Every health practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused. Notwithstanding section 139A.30, this provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease.

b. Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

(1) A social worker.

(2) An employee or operator of a public or private health care facility as defined in section 135C.1.

(3) A certified psychologist.

(4) A licensed school employee, certified para-educator, holder of a coaching authorization issued under section 272.31, or an instructor employed by a community college.

(5) An employee or operator of a licensed child care center, registered child development home, head start program, family development and self-sufficiency grant program under section 216A.107, or healthy opportunities for parents to experience success – healthy families Iowa program under section 135.106.

(6) An employee or operator of a substance abuse program or facility licensed under chapter 125.

(7) An employee of a department of human services institution listed in section 218.1.

(8) An employee or operator of a juvenile detention or juvenile shelter care facility approved under section 232.142.

(9) An employee or operator of a foster care facility licensed or approved under chapter 237.

(10) An employee or operator of a mental health center.

(11) A peace officer.

(12) A counselor or mental health professional.

(13) An employee or operator of a provider of services to children funded under a federally approved medical assistance home and community-based services waiver.

2. Any other person who believes that a child has been abused may make a report as provided in section 232.70.

3. a. For the purposes of this subsection, “licensing board” means a board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

b. A person required to make a report under subsection 1, other than a physician whose professional practice does not regularly involve providing primary health care to children, shall complete two hours of training relating to the identification and reporting of child abuse within six months of initial employment or self-employment involving the examination, attending, counseling, or treatment of children on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person’s employer or, if self-employed, from the department. The person shall complete at least two hours of additional child abuse identification and reporting training every five years.

c. If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be responsible for providing the child abuse identification and reporting training. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to

licensure, regulation, or approval by a state agency, the person shall obtain the child abuse identification and reporting training as provided in paragraph “d”.

d. The person may complete the initial or additional training requirements as part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing board.

(2) A training program using a curriculum approved by the abuse education review panel established by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

e. A licensing board with authority over the license of a person required to make a report under subsection 1 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document for the licensing board the person’s completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or suspension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering child abuse in this state.

f. For persons required to make a report under subsection 1 who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of renewal of the facility’s or program’s licensure, registration, or approval, that such persons employed by the facility or program are in compliance with the training requirements of this subsection.

g. For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

h. For persons required to make a report under subsection 1 who are employees of state departments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons’ compliance with the training requirements of this subsection.

[C66, 71, 73, 75, 77, §235A.3; C79, 81, §232.69]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §4, 6; 85 Acts, ch 173, §3 – 5; 87 Acts, ch 153, §3; 88 Acts, ch 1238, §1; 89 Acts, ch 89, §17; 89 Acts, ch 230, §5; 89 Acts, ch 265, §40; 94 Acts, ch 1130, §3; 97 Acts, ch 85, §1; 99 Acts, ch 192, §27, 33; 2000 Acts, ch 1066, §42; 2001 Acts, ch 122, §2, 3; 2002 Acts, ch 1047, §2, 20; 2002 Acts, ch 1142, §1, 31; 2005 Acts, ch 121, §2; 2007 Acts, ch 10, §164, 165; 2008 Acts, ch 1072, §3

Section not amended; internal reference change applied

### **232.70 Reporting procedure.**

1. Each report made by a mandatory reporter, as defined in section 232.69, subsection 1, shall be made both orally and in writing. Each report made by a permissive reporter, as defined in section 232.69, subsection 2, may be oral, written, or both.

2. The employer or supervisor of a person who is a mandatory or permissive reporter shall not apply a policy, work rule, or other requirement that interferes with the person making a report of child abuse.

3. The oral report shall be made by telephone or otherwise to the department of human services. If the person making the report has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

4. The written report shall be made to the department of human services within forty-eight hours after such oral report.

5. Upon receipt of a report the department shall do all of the following:
  - a. Immediately, upon receipt of an oral report, make a determination as to whether the report constitutes an allegation of child abuse as defined in section 232.68.
  - b. Notify the appropriate county attorney of the receipt of the report.
6. The oral and written reports shall contain the following information, or as much thereof as the person making the report is able to furnish:
  - a. The names and home address of the child and the child's parents or other persons believed to be responsible for the child's care;
  - b. The child's present whereabouts if not the same as the parent's or other person's home address;
  - c. The child's age;
  - d. The nature and extent of the child's injuries, including any evidence of previous injuries;
  - e. The name, age and condition of other children in the same home;
  - f. Any other information which the person making the report believes might be helpful in establishing the cause of the injury to the child, the identity of the person or persons responsible for the injury, or in providing assistance to the child; and
  - g. The name and address of the person making the report.
7. A report made by a permissive reporter, as defined in section 232.69, subsection 2, shall be regarded as a report pursuant to this chapter whether or not the report contains all of the information required by this section and may be made to the department of human services, county attorney, or law enforcement agency. If the report is made to any agency other than the department of human services, such agency shall promptly refer the report to the department of human services.
8. If a report would be determined to constitute an allegation of child abuse as defined under section 232.68, subsection 2, paragraph "a", subparagraph (3) or (5), except that the suspected abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child, the department shall refer the report to the appropriate law enforcement agency having jurisdiction to investigate the allegation. The department shall refer the report orally as soon as practicable and in writing within seventy-two hours of receiving the report.
9. Within twenty-four hours of receiving a report from a mandatory or permissive reporter, the department shall inform the reporter, orally or by other appropriate means, whether or not the department has commenced an assessment of the allegation in the report.

[C66, 71, 73, 75, 77, §235A.4; C79, 81, §232.70]

83 Acts, ch 96, §157, 159; 87 Acts, ch 153, §4; 97 Acts, ch 176, §2, 17; 2000 Acts, ch 1137, §4, 14; 2001 Acts, ch 122, §4

Section not amended; internal reference change applied

#### **232.71D Founded child abuse — central registry.**

1. The requirements of this section shall apply to child abuse information relating to a report of child abuse and to an assessment performed in accordance with section 232.71B.
2. Except as otherwise provided in subsections 3 and 4, if the department issues a finding that the alleged child abuse meets the definition of child abuse under section 232.68, subsection 2, the names of the child and the alleged perpetrator of the alleged child abuse and any other child abuse information shall be placed in the central registry as a case of founded child abuse.
  3. *a.* Unless any of the circumstances listed in paragraph "b" are applicable, cases to which any of the following circumstances apply shall not be placed in the central registry:
    - (1) A finding of physical abuse in which the department has determined the injury resulting from the abuse was minor, isolated, and unlikely to reoccur.
    - (2) A finding of abuse by failure to provide adequate supervision or by failure to provide adequate clothing, in which the department has determined the risk from the abuse to the child's health and welfare was minor, isolated, and unlikely to reoccur.
  - b.* If any of the following circumstances apply in addition to those listed in paragraph "a", the names of the child and the alleged perpetrator of the alleged child abuse and any

other child abuse information shall be placed in the central registry as a case of founded child abuse:

(1) The case was referred for juvenile or criminal court action as a result of the acts or omissions of the alleged perpetrator or a criminal or juvenile court action was initiated by the county attorney or juvenile court within twelve months of the date of the department's report concerning the case, in which the alleged perpetrator was convicted of a crime involving the child or there was a delinquency or child in need of assistance adjudication.

(2) The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse and the department has previously determined within the eighteen-month period preceding the issuance of the department's report that the acts or omissions of the alleged perpetrator in a prior case met the definition of child abuse.

(3) The department determines the alleged perpetrator of the child abuse will continue to pose a danger to the child who is the subject of the report of child abuse or to another child with whom the alleged perpetrator may come into contact.

4. Cases of alleged child abuse to which any of the following circumstances apply shall be placed in the central registry as follows:

a. A finding of sexual abuse in which the alleged perpetrator of the abuse is age thirteen or younger. However, the name of the alleged perpetrator shall be withheld from the registry.

b. A finding of sexual abuse in which the alleged perpetrator of the abuse is age fourteen through seventeen and the court has found there is good cause for the name of the alleged perpetrator to be removed from the central registry. Only the name of the alleged perpetrator shall be removed from the registry.

5. If report data and disposition data are placed in the central registry in accordance with this section, the department shall make periodic follow-up reports in a manner prescribed by the registry so that the registry is kept up-to-date and fully informed concerning the case.

6. a. The confidentiality of all of the following shall be maintained in accordance with section 217.30:

(1) Assessment data.

(2) Information pertaining to an allegation of child abuse for which there was no assessment performed.

(3) Information pertaining to an allegation of child abuse which was determined to not meet the definition of child abuse. Individuals identified in section 235A.15, subsection 4, are authorized to have access to such information under section 217.30.

(4) Report data and disposition data pertaining to an allegation of child abuse determined to meet the definition of child abuse which is not subject to placement in the central registry. Individuals identified in section 235A.15, subsection 3, are authorized to have access to such data under section 217.30.

b. The confidentiality of report data and disposition data pertaining to an allegation of child abuse determined to meet the definition of child abuse which is subject to placement in the central registry, shall be maintained as provided in chapter 235A.

97 Acts, ch 176, §5, 25, 26, 43; 99 Acts, ch 192, §33; 2004 Acts, ch 1086, §43; 2005 Acts, ch 121, §3; 2011 Acts, ch 28, §3, 4; 2011 Acts, ch 131, §57, 158

Subsections 2 and 3 amended

NEW subsection 4 and former subsections 4 and 5 redesignated as 5 and 6

### PART 3

#### TEMPORARY CUSTODY OF A CHILD

##### **232.81 Complaint.**

1. Any person having knowledge of the circumstances may file a complaint with the person or agency designated by the court to perform intake duties alleging that a child is a child in need of assistance.

2. Upon receipt of a complaint, the court may request the department of human services,

juvenile probation office, or other authorized agency or individual to conduct a preliminary investigation of the complaint to determine if further action should be taken.

3. A petition alleging the child to be a child in need of assistance may be filed pursuant to section 232.87 provided the allegations of the complaint, if proven, are sufficient to establish the court's jurisdiction and the filing is in the best interests of the child.

[SS15, §254-a15; C24, 27, 31, 35, 39, §3621; C46, 50, 54, 58, 62, §232.5; C71, 73, 75, 77, §232.3; C79, 81, §232.81]

83 Acts, ch 96, §157, 159; 2011 Acts, ch 98, §6

Subsection 4 stricken

## PART 4

### JUDICIAL PROCEEDINGS

#### **232.108 Visitation or ongoing interaction with siblings.**

1. If the court orders the transfer of custody of a child and siblings to the department or other agency for placement under this division, under division II, relating to juvenile delinquency proceedings, or under any other provision of this chapter, the department or other agency shall make a reasonable effort to place the child and siblings together in the same placement. The requirement of this subsection remains applicable to custody transfer orders made at separate times and applies in addition to efforts made by the department or agency to place the child with a relative.

2. If the requirements of subsection 1 apply but the siblings are not placed in the same placement together, the department or other agency shall provide the siblings with the reasons why and the efforts being made to facilitate such placement, or why making efforts for such placement is not appropriate. Unless visitation or ongoing interaction with siblings is suspended or terminated by the court, the department or agency shall make reasonable effort to provide for frequent visitation or other ongoing interaction between the child and the child's siblings from the time of the child's out-of-home placement until the child returns home or is in a permanent placement.

3. A person who wishes to assert a sibling relationship with a child who is subject to an order under this chapter for an out-of-home placement and to request frequent visitation or other ongoing interaction with the child may file a petition with the court with jurisdiction over the child. Unless the court determines it would not be in the child's best interest, upon finding that the person is a sibling of the child, the provisions of this section providing for frequent visitation or other ongoing interaction between the siblings shall apply. Nothing in this section is intended to provide or expand a right to counsel under this chapter beyond the right provided and persons specified in sections 232.89 and 232.113.

4. If the court determines by clear and convincing evidence that visitation or other ongoing interaction between a child and the child's siblings would be detrimental to the well-being of the child or a sibling, the court shall order the visitation or interaction to be suspended or terminated. The reasons for the determination shall be noted in the court order suspending or terminating the visitation or interaction and shall be explained to the child and the child's siblings, and to the parent, guardian, or custodian of the child.

5. The case permanency plan of a child who is subject to this section shall comply with all of the following, as applicable:

a. The plan shall document the efforts being made to provide for the child's frequent visitation or other ongoing interaction with the child's siblings from the time of the child's out-of-home placement until the child returns home or is in a permanent placement. The child's parent, guardian, or custodian may comment on the efforts as documented in the case permanency plan.

b. If at any point the court determines that the child's visitation or interaction with siblings would be detrimental to the child's well-being and visitation or interaction with siblings is suspended or terminated by the court, the determination shall be noted in the case permanency plan. If the court lifts the suspension or termination, the case permanency plan

shall be revised to document the efforts to provide for visitation or interaction as required under paragraph “a”.

c. If one or more of the child’s siblings are also subject to an order under this chapter for an out-of-home placement and the siblings are not placed in the same placement together, the plan shall document the reasons why and the efforts being made to facilitate such placement, or why making efforts for such placement is not appropriate.

6. If an order is entered for termination of parental rights of a child who is subject to this section, unless the court has suspended or terminated sibling visitation or interaction in accordance with this section, the department or child-placing agency shall do all of the following to facilitate frequent visitation or ongoing interaction between the child and siblings when the child is adopted or enters a permanent placement:

a. Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships.

b. Provide prospective adoptive parents with information regarding the child’s siblings. The address of a sibling’s residence shall not be disclosed in the information unless authorized by court order for good cause shown.

c. Encourage prospective adoptive parents to plan for facilitating postadoption contact between the child and the child’s siblings.

7. Any information regarding court-ordered or authorized sibling visitation, interaction, or contact shall be provided to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the visitation or interaction.

2007 Acts, ch 67, §5

Department to adapt section’s provisions for application to the subsidized guardianship program; 2011 Acts, ch 98, §10, 11  
Section not amended; footnote added

#### DIVISION IV

#### TERMINATION OF PARENT-CHILD RELATIONSHIP PROCEEDING

##### **232.116 Grounds for termination.**

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

a. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

b. The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.

c. The court finds that there is clear and convincing evidence that the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

d. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

e. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child’s parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, “*significant and meaningful contact*” includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child’s life.

f. The court finds that all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child’s parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child’s parents as provided in section 232.102.

g. The court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

h. The court finds that all of the following have occurred:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child’s parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child’s parents as provided in section 232.102 at the present time.

i. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

j. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child’s parents for placement pursuant to section 232.102.

(2) The parent has been imprisoned for a crime against the child, the child’s sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

k. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child’s parents for placement pursuant to section 232.102.

(2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

*l.* The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

*m.* The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child, the child's sibling, or any other child in the household.

*n.* The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The parent has been convicted of child endangerment resulting in the death of the child's sibling, has been convicted of three or more acts of child endangerment involving the child, the child's sibling, or another child in the household, or has been convicted of child endangerment resulting in a serious injury to the child, the child's sibling, or another child in the household.

(3) There is clear and convincing evidence that the circumstances surrounding the parent's conviction for child endangerment would result in a finding of imminent danger to the child.

*o.* The parent has been convicted of a felony offense that is a sex offense against a minor as defined in section 692A.101, the parent is divorced from or was never married to the minor's other parent, and the parent is serving a minimum sentence of confinement of at least five years for that offense.

2. In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child. This consideration may include any of the following:

*a.* Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

*b.* For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent or by another person, whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

*c.* The relevant testimony or written statement that a foster parent, relative, or other individual with whom the child has been placed for preadoptive care or other care has a right to provide to the court.

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

- a. A relative has legal custody of the child.
- b. The child is over ten years of age and objects to the termination.
- c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.
- d. It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.
- e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

[C79, §232.114; C81, §232.116]

84 Acts, ch 1279, §19, 20; 86 Acts, ch 1186, §11; 87 Acts, ch 159, §6; 89 Acts, ch 229, §7 – 12; 90 Acts, ch 1251, §28; 92 Acts, ch 1231, §27 – 29; 93 Acts, ch 76, §2; 94 Acts, ch 1174, §3, 22; 95 Acts, ch 182, §10, 11; 98 Acts, ch 1190, §23; 2001 Acts, ch 67, §9, 13; 2006 Acts, ch 1182, §59; 2007 Acts, ch 172, §14; 2008 Acts, ch 1098, §2; 2009 Acts, ch 119, §38

For future amendment to subsection 1, paragraph 1, subparagraph (2), effective July 1, 2012, see 2011 Acts, ch 121, §58, 62  
Section not amended; footnote added

## DIVISION VII

### EXPENSES AND COSTS

#### **232.142 Maintenance and cost of juvenile homes — fund.**

1. County boards of supervisors which singly or in conjunction with one or more other counties provide and maintain juvenile detention and juvenile shelter care homes are subject to this section.
2. For the purpose of providing and maintaining a county or multicounty home, the board of supervisors of any county may issue general county purpose bonds in accordance with sections 331.441 to 331.449. Expenses for providing and maintaining a multicounty home shall be paid by the counties participating in a manner to be determined by the boards of supervisors.
3. A county or multicounty juvenile detention home approved pursuant to this section shall receive financial aid from the state in a manner approved by the director. Aid paid by the state shall be at least ten percent and not more than fifty percent of the total cost of the establishment, improvements, operation, and maintenance of the home.
4. The director shall adopt minimal rules and standards for the establishment, maintenance, and operation of such homes as shall be necessary to effect the purposes of this chapter. The rules shall apply the requirements of section 237.8, concerning employment and evaluation of persons with direct responsibility for a child or with access to a child when the child is alone and persons residing in a child foster care facility, to persons employed by, residing in, or volunteering for a home approved under this section. The director shall, upon request, give guidance and consultation in the establishment and administration of the homes and programs for the homes.
5. The director shall approve annually all such homes established and maintained under the provisions of this chapter. A home shall not be approved unless it complies with minimal rules and standards adopted by the director and has been inspected by the department of inspections and appeals.
6. A juvenile detention home fund is created in the state treasury under the authority of the department. The fund shall consist of moneys deposited in the fund pursuant to sections 321.218A and 321A.32A. The moneys in the fund shall be used for the costs of the establishment, improvement, operation, and maintenance of county or multicounty juvenile

detention homes in accordance with annual appropriations made by the general assembly from the fund for these purposes.

[S13, §254-a20, -a26, -a29, -a30; C24, 27, 31, 35, 39, §3653 – 3655; C46, 50, 54, 58, 62, §232.35 – 232.37; C66, 71, 73, 75, 77, §232.21 – 232.26; C79, 81, S81, §232.142; 81 Acts, ch 117, §1031]

83 Acts, ch 123, §91, 209; 88 Acts, ch 1134, §55; 90 Acts, ch 1204, §47; 90 Acts, ch 1239, §13; 91 Acts, ch 138, §4; 92 Acts, ch 1229, §9; 2001 Acts, ch 191, §38; 2011 Acts, ch 98, §7

Subsection 4 amended

**232.143 Service area group foster care budget targets.**

1. *a.* A statewide expenditure target for children in group foster care placements in a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually in an appropriation bill by the general assembly. Representatives of the department and juvenile court services shall jointly develop a formula for allocating a portion of the statewide expenditure target established by the general assembly to each of the department's service areas. The formula shall be based upon the service area's proportion of the state population of children and of the statewide usage of group foster care in the previous five completed fiscal years and upon other indicators of need. The expenditure amount determined in accordance with the formula shall be the group foster care budget target for that service area.

*b.* A service area may exceed the service area's budget target for group foster care by not more than five percent in a fiscal year, provided the overall funding allocated by the department for all child welfare services in the service area is not exceeded.

*c.* If all of the following circumstances are applicable, a service area may temporarily exceed the service area's budget target as necessary for placement of a child in group foster care:

- (1) The child is thirteen years of age or younger.
- (2) The court has entered a dispositional order for placement of the child in group foster care.
- (3) The child is placed in a juvenile detention facility awaiting placement in group foster care.

*d.* If a child is placed pursuant to paragraph "c", causing a service area to temporarily exceed the service area's budget target, the department and juvenile court services shall examine the cases of the children placed in group foster care and counted in the service area's budget target at the time of the placement pursuant to paragraph "c". If the examination indicates it may be appropriate to terminate the placement for any of the cases, the department and juvenile court services shall initiate action to set a dispositional review hearing under this chapter for such cases. In such a dispositional review hearing, the court shall determine whether needed aftercare services are available following termination of the placement and whether termination of the placement is in the best interests of the child and the community.

2. For each of the department's service areas, representatives appointed by the department and juvenile court services shall establish a plan for containing the expenditures for children placed in group foster care ordered by the court within the budget target allocated to that service area pursuant to subsection 1. The plan shall be established in a manner so as to ensure the budget target amount will last the entire fiscal year. The plan shall include monthly targets and strategies for developing alternatives to group foster care placements in order to contain expenditures for child welfare services within the amount appropriated by the general assembly for that purpose. Funds for a child placed in group foster care shall be considered encumbered for the duration of the child's projected or actual length of stay, whichever is applicable. Each service area plan shall be established within sixty days of the date by which the group foster care budget target for the service area is determined. To the extent possible, the department and juvenile court services shall coordinate the planning required under this subsection with planning for services paid under section 232.141, subsection 4. The department's service area manager shall communicate

regularly, as specified in the service area plan, with the chief juvenile court officers within that service area concerning the current status of the service area plan's implementation.

3. State payment for group foster care placements shall be limited to those placements which are in accordance with the service area plans developed pursuant to subsection 2.

92 Acts, ch 1229, §10; 96 Acts, ch 1213, §35; 98 Acts, ch 1047, §22; 99 Acts, ch 111, §9; 2004 Acts, ch 1116, §13; 2007 Acts, ch 218, §115

Statewide expenditure target for group foster care maintenance and services for 2011-2012 and 2012-2013 fiscal years; 2011 Acts, ch 129, §15, 33, 128, 144, 156

Section not amended; footnote revised

## DIVISION X

### INTERSTATE JUVENILE COMPACTS

#### **232.172 Confinement of delinquent juvenile.**

1. For a juvenile under the jurisdiction of this state who is subject to the interstate compact for juveniles under section 232.173, the confinement of the juvenile in an institution located within another compacting state shall be as provided under the compact.

2. This subsection applies to the confinement of a delinquent juvenile under the jurisdiction of this state in an institution located within a noncompacting state, as defined in section 232.173, that entered into the interstate compact on juveniles under section 232.171. In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of the delinquent juvenile, such authorities may, pursuant to the out-of-state confinement amendment to the interstate compact on juveniles in section 232.171, confine or order the confinement of the delinquent juvenile in a compact institution within another party state.

[C66, 71, 73, 75, 77, §231.15; C79, 81, §232.140]

CS85, §232.172

2010 Acts, ch 1192, §75; 2011 Acts, ch 34, §58

Subsection 2 amended

## DIVISION XII

### JUVENILE JUSTICE REFORM

#### **232.188 Decategorization of child welfare and juvenile justice funding initiative.**

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

a. "*Decategorization governance board*" or "*governance board*" means the group that enters into and implements a decategorization project agreement.

b. "*Decategorization project*" means the county or counties that have entered into a decategorization agreement to implement the decategorization initiative in the county or multicounty area covered by the agreement.

c. "*Decategorization services funding pool*" or "*funding pool*" means the funding designated for a decategorization project from all sources.

2. *Purpose.* The decategorization of the child welfare and juvenile justice funding initiative is intended to establish a system of delivering human services based upon client needs to replace a system based upon a multitude of categorical programs and funding sources, each with different service definitions and eligibility requirements. The purposes of the decategorization initiative include but are not limited to redirecting child welfare and juvenile justice funding to services which are more preventive, family-centered, and community-based in order to reduce use of restrictive approaches which rely upon institutional, out-of-home, and out-of-community services.

3. *Implementation.*

a. Implementation of the initiative shall be through creation of decategorization projects. A project shall consist of either a single county or a group of counties interested in jointly

implementing the initiative. Representatives of the department, juvenile court services, and county government shall develop a project agreement to implement the initiative within a project.

b. The initiative shall include community planning activities in the area covered by a project. As part of the community planning activities, the department shall partner with other community stakeholders to develop service alternatives that provide less restrictive levels of care for children and families receiving services from the child welfare and juvenile justice systems within the project area.

c. The decategorization initiative shall not be implemented in a manner that limits the legal rights of children and families to receive services.

#### 4. *Governance board.*

a. In partnership with an interested county or group of counties which has demonstrated the commitment and involvement of the affected county department, or departments, of human services, the juvenile justice system within the project area, and board, or boards, of supervisors in order to form a decategorization project, the department shall develop a process for combining specific state and state-federal funding categories into a decategorization services funding pool for that project. A decategorization project shall be implemented by a decategorization governance board. The decategorization governance board shall develop specific, quantifiable short-term and long-term plans for enhancing the family-centered and community-based services and reducing reliance upon out-of-community care in the project area.

b. The department shall work with the decategorization governance boards to best coordinate planning activities and most effectively target funding resources. A departmental service area manager shall work with the decategorization governance boards in that service area to support board planning and service development activities and to promote the most effective alignment of resources.

c. A decategorization governance board shall coordinate the project's planning and budgeting activities with the departmental service area manager for the county or counties comprising the project area and the early childhood Iowa area board or boards for the early childhood Iowa area or areas within which the decategorization project is located.

#### 5. *Funding pool.*

a. The governance board for a decategorization project has authority over the project's decategorization services funding pool and shall manage the pool to provide more flexible, individualized, family-centered, preventive, community-based, comprehensive, and coordinated service systems for children and families served in that project area. A funding pool shall also be used for child welfare and juvenile justice systems enhancements.

b. Notwithstanding section 8.33, moneys designated for a project's decategorization services funding pool that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure as directed by the project's governance board for child welfare and juvenile justice systems enhancements and other purposes of the project for the next two succeeding fiscal years. Such moneys shall be known as "*carryover funding*". Moneys may be made available to a funding pool from one or more of the following sources:

(1) Funds designated for the initiative in a state appropriation.

(2) Child welfare and juvenile justice services funds designated for the initiative by a departmental service area manager.

(3) Juvenile justice program funds designated for the initiative by a chief juvenile court officer.

(4) Carryover funding.

(5) Any other source designating moneys for the funding pool.

c. The services and activities funded from a project's funding pool may vary depending upon the strategies selected by the project's governance board and shall be detailed in an annual child welfare and juvenile justice decategorization services plan developed by the governance board. A decategorization governance board shall involve community representatives and county organizations in the development of the plan for that project's funding pool. In addition, the governance board shall coordinate efforts through

communication with the appropriate departmental service area manager regarding budget planning and decategorization service decisions.

d. A decategorization governance board is responsible for ensuring that decategorization services expenditures from that project's funding pool do not exceed the amount of funding available. If necessary, the governance board shall reduce expenditures or discontinue specific services as necessary to manage within the funding pool resources available for a fiscal year.

e. The annual child welfare and juvenile justice decategorization services plan developed for use of the funding pool by a decategorization governance board shall be submitted to the department administrator of child welfare services and the Iowa empowerment board. In addition, the decategorization governance board shall submit an annual progress report to the department administrator and the Iowa empowerment board which summarizes the progress made toward attaining the objectives contained in the plan. The progress report shall serve as an opportunity for information sharing and feedback.

6. *Departmental role.* A departmental service area's share of the child welfare appropriation that is not allocated by law for the decategorization initiative shall be managed by and is under the authority of the service area manager. A service area manager is responsible for meeting the child welfare service needs in the counties comprising the service area with the available funding resources.

92 Acts, ch 1229, §18; 98 Acts, ch 1206, §11, 20; 99 Acts, ch 111, §10; 99 Acts, ch 190, §16; 99 Acts, ch 192, §33; 2004 Acts, ch 1116, §14; 2005 Acts, ch 95, §1; 2010 Acts, ch 1031, §297; 2011 Acts, ch 129, §90, 156

Carryover funding from fiscal year beginning July 1, 2009, transferred to community housing and services for persons with disabilities revolving loan program fund; 2011 Acts, ch 129, §55, 74

Subsection 5, paragraph b, unnumbered paragraph 1 amended

## CHAPTER 232C

### EMANCIPATION OF MINORS

#### **232C.4 Effect of emancipation order.**

1. An emancipation order shall have the same effect as a minor reaching the age of majority with respect to but not limited to the following:

- a. The ability to sue or be sued in the minor's own name.
- b. The right to enter into a binding contract.
- c. The right to establish a legal residence.
- d. The right to incur debts.
- e. The right to consent to medical, dental, or psychiatric care.

2. An emancipation order shall have the same effect as the minor reaching the age of majority and the parents are exempt from the following:

- a. Future child support obligations for the emancipated minor.
- b. An obligation to provide medical support for the emancipated minor, unless deemed necessary by the court.
- c. A right to the income or property of the emancipated minor.
- d. A responsibility for the debts of the emancipated minor.

3. An emancipated minor shall remain subject to voting restrictions under chapter 48A, gambling restrictions under chapter 99B, 99D, 99F, 99G, or 725, alcohol restrictions under chapter 123, compulsory attendance requirements under chapter 299, and cigarette tobacco restrictions under chapter 453A.

4. An emancipated minor shall not be considered an adult for prosecution except as provided in section 232.8.

5. Notwithstanding sections 232.147 through 232.151, the emancipation order shall be released by the juvenile court subject to rules prescribed by the supreme court.

6. A parent who is absolved of child support obligations pursuant to an emancipation

order shall notify the child support recovery unit of the department of human services of the emancipation.

2009 Acts, ch 153, §6; 2011 Acts, ch 34, §59

Section amended

## CHAPTER 234

### CHILD AND FAMILY SERVICES

#### **234.7 Department duties.**

1. The department of human services shall comply with the provision associated with child foster care licensees under chapter 237 that requires that a child's foster parent be included in, and be provided timely notice of, planning and review activities associated with the child, including but not limited to permanency planning and placement review meetings, which shall include discussion of the child's rehabilitative treatment needs.

2. *a.* The department of human services shall submit a waiver request to the United States department of health and human services as necessary to provide coverage under the medical assistance program for children who are described by both of the following:

(1) The child needs behavioral health care services and qualifies for the care level provided by a psychiatric medical institution for children licensed under chapter 135H.

(2) The child is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unable to provide such treatment.

*b.* The waiver request shall provide for appropriately addressing the needs of children described in paragraph "a" by implementing any of the following options: using a wraparound services approach, renegotiating the medical assistance program contract provisions for behavioral health services, or applying another approach for appropriately meeting the children's needs.

*c.* If federal approval of the waiver request is not received, the department shall submit options to the governor and general assembly to meet the needs of such children through a state-funded program.

95 Acts, ch 182, §14; 2005 Acts, ch 117, §3; 2008 Acts, ch 1032, §38; 2011 Acts, ch 34, §60

Subsection 2, paragraph a, unnumbered paragraph 1 amended

#### **234.35 When state to pay foster care costs.**

1. The department of human services is responsible for paying the cost of foster care for a child, according to rates established pursuant to section 234.38, under any of the following circumstances:

*a.* When a court has committed the child to the director of human services or the director's designee.

*b.* When a court has transferred legal custody of the child to the department of human services.

*c.* When the department has agreed to provide foster care services for the child for a period of not more than ninety days on the basis of a signed placement agreement between the department and the child's parent or guardian.

*d.* When the child has been placed in emergency care for a period of not more than thirty days upon approval of the director or the director's designee.

*e.* When a court has entered an order transferring the legal custody of the child to a foster care placement pursuant to section 232.52, subsection 2, paragraph "d", or section 232.102, subsection 1. However, payment for a group foster care placement shall be limited to those placements which conform to a service area group foster care plan established pursuant to section 232.143.

*f.* When the department has agreed to provide foster care services for a child who is

eighteen years of age or older on the basis of a signed placement agreement between the department and the child or the person acting on behalf of the child.

g. When the department has agreed to provide foster care services for the child on the basis of a signed placement agreement initiated before July 1, 1992, between the department and the child's parent or guardian.

h. When the child is placed in shelter care pursuant to section 232.20, subsection 1, or section 232.21.

i. When the court has entered an order in a voluntary foster care placement proceeding pursuant to section 232.182, subsection 5, placing the child into foster care.

2. Except as provided under section 234.38 for direct payment of foster parents, payment for foster care costs shall be limited to foster care providers with whom the department has a contract in force.

3. Payment for foster care services provided to a child who is eighteen years of age or older shall be limited to the following:

a. For a child who is eighteen years of age, family foster care or independent living arrangements.

b. For a child who is nineteen years of age, independent living arrangements.

c. For a child who is at imminent risk of becoming homeless or failing to graduate from high school or to obtain a general education development diploma, if the services are in the child's best interests, funding is available for the services, and an appropriate alternative service is unavailable.

4. The department shall report annually to the governor and general assembly by January 1 on the numbers of children for whom the state paid for independent living services during the immediately preceding fiscal year. The report shall detail the number of children, by county, who received such services, were discharged from such services, the voluntary or involuntary status of such services, and the reasons for discharge. The department shall assess the report data as part of any evaluation of independent living services or consideration for improving the services.

[C75, 77, 79, 81, §234.35]

90 Acts, ch 1270, §42, 43; 92 Acts, ch 1229, §25; 93 Acts, ch 172, §37, 56; 2003 Acts, ch 117, §9; 2003 Acts, ch 175, §37; 2004 Acts, ch 1116, §15; 2011 Acts, ch 34, §61

See Iowa Acts for special provisions relating to foster care payments in a given fiscal year

Limitations on funding for state shelter care; inclusion of child welfare emergency services; 2008 Acts, ch 1187, §16, 79, 97; 2009 Acts, ch 182, §16; 2010 Acts, ch 1181, §7, 13; 2010 Acts, ch 1192, §19; 2011 Acts, ch 129, §15, 128, 156

Subsection 3, paragraph c amended

## CHAPTER 235A

### CHILD ABUSE

#### **235A.15 Authorized access — procedures involving other states.**

1. Notwithstanding chapter 22, the confidentiality of all child abuse information shall be maintained, except as specifically provided by this section.

2. Access to report data and disposition data subject to placement in the central registry pursuant to section 232.71D is authorized only to the following persons or entities:

a. Subjects of a report as follows:

(1) To a child named in a report as a victim of abuse or to the child's attorney or guardian ad litem.

(2) To a parent or to the attorney for the parent of a child named in a report as a victim of abuse.

(3) To a guardian or legal custodian, or that person's attorney, of a child named in a report as a victim of abuse.

(4) To a person or the attorney for the person named in a report as having abused a child.

b. Persons involved in an assessment of child abuse as follows:

(1) To a health practitioner or mental health professional who is examining, attending, or treating a child whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to a child believed to have been the victim of abuse is requested by the department.

(2) To an employee or agent of the department of human services responsible for the assessment of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an assessment of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) To a multidisciplinary team, or to parties to an interagency agreement entered into pursuant to section 280.25, if the department of human services approves the composition of the multidisciplinary team or the relevant provisions of the interagency agreement and determines that access to the team or to the parties to the interagency agreement is necessary to assist the department in the diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to each mandatory reporter who reported the child abuse.

(6) To the county attorney.

(7) To the juvenile court.

(8) To a licensing authority for a facility providing care to a child named in a report, if the licensing authority is notified of a relationship between facility policy and the alleged child abuse under section 232.71B.

(9) To the child protection assistance team established in accordance with section 915.35 for the county in which the report was made.

c. Individuals, agencies, or facilities providing care to a child, but only with respect to disposition data and, if authorized in law to the extent necessary for purposes of an employment evaluation, report data, for cases of founded child abuse placed in the central registry in accordance with section 232.71D as follows:

(1) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

(2) To an administrator of a child foster care facility licensed under chapter 237 if the data concerns a person employed or being considered for employment by the facility.

(3) To an administrator of a child care facility registered or licensed under chapter 237A if the data concerns a person employed or being considered for employment by or living in the facility.

(4) To the superintendent of the Iowa braille and sight saving school if the data concerns a person employed or being considered for employment or living in the school.

(5) To the superintendent of the school for the deaf if the data concerns a person employed or being considered for employment or living in the school.

(6) To an administrator of a community mental health center accredited under chapter 230A if the data concerns a person employed or being considered for employment by the center.

(7) To an administrator of a facility or program operated by the state, a city, or a county which provides services or care directly to children, if the data concerns a person employed by or being considered for employment by the facility or program.

(8) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the data concerns a person employed by or being considered by the agency for employment.

(9) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the data concerns a person employed by or being considered by the agency for employment.

(10) To an administrator of a child care resource and referral agency which has entered into an agreement authorized by the department to provide child care resource and referral services. Access is authorized if the data concerns a person providing child care services or a person employed by a provider of such services and the agency includes the provider as a referral or the provider has requested to be included as a referral.

(11) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

(12) To an area education agency or other person responsible for providing early intervention services to children that is funded under part C of the federal Individuals with Disabilities Education Act.

(13) To a federal, state, or local governmental unit, or agent of the unit, that has a need for the information in order to carry out its responsibilities under law to protect children from abuse and neglect.

(14) To a nursing program that is approved by the state board of nursing under section 152.5, if the data relates to a record check performed pursuant to section 152.5.

d. Report data and disposition data, and assessment data to the extent necessary for resolution of the proceeding, relating to judicial and administrative proceedings as follows:

(1) To a juvenile court involved in an adjudication or disposition of a child named in a report.

(2) To a district court upon a finding that data is necessary for the resolution of an issue arising in any phase of a case involving child abuse.

(3) To a court or the department hearing an appeal for correction of report data and disposition data as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of report data and disposition data as provided in section 235A.19.

(5) To a probation or parole officer, juvenile court officer, court appointed special advocate as defined in section 232.2, or adult correctional officer having custody or supervision of, or conducting an investigation for a court or the board of parole regarding, a person named in a report as a victim of child abuse or as having abused a child.

(6) To the department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

(7) Each licensing board specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

e. Others as follows, but only with respect to report data and disposition data for cases of founded child abuse subject to placement in the registry pursuant to section 232.71D:

(1) To a person conducting bona fide research on child abuse, but without data identifying individuals named in a child abuse report, unless having that data open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the child, the child's guardian or guardian ad litem and the person named in a report as having abused a child give permission to release the data.

(2) To registry or department personnel when necessary to the performance of their official duties or to a person or agency under contract with the department to carry out official duties and functions of the department.

(3) To the department of justice for the sole purpose of the filing of a claim for restitution or compensation pursuant to sections 915.21 and 915.84. Data provided pursuant to this subparagraph is subject to the provisions of section 915.90.

(4) To a legally constituted child protection agency of another state which is investigating or assessing or treating a child named in a report as having been abused or which is investigating or assessing or treating a person named as having abused a child.

(5) To a public or licensed child-placing agency of another state responsible for an adoptive or foster care preplacement or placement evaluation.

(6) To the attorney for the department of human services who is responsible for representing the department.

(7) To the child advocacy and local citizen foster care review boards created pursuant to sections 237.16 and 237.19.

(8) To an employee or agent of the department of human services regarding a person who is providing child care if the person is not registered or licensed to operate a child care facility.

(9) To the board of educational examiners created under chapter 272 for purposes of

determining whether a license, certificate, or authorization should be issued, denied, or revoked.

(10) To a legally constituted child protection agency in another state if the agency is conducting a records check of a person who is providing care or has applied to provide care to a child in the other state.

(11) To the legally authorized protection and advocacy agency recognized in section 135C.2, if a person identified in the information as a victim or a perpetrator of abuse resides in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(12) To the department of human services for a record check relating to employment or residence pursuant to section 218.13.

(13) To the Iowa board for the treatment of sexual abusers for purposes of certifying sex offender treatment providers.

(14) To an employee or agent of the department responsible for registering or licensing or approving the registration or licensing of an agency or facility, or to an individual providing care to a child and regulated by the department.

(15) To an employee of the department responsible for an adoptive placement, a certified adoption investigator, or licensed child-placing agency responsible for an adoptive placement.

(16) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(17) To the department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

(18) To a person or agency responsible for the care or supervision of a child named in a report as an alleged victim of abuse or a person named in a report as having allegedly abused a child, if the juvenile court or department deems access to report data and disposition data by the person or agency to be necessary.

(19) To the Iowa veterans home for purposes of record checks of potential volunteers and volunteers in the Iowa veterans home.

(20) To the administrator of a certified nurse aide program, if the data relates to a record check of a student of the program performed pursuant to section 135C.33.

(21) To the administrator of a juvenile detention or shelter care home, if the data relates to a record check of an existing or prospective employee, resident, or volunteer for or in the home.

*f.* Only with respect to disposition data for cases of founded child abuse subject to placement in the central registry pursuant to section 232.71D, to a person who submits written authorization from an individual allowing the person access to data pursuant to this subsection on behalf of the individual in order to verify whether the individual is named in a founded child abuse report as having abused a child.

3. Access to report data and disposition data for a case of child abuse determined to meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following persons:

- a. Subjects of a report identified in subsection 2, paragraph "a".
- b. Persons involved in an assessment of child abuse identified in subsection 2, paragraph "b", subparagraphs (2), (3), (4), (6), and (7).
- c. Others identified in subsection 2, paragraph "e", subparagraphs (2), (3), (6), and (18).
- d. The department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

4. Access to report data for a case of child abuse determined to not meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following:

- a. Subjects of a report identified in subsection 2, paragraph "a".
- b. Persons involved in an assessment of child abuse identified in subsection 2, paragraph "b", subparagraphs (2), (6), and (7).
- c. Others identified in subsection 2, paragraph "e", subparagraphs (2) and (18).

d. The department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

5. Access to disposition data subject to placement in the central registry pursuant to section 232.71D is authorized to the department of administrative services or to the personnel office of a public employer, as defined in section 20.3, as necessary for presentation in grievance or arbitration procedures provided for in sections 8A.415 and 20.18. Disposition data introduced into a grievance or arbitration proceeding shall not be considered a part of the public record of a case.

6. a. If a child who is a legal resident of another state is present in this state and a report of child abuse is made concerning the child, the department shall act to ensure the safety of the child. The department shall contact the child's state of residency to coordinate the assessment of the report. If the child's state of residency refuses to conduct an assessment, the department shall commence an appropriate assessment.

b. If a report of child abuse is made concerning an alleged perpetrator who resides in this state and a child who resides in another state, the department shall assist the child's state of residency in conducting an assessment of the report. The assistance shall include but is not limited to an offer to interview the alleged perpetrator and any other relevant source. If the child's state of residency refuses to conduct an assessment of the report, the department shall commence an appropriate assessment. The department shall seek to develop protocols with states contiguous to this state for coordination in the assessment of a report of child abuse when a person involved with the report is a resident of another state.

7. If the director of human services receives a written request for information regarding a specific case of child abuse involving a fatality or near fatality to a child from the majority or minority leader of the senate or the speaker or the minority leader of the house of representatives, the director or the director's designee shall arrange for a confidential meeting with the requestor or the requestor's designee. In the confidential meeting the director or the director's designee shall share all pertinent information concerning the case, including but not limited to child abuse information. Any written document distributed by the director or the director's designee at the confidential meeting shall not be removed from the meeting and a participant in the meeting shall be subject to the restriction on dissemination of confidential information applicable to a person under section 235A.17, subsection 3, for confidential information disclosed to the participant at the meeting. A participant in the meeting may issue a report to the governor or make general public statements concerning the department's handling of the case of child abuse.

8. Upon the request of the governor, the department shall disclose child abuse information to the governor or the governor's designee relating to a specific case of child abuse reported to the department.

9. If, apart from a request made pursuant to subsection 7 or 8, the department receives from a member of the public a request for information relating to a case of founded child abuse involving a fatality or near fatality to a child, the response to the request shall be made in accordance with this subsection and subsections 10 and 11. If the request is received before or during performance of an assessment of the case in accordance with section 232.71B, the director of human services or the director's designee shall initially disclose whether or not the assessment will be or is being performed. Otherwise, within five business days of receiving the request or completing the assessment, whichever is later, the director of human services or the director's designee shall consult with the county attorney responsible for prosecution of any alleged perpetrator of the fatality or near fatality and shall disclose information, including but not limited to child abuse information, relating to the case, except for the following:

a. The substance or content of any mental health or psychological information that is confidential under chapter 228.

b. Information that constitutes the substance or contains the content of an attorney work product or is a privileged communication under section 622.10.

c. Information that would reveal the identity of any individual who provided information relating to a report of child abuse or an assessment of such a report involving the child.

d. Information that the director or the director's designee reasonably believes is likely to

cause mental or physical harm to a sibling of the child or to another child residing in the child's household.

e. Information that the director or the director's designee reasonably believes is likely to jeopardize the prosecution of any alleged perpetrator of the fatality or near fatality.

f. Information that the director or the director's designee reasonably believes is likely to jeopardize the rights of any alleged perpetrator of the fatality or near fatality to a fair trial.

g. Information that the director or the director's designee reasonably believes is likely to undermine an ongoing or future criminal investigation.

h. Information, the release of which is a violation of federal law or regulation.

10. The information released by the director of human services or the director's designee pursuant to a request made under subsection 9 relating to a case of founded child abuse involving a fatality or near fatality to a child shall include all of the following, unless such information is excepted from disclosure under subsection 9:

a. Any relevant child abuse information concerning the child or the child's family and the department's response and findings.

b. A summary of information, that would otherwise be confidential under section 217.30, as to whether or not the child or a member of the child's family was utilizing social services provided by the department at the time of the child fatality or near fatality or within the five-year period preceding the fatality or near fatality.

c. Any recommendations made by the department to the county attorney or the juvenile court.

d. If applicable, a summary of an evaluation of the department's responses in the case.

11. a. If a person who made a request for information under subsection 9 does not believe the department has substantially complied with the request, the person may apply to the juvenile court under section 235A.24 for an order for disclosure of additional information.

b. If release of social services information in addition to that released under subsection 10, paragraph "b", is believed to be in the public's interest and right to know, the director of human services or the director's designee may apply to the court under section 235A.24 requesting a review of the information proposed for release and an order authorizing release of the information. A release of information that would otherwise be confidential under section 217.30 concerning social services provided to the child or the child's family shall not include information concerning financial or medical assistance provided to the child or the child's family.

12. If an individual who is the subject of a child abuse report listed in subsection 2, paragraph "a", or another party involved in a child abuse assessment under section 232.71B releases in a public forum or to the media information concerning a case of child abuse including but not limited to child abuse information which would otherwise be confidential, the director of human services, or the director's designee, may respond with relevant information concerning the case of child abuse that was the subject of the release. Prior to releasing the response, the director or the director's designee shall consult with the child's parent or guardian, or the child's guardian ad litem, and apply to the court under section 235A.24 requesting a review of the information proposed for release and an order authorizing release of the information.

[C75, 77, 79, 81, §235A.15; 82 Acts, ch 1066, §2]

83 Acts, ch 96, §157, 159; 85 Acts, ch 173, §16; 85 Acts, ch 174, §1; 86 Acts, ch 1177, §2; 87 Acts, ch 153, §10, 11; 88 Acts, ch 1158, §53; 89 Acts, ch 65, §1; 89 Acts, ch 283, §25; 90 Acts, ch 1221, §3, 4; 90 Acts, ch 1248, §1; 90 Acts, ch 1249, §1; 91 Acts, ch 97, §30; 91 Acts, ch 138, §5, 6; 92 Acts, ch 1141, §4; 92 Acts, ch 1143, §3, 4; 93 Acts, ch 76, §3, 4; 94 Acts, ch 1023, §43; 94 Acts, ch 1156, §1; 95 Acts, ch 93, §1 - 3; 95 Acts, ch 182, §15, 16; 96 Acts, ch 1175, §4; 96 Acts, ch 1183, §28; 97 Acts, ch 176, §9, 32 - 37, 43; 98 Acts, ch 1090, §64, 84; 98 Acts, ch 1100, §97; 98 Acts, ch 1115, §3; 99 Acts, ch 61, §10 - 12, 14; 99 Acts, ch 111, §8; 99 Acts, ch 141, §31; 99 Acts, ch 192, §33; 2000 Acts, ch 1123, §3; 2000 Acts, ch 1137, §6 - 9, 14; 2000 Acts, ch 1153, §1; 2001 Acts, ch 8, §2; 2002 Acts, ch 1034, §2; 2002 Acts, ch 1162, §19; 2003 Acts, ch 107, §2; 2003 Acts, ch 145, §217, 286; 2004 Acts, ch 1116, §27; 2004 Acts, ch 1153, §4 - 7;

2005 Acts, ch 19, §37; 2005 Acts, ch 121, §4 – 8; 2006 Acts, ch 1008, §2; 2006 Acts, ch 1152, §1; 2007 Acts, ch 10, §166; 2007 Acts, ch 22, §55; 2009 Acts, ch 93, §2; 2011 Acts, ch 98, §8

See §235A.24

Subsection 2, paragraph e, NEW subparagraphs (20) and (21)

### **235A.18 Sealing and expungement of founded child abuse information.**

1. Report data and disposition data relating to a particular case of alleged abuse which has been determined to be founded child abuse and placed in the central registry in accordance with section 232.71D shall be maintained in the registry as follows:

a. Report and disposition data relating to a particular case of alleged child abuse shall be sealed ten years after the initial placement of the data in the registry unless good cause be shown why the data should remain open to authorized access. If a subsequent report of an alleged case of child abuse involving the child named in the initial data placed in the registry as the victim of abuse or a person named in the data as having abused a child is received by the department within this ten-year period, the data shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the data should remain open to authorized access. However, such report and disposition data shall be made available to the department of justice if the department requests access to the alleged child abuse records for purposes of review by the prosecutor's review committee or commitment of sexually violent predators under chapter 229A.

b. Data sealed in accordance with this section shall be expunged eight years after the date the data was sealed. However, if the report data and the disposition data involve child abuse as defined in section 232.68, subsection 2, paragraph "a", subparagraph (3) or (5), the data shall not be expunged for a period of thirty years. Sealed data shall be made available to the department of justice upon request if the prosecutor's review committee is reviewing records or if a prosecuting attorney has filed a petition to commit a sexually violent predator under chapter 229A.

2. The juvenile or district court and county attorney shall expunge child abuse information upon notice from the registry. The supreme court shall prescribe rules establishing the period of time child abuse information is retained by the juvenile and district courts. A county attorney shall not retain child abuse information in excess of the time period the information would be retained under the rules prescribed by the supreme court. Child abuse information relating to a particular case of child abuse placed in the central registry that a juvenile or district court determines is unfounded in a written finding based upon a preponderance of evidence shall be expunged from the central registry.

3. The department of human services shall adopt rules establishing the period of time child abuse information which is not maintained in the central registry is retained by the department.

[C75, 77, 79, 81, §235A.18]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §24; 85 Acts, ch 173, §17; 89 Acts, ch 230, §20; 90 Acts, ch 1221, §5, 6; 93 Acts, ch 76, §5, 6; 97 Acts, ch 176, §11; 99 Acts, ch 61, §13, 14; 2000 Acts, ch 1137, §11, 14; 2000 Acts, ch 1154, §18; 2011 Acts, ch 28, §5

Subsection 3 stricken and former subsection 4 renumbered as 3

### **235A.19 Examination, requests for correction or expungement and appeal.**

1. A subject of a child abuse report, as identified in section 235A.15, subsection 2, paragraph "a", shall have the right to examine report data and disposition data which refers to the subject. The department may prescribe reasonable hours and places of examination.

2. a. A subject of a child abuse report may file with the department within ninety days of the date of the notice of the results of an assessment performed in accordance with section 232.71B, a written statement to the effect that report data and disposition data referring to the subject is in whole or in part erroneous, and may request a correction of that data or of the findings of the assessment report. The department shall provide the subject with an opportunity for a contested case hearing pursuant to chapter 17A to correct the data or the findings, unless the department corrects the data or findings as requested. The department may defer the hearing until the conclusion of the adjudicatory phase of a pending juvenile or district court case relating to the data or findings.

b. The department shall not disclose any report data or disposition data until the conclusion of the proceeding to correct the data or findings, except as follows:

- (1) As necessary for the proceeding itself.
- (2) To the parties and attorneys involved in a judicial proceeding.
- (3) For the regulation of child care or child placement.
- (4) Pursuant to court order.
- (5) To the subject of an assessment or a report.
- (6) For the care or treatment of a child named in a report as a victim of abuse.
- (7) To persons involved in an assessment of child abuse.
- (8) For statutorily authorized record checks for employment of an individual by a provider of adult home care, adult health facility care, or other adult placement facility care.
- (9) For others identified in section 235A.15, subsection 2, paragraph “d”, subparagraph (7), and paragraph “e”, subparagraphs (9) and (16).

3. The subject of a child abuse report may appeal the decision resulting from a hearing held pursuant to subsection 2 to the district court of Polk county or to the district court of the district in which the subject of the child abuse report resides. Immediately upon appeal the court shall order the department to file with the court a certified copy of the report data or disposition data. Appeal shall be taken in accordance with chapter 17A.

4. Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access to the record and evidence shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. A person other than the appellant shall not permit a copy of any of the testimony or pleadings or the substance of the testimony or pleadings to be made available to any person other than a party to the action or the party’s attorney. Violation of the provisions of this subsection shall be a public offense punishable under section 235A.21.

5. Whenever the department corrects or eliminates data as requested or as ordered by the court, the department shall advise all persons who have received the incorrect data of such fact. Upon application to the court and service of notice on the department, any subject of a child abuse report may request and obtain a list of all persons who have received report data or disposition data referring to the subject.

6. In the course of any proceeding provided for by this section, the identity of the person who reported the disputed data and the identity of any person who has been reported as having abused a child may be withheld upon a determination by the department that disclosure of their identities would be detrimental to their interests.

[C75, 77, 79, 81, §235A.19]

85 Acts, ch 173, §18; 89 Acts, ch 230, §21; 92 Acts, ch 1143, §5; 94 Acts, ch 1130, §10; 95 Acts, ch 49, §3; 97 Acts, ch 35, §21, 25; 97 Acts, ch 176, §12, 39, 40, 43; 98 Acts, ch 1100, §98; 2000 Acts, ch 1067, §2; 2005 Acts, ch 121, §9; 2011 Acts, ch 28, §6

Subsection 2, paragraph a amended

## CHAPTER 235B

### DEPENDENT ADULT ABUSE SERVICES — INFORMATION REGISTRY

See also chapter 235E  
Legislative services agency to monitor reporting, investigations,  
workload and performance of personnel, and report annually by February 1;  
department on aging and departments of  
human services and inspections and appeals to cooperate;  
87 Acts, ch 182, §11; 2003 Acts, ch 35, §46, 49;  
2009 Acts, ch 182, §137

#### **235B.1 Dependent adult abuse services.**

The department shall establish and operate a dependent adult abuse services program. The program shall emphasize the reporting and evaluation of cases of abuse of a dependent adult

who is unable to protect the adult's own interests or unable to perform activities necessary to meet essential human needs. The program shall include but is not limited to:

1. The establishment of local or regional multidisciplinary teams to assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to victims of dependent adult abuse. The membership of a team shall include individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, law, law enforcement, or other disciplines relative to dependent adults. Members of a team shall include but are not limited to persons representing the area agencies on aging, county attorneys, health care providers, and other persons involved in advocating or providing services to dependent adults.

2. Provisions for information sharing and case consultation among service providers, care providers, and victims of dependent adult abuse.

3. Procedures for referral of cases among service providers, including the referral of victims of dependent adult abuse residing in licensed health care facilities.

4. *a.* The establishment of a dependent adult protective advisory council. The advisory council shall do all of the following:

(1) Advise the director of human services, the director of elder affairs, the director of inspections and appeals, the director of public health, the director of the department of corrections, and the director of human rights regarding dependent adult abuse.

(2) Evaluate state law and rules and make recommendations to the general assembly and to executive branch departments regarding laws and rules concerning dependent adults.

(3) Receive and review recommendations and complaints from the public, health care facilities, and health care programs concerning the dependent adult abuse services program.

*b.* (1) The advisory council shall consist of twelve members. Eight members shall be appointed by and serve at the pleasure of the governor. Four of the members appointed shall be appointed on the basis of knowledge and skill related to expertise in the area of dependent adult abuse including professionals practicing in the disciplines of medicine, public health, mental health, long-term care, social work, law, and law enforcement. Two of the members appointed shall be members of the general public with an interest in the area of dependent adult abuse and two of the members appointed shall be members of the Iowa caregivers association. In addition, the membership of the council shall include the director or the director's designee of the department of human services, the department on aging, the Iowa department of public health, and the department of inspections and appeals.

(2) The members of the advisory council shall be appointed to terms of four years beginning May 1. Appointments shall comply with sections 69.16 and 69.16A. Vacancies shall be filled in the same manner as the original appointment.

(3) Members shall receive actual expenses incurred while serving in their official capacity.

(4) The advisory council shall select a chairperson, annually, from its membership.

83 Acts, ch 96, §159, 160; 83 Acts, ch 153, §4; 84 Acts, ch 1178, §3; 85 Acts, ch 180, §1; 87 Acts, ch 182, §2 – 8; 88 Acts, ch 1238, §2; 89 Acts, ch 24, §2, 3; 90 Acts, ch 1204, §52; 90 Acts, ch 1271, §1509; 91 Acts, ch 231, §1; 96 Acts, ch 1130, §1; 2004 Acts, ch 1116, §16; 2008 Acts, ch 1093, §1, 2; 2009 Acts, ch 23, §50; 2010 Acts, ch 1069, §28; 2011 Acts, ch 34, §62

Subsection 4, paragraph b, subparagraph (1) amended

### **235B.6 Authorized access.**

1. Notwithstanding chapter 22, the confidentiality of all dependent adult abuse information shall be maintained, except as specifically provided by subsections 2 and 3.

2. Access to dependent adult abuse information other than unfounded dependent adult abuse information is authorized only to the following persons:

*a.* A subject of a report including all of the following:

(1) To an adult named in a report as a victim of abuse or to the adult's attorney or guardian ad litem.

(2) To a guardian or legal custodian, or that person's attorney, of an adult named in a report as a victim of abuse.

(3) To the person or the attorney for the person named in a report as having abused an adult.

b. A person involved in an investigation of dependent adult abuse including all of the following:

(1) A health practitioner or mental health professional who is examining, attending, or treating an adult whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to an adult believed to have been the victim of abuse is requested by the department.

(2) An employee or agent of the department responsible for the investigation of a dependent adult abuse report or for the purpose of performing record checks as required under section 135C.33.

(3) A representative of the department involved in the certification or accreditation of an agency or program providing care or services to a dependent adult believed to have been a victim of abuse.

(4) A law enforcement officer responsible for assisting in an investigation of a dependent adult abuse allegation.

(5) A multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the investigation, diagnosis, assessment, and disposition of a case of dependent adult abuse.

(6) The mandatory reporter who reported the dependent adult abuse in an individual case.

(7) Each board specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

c. A person providing care to an adult including all of the following:

(1) A licensing authority for a facility, including a facility or program defined in section 235E.1, providing care to an adult named in a report.

(2) A person authorized as responsible for the care or supervision of an adult named in a report as a victim of abuse or a person named in a report as having abused an adult if the court or registry deems access to dependent adult abuse information by such person to be necessary.

(3) An employee or agent of the department responsible for registering or licensing or approving the registration or licensing of a person, or to an individual providing care to an adult and regulated by the department.

(4) The legally authorized protection and advocacy agency recognized pursuant to section 135C.2 if a person identified in the information as a victim or a perpetrator of abuse resided in or receives services from a facility, including a facility or program defined in section 235E.1, or agency because the person is diagnosed as having a developmental disability or a mental illness.

(5) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the information concerns a person employed by or being considered by the agency for employment.

(6) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the information concerns a person employed by or being considered by the agency for employment.

(7) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

(8) An employee of an agency requested by the department to provide case management or other services to the dependent adult.

d. Relating to judicial and administrative proceedings, persons including all of the following:

(1) A court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving dependent adult abuse.

(2) A court or agency hearing an appeal for correction of dependent adult abuse information as provided in section 235B.10.

(3) An expert witness or a witness who testifies at any stage of an appeal necessary for correction of dependent adult abuse information as provided in section 235B.10.

(4) A court or administrative agency making a determination regarding an unemployment compensation claim pursuant to section 96.6.

e. Other persons including all of the following:

(1) A person conducting bona fide research on dependent adult abuse, but without information identifying individuals named in a dependent adult abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the adult, the adult's guardian or guardian ad litem, and the person named in a report as having abused an adult give permission to release the information.

(2) Registry or department personnel when necessary to the performance of their official duties or a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) The department of justice for the sole purpose of the filing of a claim for reparation pursuant to sections 915.21 and 915.84.

(4) A legally constituted adult protection agency of another state which is investigating or treating an adult named in a report as having been abused.

(5) The attorney for the department who is responsible for representing the department.

(6) A health care facility administrator or the administrator's designee, following the appeals process, for the purpose of hiring staff or continued employment of staff.

(7) To the administrator of an agency providing care to a dependent adult in another state, for the purpose of performing an employment background check.

(8) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(9) The department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

(10) The state or a local long-term care resident's advocate if the victim resides in a long-term care facility or the alleged perpetrator is an employee of a long-term care facility.

(11) The state office or a local office of substitute decision maker as defined in section 231E.3, if the information relates to the provision of legal services for a client served by the state or local office of substitute decision maker.

(12) A nursing program that is approved by the state board of nursing under section 152.5, if the information relates to a record check performed pursuant to section 152.5.

(13) To the board of educational examiners created under chapter 272 for purposes of determining whether a license, certificate, or authorization should be issued, denied, or revoked.

(14) The department on aging for the purposes of conducting background checks of applicants for employment with the department on aging.

(15) To the Iowa veterans home for purposes of record checks of potential volunteers and volunteers in the Iowa veterans home.

(16) To the administrator of a certified nurse aide program, if the data relates to a record check of a student of the program performed pursuant to section 135C.33.

(17) To the administrator of a juvenile detention or shelter care home, if the data relates to a record check of an existing or prospective employee, resident, or volunteer for or in the home.

f. To a person who submits written authorization from an individual allowing the person access to information on the determination only on whether or not the individual who authorized the access is named in a founded dependent adult abuse report as having abused a dependent adult.

3. Access to unfounded dependent adult abuse information is authorized only to those

persons identified in subsection 2, paragraph “a”, paragraph “b”, subparagraphs (2), (5), and (6), and paragraph “e”, subparagraphs (2) and (10).

91 Acts, ch 231, §6; 92 Acts, ch 1163, §50; 95 Acts, ch 50, §1; 95 Acts, ch 93, §4; 96 Acts, ch 1183, §29; 97 Acts, ch 42, §2; 98 Acts, ch 1090, §65, 84; 99 Acts, ch 141, §32; 2000 Acts, ch 1067, §3; 2000 Acts, ch 1153, §2; 2001 Acts, ch 8, §3; 2001 Acts, ch 20, §4, 5; 2002 Acts, ch 1034, §3; 2003 Acts, ch 98, §3 – 5; 2005 Acts, ch 46, §1; 2005 Acts, ch 175, §143; 2006 Acts, ch 1008, §3; 2006 Acts, ch 1030, §28; 2006 Acts, ch 1152, §2; 2007 Acts, ch 10, §167; 2008 Acts, ch 1093, §8, 9; 2008 Acts, ch 1187, §116; 2009 Acts, ch 23, §51, 52; 2009 Acts, ch 93, §3; 2010 Acts, ch 1062, §9; 2011 Acts, ch 98, §9

Subsection 2, paragraph e, NEW subparagraphs (16) and (17)

### **235B.19 Emergency order for protective services.**

1. If the department determines that a dependent adult is suffering from dependent adult abuse which presents an immediate danger to the health or safety of the dependent adult or which results in irreparable harm to the physical or financial resources or property of the dependent adult, and that the dependent adult lacks capacity to consent to receive protective services and that no consent can be obtained, the department may petition the court with probate jurisdiction in the county in which the dependent adult resides for an emergency order authorizing protective services.

2. The petition shall be verified and shall include all of the following:

a. The name, date of birth, and address of the dependent adult who needs protective services.

b. The nature of the dependent adult abuse.

c. The services required.

3. a. The department shall serve a copy of the petition and any order authorizing protective services, if issued, on the dependent adult and on persons who are competent adults and reasonably ascertainable at the time the petition is filed in accordance with the following priority:

(1) An attorney in fact named by the dependent adult in a durable power of attorney for health care pursuant to chapter 144B.

(2) The dependent adult’s spouse.

(3) The dependent adult’s children.

(4) The dependent adult’s grandchildren.

(5) The dependent adult’s siblings.

(6) The dependent adult’s aunts and uncles.

(7) The dependent adult’s nieces and nephews.

(8) The dependent adult’s cousins.

b. When the department has served a person in one of the categories specified in paragraph “a”, the department shall not be required to serve a person in any other category.

c. The department shall serve the dependent adult’s copy of the petition and order personally upon the dependent adult. Service of the petition and all other orders and notices shall be in a sealed envelope with the proper postage on the envelope, addressed to the person being served at the person’s last known post office address, and deposited in a mail receptacle provided by the United States postal service. The department shall serve such copies of emergency orders authorizing protective services and notices within three days after filing the petition and receiving such orders.

d. The department and all persons served by the department with notices under this subsection shall be prohibited from all of the following without prior court approval after the department’s petition has been filed:

(1) Selling, removing, or otherwise disposing of the dependent adult’s personal property.

(2) Withdrawing funds from any bank, savings and loan association, credit union, or other financial institution, or from an account containing securities in which the dependent adult has an interest.

4. Upon finding that there is probable cause to believe that the dependent adult abuse presents an immediate threat to the health or safety of the dependent adult or which results in irreparable harm to the physical or financial resources or property of the dependent adult,

and that the dependent adult lacks capacity to consent to the receipt of services, the court may do any of the following:

- a. Order removal of the dependent adult to safer surroundings.
- b. Order the provision of medical services.

- c. Order the provision of other available services necessary to remove conditions creating the danger to health or safety, including the services of peace officers or emergency services personnel and the suspension of the powers granted to a guardian or conservator and the subsequent appointment of a new temporary guardian or new temporary conservator pursuant to subsection 5 pending a decision by the court on whether the powers of the initial guardian or conservator should be reinstated or whether the initial guardian or conservator should be removed.

5. *a.* Notwithstanding sections 633.552 and 633.573, upon a finding that there is probable cause to believe that the dependent adult abuse presents an immediate danger to the health or safety of the dependent adult or is producing irreparable harm to the physical or financial resources or property of the dependent adult, and that the dependent adult lacks capacity to consent to the receipt of services, the court may order the appointment of a temporary guardian or temporary conservator without notice to the dependent adult or the dependent adult's attorney if all of the following conditions are met:

- (1) It clearly appears from specific facts shown by affidavit or by the verified petition that a dependent adult's decision-making capacity is so impaired that the dependent adult is unable to care for the dependent adult's personal safety or to attend to or provide for the dependent adult's basic necessities or that immediate and irreparable injury, loss, or damage will result to the physical or financial resources or property of the dependent adult before the dependent adult or the dependent adult's attorney can be heard in opposition.

- (2) The department certifies to the court in writing any efforts the department has made to give the notice or the reasons supporting the claim that notice should not be required.

- (3) The department files with the court a request for a hearing on the petition for the appointment of a temporary guardian or temporary conservator.

- (4) The department certifies that the notice of the petition, order, and all filed reports and affidavits will be sent to the dependent adult by personal service within the time period the court directs but not more than seventy-two hours after entry of the order of appointment.

- b.* An order of appointment of a temporary guardian or temporary conservator entered by the court under paragraph "a" shall expire as prescribed by the court but within a period of not more than thirty days unless extended by the court for good cause.

- c.* A hearing on the petition for the appointment of a temporary guardian or temporary conservator shall be held within the time specified in paragraph "b". If the department does not proceed with a hearing on the petition, the court, on the motion of any party or on its own motion, may dismiss the petition.

6. The emergency order expires at the end of seventy-two hours from the time of the order unless the seventy-two-hour period ends on a Saturday, Sunday, or legal holiday in which event the order is automatically extended to 4:00 p.m. on the first succeeding business day. An order may be renewed for not more than fourteen additional days. A renewal order that ends on a Saturday, Sunday, or legal holiday is automatically extended to 4:00 p.m. on the first succeeding business day. The court may modify or terminate the emergency order on the petition of the department, the dependent adult, or any person interested in the dependent adult's welfare.

7. If the department cannot obtain an emergency order under this section due to inaccessibility of the court, the department may contact law enforcement to remove the dependent adult to safer surroundings, authorize the provision of medical treatment, and order the provision of or provide other available services necessary to remove conditions creating the immediate danger to the health or safety of the dependent adult or which are producing irreparable harm to the physical or financial resources or property of the dependent adult. The department shall obtain an emergency order under this section not later than four p.m. on the first succeeding business day after the date on which protective or other services are provided. If the department does not obtain an emergency order within the prescribed time period, the department shall cease providing protective services and,

if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place. A person, agency, or institution acting in good faith in removing a dependent adult or in providing services under this subsection, and an employer of or person under the direction of such a person, agency, or institution, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the removal or provision of services.

8. Upon a finding of probable cause to believe that dependent adult abuse has occurred and is either ongoing or is likely to reoccur, the court may also enter orders as may be appropriate to third persons enjoining them from specific conduct. The orders may include temporary restraining orders which impose criminal sanctions if violated. The court may enjoin third persons from any of the following:

- a. Removing the dependent adult from the care or custody of another.
- b. Committing dependent adult abuse on the dependent adult.
- c. Living at the dependent adult's residence.
- d. Contacting the dependent adult in person or by telephone.
- e. Selling, removing, or otherwise disposing of the dependent adult's personal property.
- f. Withdrawing funds from any bank, savings and loan association, credit union, or other financial institution, or from a stock account in which the dependent adult has an interest.
- g. Negotiating any instruments payable to the dependent adult.
- h. Selling, mortgaging, or otherwise encumbering any interest that the dependent adult has in real property.
- i. Exercising any powers on behalf of the dependent adult through representatives of the department, any court-appointed guardian or guardian ad litem, or any official acting on the dependent adult's behalf.
- j. Engaging in any other specified act which, based upon the facts alleged, would constitute harm or a threat of imminent harm to the dependent adult or would cause damage to or the loss of the dependent adult's property.

9. This section shall not be construed and is not intended as and shall not imply a grant of entitlement for services to persons who are not otherwise eligible for the services or for utilization of services which do not currently exist or are not otherwise available.

96 Acts, ch 1130, §9; 2005 Acts, ch 50, §2 – 5; 2006 Acts, ch 1080, §1; 2008 Acts, ch 1187, §117, 118; 2011 Acts, ch 129, §91, 156

NEW subsection 3 and former subsections 3 – 8 renumbered as 4 – 9

## CHAPTER 237

### CHILD FOSTER CARE FACILITIES

Multidimensional treatment level foster care pilot project for children transitioning from psychiatric medical institutions for children; 2006 Acts, ch 1123, §1; 2007 Acts, ch 218, §46, 47

#### DIVISION I

#### CHILD FOSTER CARE

##### **237.13 Foster home insurance fund.**

1. For the purposes of this section, “*foster home*” means an individual, as defined in section 237.1, subsection 7, who is licensed to provide child foster care and shall also be known as a “*licensed foster home*”.

2. The foster home insurance fund is created within the office of the treasurer of state to be administered by the department of human services. The fund consists of all moneys appropriated by the general assembly for deposit in the fund. The general fund of the state is

not liable for claims presented against the fund. The department may contract with another state agency, or private organization, to perform the administrative functions necessary to carry out this section.

3. Except as provided in this section, the fund shall pay, on behalf of each licensed foster home, any valid and approved claim of foster children, their parents, guardians, or guardians ad litem, for damages arising from the foster care relationship and the provision of foster care services. The fund shall also compensate licensed foster homes for property damage, at replacement cost, or for bodily injury, as a result of the activities of the foster child, and reasonable and necessary legal fees incurred in defense of civil claims filed pursuant to subsection 6, paragraph “d”, and any judgments awarded as a result of such claims.

4. The fund is not liable for any of the following:

a. A loss arising out of a foster parent’s dishonest, fraudulent, criminal, or intentional act.  
 b. An occurrence which does not arise from the foster care relationship.  
 c. A bodily injury arising out of the operation or use of a motor vehicle, aircraft, recreational vehicle, or watercraft owned, operated by, rented, leased, or loaned to, a foster parent.

d. A loss arising out of a foster parent’s lascivious acts, indecent contact, or sexual activity, as defined in chapters 702 and 709. Notwithstanding any definition to the contrary in chapters 702 and 709, for purposes of this subsection a child is a person under the age of eighteen.

e. A loss or damage arising out of occurrences prior to July 1, 1988.

f. Exemplary or punitive damages.

g. A loss or damage arising out of conduct which is in violation of administrative rules.

5. The fund is not liable for the first one hundred dollars for all claims arising out of one or more occurrences during a fiscal year related to a single foster home. The fund is not liable for damages in excess of three hundred thousand dollars for all claims arising out of one or more occurrences during a fiscal year related to a single home.

6. Procedures for claims against the fund:

a. A claim against the fund shall be filed in accordance with the claims procedures and on forms prescribed by the department of human services.

b. A claim shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim. If a claim is not submitted to the fund within the applicable time, the claim shall be rejected.

c. The department shall issue a decision on a claim within one hundred eighty days of its presentation.

d. A person shall not bring a civil action against a foster parent for which the fund may be liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid in part, and damages in excess of the payment are claimed.

7. All processing of decisions and reports, payment of claims, and other administrative actions relating to the fund shall be conducted by the department of human services.

8. The department of human services shall adopt rules, pursuant to chapter 17A, to carry out the provisions of this section.

88 Acts, ch 1223, §1; 89 Acts, ch 178, §4; 93 Acts, ch 172, §41; 99 Acts, ch 55, §1 – 5; 2001 Acts, ch 135, §1, 2; 2011 Acts, ch 98, §2, 3

Subsection 1 amended

Subsection 5 stricken and subsections 6 – 9 renumbered as 5 – 8

## CHAPTER 237A

### CHILD CARE FACILITIES

#### 237A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Administrator*” means the administrator of the division of the department designated by the director to administer this chapter.
2. “*Child*” means either of the following:
  - a. A person twelve years of age or younger.
  - b. A person thirteen years of age or older but younger than nineteen years of age who has a developmental disability as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in 42 U.S.C. § 15002(8).
3. “*Child care*” means the care, supervision, and guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than twenty-four hours per day per child on a regular basis, but does not include care, supervision, and guidance of a child by any of the following:
  - a. An instructional program for children who are attending prekindergarten as defined by the state board of education under section 256.11 or a higher grade level and are at least four years of age administered by any of the following:
    - (1) A public or nonpublic school system accredited by the department of education or the state board of regents.
    - (2) A nonpublic school system which is not accredited by the department of education or the state board of regents.
  - b. A program provided under section 279.49 or 280.3A.
  - c. Any of the following church-related programs:
    - (1) An instructional program.
    - (2) A youth program other than a preschool, before or after school child care program, or other child care program.
    - (3) A program providing care to children on church premises while the children’s parents are attending church-related or church-sponsored activities on the church premises.
  - d. Short-term classes of less than two weeks’ duration held between school terms or during a break within a school term.
  - e. A child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the department of inspections and appeals pursuant to chapter 135B.
  - f. A program operated not more than one day per week by volunteers which meets all of the following conditions:
    - (1) Not more than eleven children are served per volunteer.
    - (2) The program operates for less than four hours during any twenty-four-hour period.
    - (3) The program is provided at no cost to the children’s parent, guardian, or custodian.
  - g. A program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.
  - h. An after school program continuously offered throughout the school year calendar to children who are at least five years of age and are enrolled in school, and attend the program intermittently or a summer-only program for such children. The program must be provided through a nominal membership fee or at no cost.
  - i. A special activity program which meets less than four hours per day for the sole purpose of the special activity. Special activity programs include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.
  - j. A nationally accredited camp.
  - k. A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:
    - (1) A purchase of service or managed care contract with the department.
    - (2) A contract approved by a governance board of a decategorization of child welfare and juvenile justice funding project created under section 232.188.
    - (3) An arrangement approved by a juvenile court order.
  - l. Care provided on-site to children of parents residing in an emergency, homeless, or domestic violence shelter.
  - m. A child care facility providing respite care to a licensed foster family home for a period of twenty-four hours or more to a child who is placed with that licensed foster family home.

n. A program offered to a child whose parent, guardian, or custodian is engaged solely in a recreational or social activity, remains immediately available and accessible on the physical premises on which the child's care is provided, and does not engage in employment while the care is provided. However, if the recreational or social activity is provided in a fitness center or on the premises of a nonprofit organization, the parent, guardian, or custodian of the child may be employed to teach or lead the activity.

4. "*Child care center*" or "*center*" means a facility providing child care or preschool services for seven or more children, except when the facility is registered as a child development home.

5. "*Child care facility*" or "*facility*" means a child care center, preschool, or a registered child development home.

6. "*Child care home*" means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under section 237A.3.

7. "*Child development home*" means a person or program registered under section 237A.3A that may provide child care to six or more children at any one time.

8. "*Department*" means the department of human services.

9. "*Director*" means the director of human services.

10. "*Infant*" means a child who is less than twenty-four months of age.

11. "*Involvement with child care*" means licensed or registered under this chapter, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, or providing child care as a child care home provider, or residing in a child care home.

12. "*Licensed center*" means a center issued a full or provisional license by the department under the provisions of this chapter or a center for which a license is being processed.

13. "*Poverty level*" means the poverty level defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

14. "*Preschool*" means a child care facility which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, social skills, and motor skills, and to extend their interest and understanding of the world about them.

15. "*School*" means kindergarten or a higher grade level.

16. "*State child care advisory committee*" means the state child care advisory committee established pursuant to section 135.173A.

[C75, 77, 79, 81, §237A.1; 82 Acts, ch 1213, §1 – 3]

83 Acts, ch 96, §157, 159; 87 Acts, ch 115, §34; 88 Acts, ch 1097, §1; 89 Acts, ch 206, §3; 90 Acts, ch 1005, §1 – 3; 91 Acts, ch 151, §1; 92 Acts, ch 1083, §1; 92 Acts, ch 1109, §1; 93 Acts, ch 54, §4; 93 Acts, ch 76, §8, 9; 94 Acts, ch 1129, §1; 94 Acts, ch 1175, §1; 97 Acts, ch 151, §1; 99 Acts, ch 192, §1; 2000 Acts, ch 1067, §14; 2001 Acts, ch 105, §3, 4; 2002 Acts, ch 1142, §3 – 8, 31; 2003 Acts, ch 81, §1; 2005 Acts, ch 95, §4; 2010 Acts, ch 1031, §355, 361; 2011 Acts, ch 129, §92, 156

2010 amendment to subsection 16 takes effect July 1, 2011; 2010 Acts, ch 1031, §361

Subsection 3, paragraph n amended

Subsection 16 amended

### **237A.12 Rules.**

1. Subject to the provisions of chapter 17A, the department shall adopt rules setting minimum standards to provide quality child care in the operation and maintenance of child care centers and registered child development homes, relating to all of the following:

a. The number and qualifications of personnel necessary to assure the health, safety, and welfare of children in the facilities. Rules for facilities which are preschools shall be drawn so that any staff-to-children ratios which relate to the age of the children enrolled shall be based on the age of the majority of the children served by a particular class rather than on the age of the youngest child served.

b. Physical facilities.

c. The adequacy of activity programs and food services available to the children. The department shall not restrict the use of or apply nutritional standards to a lunch or other meal

which is brought to the center, child development home, or child care home by a school-age child for the child's consumption.

- d. Policies established by the center for parental participation.
- e. Programs for education and in-service training of staff.
- f. Records kept by the facilities.
- g. Administration.
- h. Health, safety, and medical policies for children.

2. Rules adopted by the state fire marshal for buildings, other than school buildings, used as child care centers as an adjunct to the primary purpose of the building shall take into consideration that children are received for temporary care only and shall not differ from rules adopted for these buildings when they are used by groups of persons congregating from time to time in the primary use and occupancy of the buildings. However, the rules may require a fire-rated separation from the remaining portion of the building if the fire marshal determines that the separation is necessary for the protection of children from a specific flammable hazard.

3. Rules relating to fire safety for child care centers shall be adopted under this chapter by the state fire marshal in consultation with the department. Rules adopted by the state fire marshal for a building which is owned or leased by a school district or accredited nonpublic school and used as a child care facility shall not differ from standards adopted by the state fire marshal for school buildings under chapter 100. Rules relating to sanitation shall be adopted by the department in consultation with the director of public health. All rules shall be developed in consultation with the state child care advisory committee. The state fire marshal shall inspect the facilities.

4. If a building is owned or leased by a school district or accredited nonpublic school and complies with standards adopted by the state fire marshal for school buildings under chapter 100, the building is considered appropriate for use by a child care facility. The rules adopted by the administrator under this section shall not require the facility to comply with building requirements which differ from requirements for use of the building as a school.

5. Standards and requirements set by a city or county for a building which is owned or leased by a school district or accredited nonpublic school and used as a child care facility shall take into consideration that children are received for temporary care only and shall not differ from standards and requirements set for use of the building as a school.

[C75, 77, 79, 81, §237A.12]

85 Acts, ch 173, §20; 91 Acts, ch 151, §3; 92 Acts, ch 1083, §2; 94 Acts, ch 1129, §4, 5; 94 Acts, ch 1175, §2; 99 Acts, ch 192, §16; 2002 Acts, ch 1142, §14 – 16, 31; 2010 Acts, ch 1031, §356, 361

2010 amendment to subsection 3 takes effect July 1, 2011; 2010 Acts, ch 1031, §361  
Subsection 3 amended

**237A.21 State child care advisory council.** Repealed by 2010 Acts, ch 1031, § 360, 361.  
2010 repeal of this section is effective July 1, 2011; 2010 Acts, ch 1031, §361

**237A.22 Duties of state child care advisory council and department.** Repealed by 2010 Acts, ch 1031, § 360, 361.

2010 repeal of this section is effective July 1, 2011; 2010 Acts, ch 1031, §361

**237A.25 Consumer information.**

1. The department shall develop consumer information material to assist parents in selecting a child care provider. In developing the material, the department shall consult with department of human services staff, department of education staff, the state child care advisory committee, the Iowa empowerment board, and child care resource and referral services. In addition, the department may consult with other entities at the local, state, and national level.

2. The consumer information material developed by the department for parents and other consumers of child care services shall include but is not limited to all of the following:

- a. A pamphlet or other printed material containing consumer-oriented information on locating a quality child care provider.

b. Information explaining important considerations a consumer should take into account in selecting a licensed or registered child care provider.

c. Information explaining how a consumer can identify quality services, including what questions to ask of providers and what a consumer might expect or demand to know before selecting a provider.

d. An explanation of the applicable laws and regulations written in layperson's terms.

e. An explanation of what it means for a provider to be licensed, registered, or unregistered.

f. An explanation of the information considered in registry and record background checks.

g. Other information deemed relevant to consumers.

3. The department shall implement and publicize an internet page or site that provides all of the following:

a. The written information developed pursuant to subsections 1 and 2.

b. Regular informational updates, including when a child care provider was last subject to a state quality review or inspection and, based upon a final score or review, the results indicating whether the provider passed or failed the review or inspection.

c. Capability for a consumer to be able to access information concerning child care providers, such as informational updates, identification of provider location, name, and capacity, and identification of providers participating in the state child care assistance program and those participating in the child care food program, by sorting the information or employing other means that provide the information in a manner that is useful to the consumer. Information regarding provider location shall identify providers located in the vicinity of an address selected by a consumer and provide contact information without listing the specific addresses of the providers.

d. Other information deemed appropriate by the department.

2003 Acts, 1st Ex, ch 2, §18, 209; 2010 Acts, ch 1031, §357, 361

2010 amendment to subsection 1 takes effect July 1, 2011; 2010 Acts, ch 1031, §361  
Subsection 1 amended

### **237A.26 Statewide resource and referral services.**

1. The department shall administer the funding for a statewide grant program for child care resource and referral services. Grants shall only be awarded to community-based nonprofit incorporated agencies and public agencies. Grants shall be awarded to facilitate the establishment of regional resource and referral agencies throughout the state, based upon the distribution of the child population in the state.

2. The department shall provide oversight of and annually evaluate an agency which is awarded a grant to provide resource and referral services to a region.

3. An agency which receives a grant to provide resource and referral services shall perform both of the following functions:

a. Organize assistance to child care homes and child care facilities utilizing training levels based upon the child care providers' degrees of experience and interest.

b. Operate in partnership with both public and private interests and coordinate resource and referral services with existing community services.

4. An agency may be required by the department to match the grant with financial resources of not more than twenty-five percent of the amount of the grant. The financial resources may include a private donation, an in-kind contribution, or a public funding source other than a separate state grant for child care service improvement.

5. An agency, to be eligible to receive a grant to provide resource and referral services, must have a board of directors if the agency is an incorporated nonprofit agency or must have an advisory board if the agency is a public agency, to oversee the provision of resource and referral services. The board shall include providers, consumers, and other persons interested in the provision or delivery of child care services.

6. An agency which receives a child care resource and referral grant may be awarded funding to provide various child care-related services, which may include but are not limited to any of the following services:

a. Assist families in selecting quality child care. The agency must provide referrals to

registered and licensed child care facilities, and to persons providing care, supervision, and guidance of a child which is not defined as child care under section 237A.1 and may provide referrals to unregistered providers.

b. Assist child care providers in adopting appropriate program and business practices to provide quality child care services.

c. Provide information to the public regarding the availability of child care services in the communities within the agency's region.

d. Actively encourage the development of new and expansion of existing child care facilities in response to identified community needs.

e. Provide specialized services to employers, including the provision of resource and referral services to employee groups identified by the employer and the provision of technical assistance to develop employer-supported child care programs. The specialized services may include but are not limited to working with employers to identify networks of recommended registered and licensed child care providers for employee groups and to implement employer-supported quality improvement initiatives among the network providers.

f. Refer eligible child care facilities to the federal child care food programs.

g. Loan toys, other equipment, and resource materials to child care facilities.

7. The department may contract with an agency receiving a child care resource and referral grant to perform any of the following functions relating to publicly funded services providing care, supervision, and guidance of a child:

a. Determine an individual's eligibility for the services in accordance with income requirements.

b. Administer a voucher, certificate, or other system for reimbursing an eligible provider of the services.

8. For purposes of improving the quality and consistency of data collection, consultation, and other support to child care home and child development home providers, a resource and referral services agency grantee shall coordinate and assist with publicly and privately funded efforts administered at the community level to provide the support. The support and efforts addressed by a grantee may include but are not limited to community-funded child care home and child development home consultants. Community members involved with the assistance may include but are not limited to the efforts of an early childhood Iowa area board under chapter 256I, and of community representatives of education, health, human services, business, faith, and public interests.

90 Acts, ch 1248, §4; 92 Acts, ch 1083, §5; 99 Acts, ch 192, §22; 2002 Acts, ch 1142, §23 – 26, 31; 2010 Acts, ch 1031, §301; 2011 Acts, ch 98, §1

Section amended

### **237A.30 Voluntary child care quality rating system.**

1. The department shall work with the community empowerment office of the department of management established in section 28.3 and the state child care advisory committee in designing and implementing a voluntary quality rating system for each provider type of child care facility.

2. The criteria utilized for the rating system may include but are not limited to any of the following: facility type; provider staff experience, education, training, and credentials; facility director education and training; an environmental rating score or other direct assessment environmental methodology; national accreditation; facility history of compliance with law and rules; child-to-staff ratio; curriculum, including the extent to which the curriculum focuses on the stages of child development and on child outcomes; business practices; staff retention rates; evaluation of staff members and program practices; staff compensation and benefit practices; provider and staff membership in professional early childhood organizations; and parental involvement with the facility.

3. A facility's quality rating may be included on the internet webpage and in the consumer information provided by the department pursuant to section 237A.25 and shall be identified

in the child care provider referrals made by child care resource and referral service grantees under section 237A.26.

99 Acts, ch 192, §33; 99 Acts, ch 203, §49; 2002 Acts, ch 1142, §27, 28, 31; 2005 Acts, ch 148, §20; 2006 Acts, ch 1010, §76; 2010 Acts, ch 1031, §302, 358, 361

2010 amendment to subsection 1, changing "state care advisory council" to "state care advisory committee", takes effect July 1, 2011; 2010 Acts, ch 1031, §358, 361

Subsection 1 amended

## CHAPTER 239B

### FAMILY INVESTMENT PROGRAM

#### **239B.8 Family investment agreements.**

The department shall establish a policy regarding the implementation of family investment agreements which limits the period of eligibility for the family investment program based upon the requirements of a family's plan for self-sufficiency. The policy shall require a family's plan to be specified in a family investment agreement between the family and the department. The department shall adopt rules to administer the policy. The components of the policy shall include but are not limited to all of the following:

1. *Participation — exemptions.* A parent living in a home with a child for whom an application for family investment program assistance has been made or for whom the assistance is provided, and all other individual members of the family whose needs are included in the assistance shall be subject to a family investment agreement unless exempt under rules adopted by the department or unless any of the following conditions exists:

a. The individual is less than sixteen years of age and is not a parent.

b. The individual is sixteen through eighteen years of age, is not a parent, and is attending elementary or secondary school, or the equivalent level of vocational or technical school, on a full-time basis. If an individual loses exempt status under this paragraph and the individual has signed a family investment agreement, the individual shall remain subject to the terms of the agreement until the terms are completed.

c. The individual is not a United States citizen and is not a qualified alien as defined in 8 U.S.C. § 1641.

2. *Agreement options.* A family investment agreement shall require an individual who is subject to the agreement to engage in one or more work or training options. An individual's level of engagement in one or more of the work or training options shall be equivalent to the level of commitment required for full-time employment or shall be significant so as to move the individual's level of engagement toward that level. The department shall adopt rules defining option requirements and establishing assistance provisions for child care, transportation, and other support services. A leave from engagement in work or training options shall be offered to a participant parent to address the birth of a child or the placement of a child with the participant parent for adoption or foster care. If such a leave is requested by the parent the combined duration of the leave shall not exceed the minimum leave duration, as outlined in the federal Family and Medical Leave Act of 1993, § 102(a) and (b)(1), as codified in 29 U.S.C. § 2612(a) and (b)(1). The terms of the leave shall be incorporated into the family investment agreement. The work or training options shall include but are not limited to all of the following:

a. *Employment.* Full-time or part-time employment.

b. *Employment search.* Active job search.

c. *JOBS.* Participation in the JOBS program.

d. *Education.* Participation in other education or training programming.

e. *Family development.* Participation in a family development and self-sufficiency grant program under section 216A.107 or other family development program.

f. *Work experience.* Work experience placement.

g. *Community service.* Unpaid community service.

*h. Parenting skills.* Participation in an arrangement which would strengthen the individual's ability to be a better parent, including but not limited to participation in a parenting education program.

*i. Family or domestic violence.* Participation in a safety plan to address or prevent family or domestic violence. The safety plan may include a temporary waiver period from required participation in the JOBS program or other employment-related activities, as appropriate for the situation of the applicant or participant. All applicants and participants shall be informed regarding the existence of this option. Participation in this option shall be subject to review in accordance with administrative rule.

*j. Incremental family investment agreements.* If an individual participant or the entire family has an acknowledged barrier, the plan for self-sufficiency may be specified in one or more incremental family investment agreements.

3. *Limited benefit plan.* If a participant fails to comply with the provisions of the participant's family investment agreement during the period of the agreement, the limited benefit plan provisions of section 239B.9 shall apply.

4. *Completion of agreement.*

*a.* Upon the completion of the terms of the agreement, family investment program assistance to a participant family covered by the agreement shall cease or be reduced in accordance with rules.

*b.* However, if the period in which a participant family is without cash assistance is one month or less and the participant family has not become exempt from JOBS program participation at the time the participant family reapplies for cash assistance, the participant family's family investment agreement shall be reinstated at the time the participant family reapplies. The reinstated agreement may be revised to accommodate changed circumstances present at the time of reapplication.

*c.* The department shall adopt rules to administer this subsection and to determine when a family is eligible to reenter the family investment program.

5. *Contracts.* The department may contract with the department of workforce development, economic development authority, or any other entity to provide services relating to a family investment agreement.

6. *Confidential information disclosure.* If approved by the director of human services or the director's designee pursuant to a written request, the department shall disclose confidential information described in section 217.30, subsection 1, to other state agencies or to any other entity which is not subject to the provisions of chapter 17A and is providing services to a participant family who is subject to a family investment agreement, if necessary in order for the participant family to receive the services. The department shall adopt rules establishing standards for disclosure of confidential information if disclosure is necessary in order for a participant to receive services.

97 Acts, ch 41, §9, 34; 98 Acts, ch 1218, §52; 99 Acts, ch 192, §33; 2000 Acts, ch 1088, §3; 2001 Acts, ch 128, §1; 2001 Acts, ch 191, §41; 2004 Acts, ch 1043, §2, 3; 2005 Acts, ch 121, §10; 2007 Acts, ch 124, §5; 2008 Acts, ch 1072, §4, 5; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **239B.17 PROMISE JOBS program.**

1. *Program established.* The promoting independence and self-sufficiency through employment job opportunities and basic skills program is established for applicants and participants of the family investment program. The requirements of the JOBS program shall vary as provided in the family investment agreement applicable to a family. The department of workforce development, economic development authority, department of education, and all other state, county, and public educational agencies and institutions providing vocational rehabilitation, adult education, or vocational or technical training shall assist and cooperate in the JOBS program. The departments, agencies, and institutions shall make agreements and arrangements for maximum cooperation and use of all available resources in the program. The department of human services may contract with the department of workforce development, the economic development authority, or another appropriate entity to provide JOBS program services.

2. *Program activities.* The JOBS program shall include, but is not limited to, provision of the following activities:

- a. Placing applicants and participants in employment and on-the-job training.
- b. Institutional and work experience training for applicants and participants for whom the training is likely to lead to regular employment.
- c. Special work projects for applicants and participants for whom a job in the regular economy cannot be found.
- d. Incentives, opportunities, services, and other benefits to aid applicants and participants, which may include but are not limited to financial education.
- e. Providing services and payments for persons whose family investment program eligibility has ended, in order to help the persons to stabilize or improve their employment status.

97 Acts, ch 41, §18, 34; 2000 Acts, ch 1088, §7; 2006 Acts, ch 1046, §1; 2007 Acts, ch 218, §40; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 249A

### MEDICAL ASSISTANCE

See Iowa Acts for special provisions relating to medical assistance reimbursements in a given year

Brain injury services program, §135.22B

Health insurance data match program, §505.25

Modified price-based case-mix reimbursement

for nursing facilities; 2001 Acts, ch 192, §4;

2002 Acts, ch 1172, §2; 2003 Acts, ch 112, §9;

2003 Acts, ch 175, §50; 2003 Acts, ch 179, §165;

2004 Acts, ch 1175, §154; 2005 Acts, ch 175, §31;

2006 Acts, ch 1184, §30; 2007 Acts, ch 218, §33, 67;

2008 Acts, ch 1187, §32, 33; 2009 Acts, ch 182, §32, 33;

2009 Acts, ch 183, §73; 2010 Acts, ch 1182, §20-23, 36;

2010 Acts, ch 1192, §33; 2010 Acts, ch 1193, §73;

2011 Acts, ch 129, §28, 141, 156

Prescription drug copayments; 2005 Acts, ch 167, §42, 66

Department of human services review of requirements

for home modification under the medical assistance home

and community-based services waiver for the elderly; plan

submission by December 31, 2011; 2010 Acts, ch 1156, §1

Department of human services to collaborate with affected Medicaid service providers

to finalize and test a uniform cost report to be used in development of specified Medicaid

reimbursement rates; report due by December 31, 2013; 2011 Acts, ch 129, §37, 156

#### 249A.3 Eligibility.

The extent of and the limitations upon eligibility for assistance under this chapter is prescribed by this section, subject to federal requirements, and by laws appropriating funds for assistance provided pursuant to this chapter.

1. Medical assistance shall be provided to, or on behalf of, any individual or family residing in the state of Iowa, including those residents who are temporarily absent from the state, who:

a. Is a recipient of federal supplemental security income or who would be eligible for federal supplemental security income if living in their own home.

b. Is an individual who is eligible for the family investment program or is an individual who would be eligible for unborn child payments under the family investment program, as authorized by Tit. IV-A of the federal Social Security Act, if the family investment program provided for unborn child payments during the entire pregnancy.

c. Was a recipient of one of the previous categorical assistance programs as of December 31, 1973, and would continue to meet the eligibility requirements for one of the previous categorical assistance programs as the requirements existed on that date.

d. Is a child up to one year of age who was born on or after October 1, 1984, to a woman receiving medical assistance on the date of the child's birth, who continues to be a member of the mother's household, and whose mother continues to receive medical assistance.

e. Is a pregnant woman whose pregnancy has been medically verified and who qualifies under either of the following:

(1) The woman would be eligible for cash assistance under the family investment program, if the child were born and living with the woman in the month of payment.

(2) The woman meets the income and resource requirements of the family investment program, provided the unborn child is considered a member of the household, and the woman's family is treated as though deprivation exists.

f. Is a child who is less than seven years of age and who meets the income and resource requirements of the family investment program.

g. (1) Is a child who is one through five years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6401, whose income is not more than one hundred thirty-three percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

(2) Is a child who has attained six years of age but has not attained nineteen years of age, whose income is not more than one hundred thirty-three percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

h. Is a woman who, while pregnant, meets eligibility requirements for assistance under the federal Social Security Act, section 1902(l), and continues to meet the requirements except for income. The woman is eligible to receive assistance until sixty days after the date pregnancy ends.

i. Is a pregnant woman who is determined to be presumptively eligible by a health care provider qualified under the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9407. The woman is eligible for ambulatory prenatal care assistance until the last day of the month following the month of the presumptive eligibility determination. If the department receives the woman's medical assistance application by the last day of the month following the month of the presumptive eligibility determination, the woman is eligible for ambulatory prenatal care assistance until the department actually determines the woman's eligibility or ineligibility for medical assistance. The costs of services provided during the presumptive eligibility period shall be paid by the medical assistance program for those persons who are determined to be ineligible through the regular eligibility determination process.

j. Is a pregnant woman or infant less than one year of age whose income does not exceed the federally prescribed percentage of the poverty level in accordance with the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302.

k. Is a pregnant woman or infant whose income is more than the limit prescribed under the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302, but not more than two hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

l. (1) Is an infant whose income is not more than two hundred percent of the federal poverty level, as defined by the most recently revised income guidelines published by the United States department of health and human services.

(2) Additionally, effective July 1, 2009, medical assistance shall be provided to a pregnant woman or infant whose family income is at or below three hundred percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, if otherwise eligible.

m. Is a child for whom adoption assistance or foster care maintenance payments are paid under Tit. IV-E of the federal Social Security Act.

n. Is an individual or family who is ineligible for the family investment program because of requirements that do not apply under Tit. XIX of the federal Social Security Act.

o. Was a federal supplemental security income or a state supplementary assistance recipient, as defined by section 249.1, and a recipient of federal social security benefits at one time since August 1, 1977, and would be eligible for federal supplemental security

income or state supplementary assistance but for the increases due to the cost of living in federal social security benefits since the last date of concurrent eligibility.

p. Is an individual whose spouse is deceased and who is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, due to the elimination of the actuarial reduction formula for federal social security benefits under the federal Social Security Act and subsequent cost of living increases.

q. Is an individual who is at least sixty years of age and is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of receipt of social security widow or widower benefits and is not eligible for federal Medicare, part A coverage.

r. Is an individual with a disability, and is at least eighteen years of age, who receives parental social security benefits under the federal Social Security Act and is not eligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of the receipt of the social security benefits.

s. Is an individual who is no longer eligible for the family investment program due to earned income. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

t. Is an individual who is no longer eligible for the family investment program due to the receipt of child or spousal support. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

u. As allowed under the federal Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 6062, is an individual who is less than nineteen years of age who meets the federal supplemental security income program rules for disability but whose income or resources exceed such program rules, who is a member of a family whose income is at or below three hundred percent of the most recently revised official poverty guidelines published by the United States department of health and human services for the family, and whose parent complies with the requirements relating to family coverage offered by the parent's employer. Such assistance shall be provided on a phased-in basis, based upon the age of the individual.

2. a. Medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 5 of this section and whose incomes and resources are insufficient to meet the cost of necessary medical care and services in accordance with the following order of priorities:

(1) (a) As allowed under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XIII), individuals with disabilities, who are less than sixty-five years of age, who are members of families whose income is less than two hundred fifty percent of the most recently revised official poverty guidelines published by the United States department of health and human services for the family, who have earned income and who are eligible for medical assistance or additional medical assistance under this section if earnings are disregarded. As allowed by 42 U.S.C. § 1396a(r)(2), unearned income shall also be disregarded in determining whether an individual is eligible for assistance under this subparagraph. For the purposes of determining the amount of an individual's resources under this subparagraph and as allowed by 42 U.S.C. § 1396a(r)(2), a maximum of ten thousand dollars of available resources shall be disregarded, and any additional resources held in a retirement account, in a medical savings account, or in any other account approved under rules adopted by the department shall also be disregarded.

(b) Individuals eligible for assistance under this subparagraph, whose individual income exceeds one hundred fifty percent of the official poverty guidelines published by the United States department of health and human services for an individual, shall pay a premium. The amount of the premium shall be based on a sliding fee schedule adopted by rule of the department and shall be based on a percentage of the individual's income. The maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty guidelines shall be commensurate with the cost of state employees' group health insurance in this state. The payment to and acceptance by an automated case management system or the department of the premium required under this subparagraph

shall not automatically confer initial or continuing program eligibility on an individual. A premium paid to and accepted by the department's premium payment process that is subsequently determined to be untimely or to have been paid on behalf of an individual ineligible for the program shall be refunded to the remitter in accordance with rules adopted by the department. Any unpaid premium shall be a debt owed the department.

(2) (a) As provided under the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000, Pub. L. No. 106-354, women who meet all of the following criteria:

(i) Are not described in 42 U.S.C. § 1396a(a)(10)(A)(i).

(ii) Have not attained age sixty-five.

(iii) Have been screened for breast and cervical cancer under the United States centers for disease control and prevention breast and cervical cancer early detection program established under 42 U.S.C. § 300k et seq., in accordance with the requirements of 42 U.S.C. § 300n, and need treatment for breast or cervical cancer. A woman is considered screened for breast and cervical cancer under this subparagraph subdivision if the woman is screened by any provider or entity, and the state grantee of the United States centers for disease control and prevention funds under Tit. XV of the federal Public Health Services Act has elected to include screening activities by that provider or entity as screening activities pursuant to Tit. XV of the federal Public Health Services Act. This screening includes but is not limited to breast or cervical cancer screenings or related diagnostic services provided by family planning or community health centers and breast cancer screenings funded by the Susan G. Komen foundation which are provided to women who meet the eligibility requirements established by the state grantee of the United States centers for disease control and prevention funds under Tit. XV of the federal Public Health Services Act.

(iv) Are not otherwise covered under creditable coverage as defined in 42 U.S.C. § 300gg(c).

(b) A woman who meets the criteria of this subparagraph (2) shall be presumptively eligible for medical assistance.

(3) Individuals who are receiving care in a hospital or in a basic nursing home, intermediate nursing home, skilled nursing home or extended care facility, as defined by section 135C.1, and who meet all eligibility requirements for federal supplemental security income except that their income exceeds the allowable maximum therefor, but whose income is not in excess of the maximum established by subsection 4 for eligibility for medical assistance and is insufficient to meet the full cost of their care in the hospital or health care facility on the basis of standards established by the department.

(4) Individuals under twenty-one years of age living in a licensed foster home, or in a private home pursuant to a subsidized adoption arrangement, for whom the department accepts financial responsibility in whole or in part and who are not eligible under subsection 1.

(5) Individuals who are receiving care in an institution for mental diseases, and who are under twenty-one years of age and whose income and resources are such that they are eligible for the family investment program, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph "a", subparagraph (1).

(6) Individuals and families whose incomes and resources are such that they are eligible for federal supplemental security income or the family investment program, but who are not actually receiving such public assistance.

(7) Individuals who are receiving state supplementary assistance as defined by section 249.1 or other persons whose needs are considered in computing the recipient's assistance grant.

(8) Individuals under twenty-one years of age who qualify on a financial basis for, but who are otherwise ineligible to receive assistance under the family investment program.

(9) As allowed under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XVII), individuals under twenty-one years of age who were in foster care under the responsibility of the state on the individual's eighteenth birthday, and whose income is less than two hundred percent of the most recently revised official poverty guidelines published by the United States department of health and human services. Medical assistance may be provided for an individual described by this subparagraph regardless of the individual's resources.

(10) Individuals eligible for family planning services under a federally approved demonstration waiver.

(11) Individuals and families who would be eligible under subsection 1 or this subsection except for excess income or resources, or a reasonable category of those individuals and families.

(12) Individuals who have attained the age of twenty-one but have not yet attained the age of sixty-five who qualify on a financial basis for, but who are otherwise ineligible to receive, federal supplemental security income or assistance under the family investment program.

b. Notwithstanding the provisions of this subsection establishing priorities for individuals and families to receive medical assistance, the department may determine within the priorities listed in this subsection which persons shall receive medical assistance based on income levels established by the department, subject to the limitations provided in subsection 4.

3. Additional medical assistance may, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, either:

a. Only those individuals and families described in subsection 1 of this section; or

b. Those individuals and families described in both subsections 1 and 2.

4. Discretionary medical assistance, within the limits of available funds and in accordance with section 249A.4, subsection 1, may be provided to or on behalf of those individuals and families described in subsection 2, paragraph "a", subparagraph (11), of this section.

5. Assistance shall not be granted under this chapter to:

a. An individual or family whose income, considered to be available to the individual or family, exceeds federally prescribed limitations.

b. An individual or family whose resources, considered to be available to the individual or family, exceed federally prescribed limitations.

5A. In determining eligibility for children under subsection 1, paragraphs "b", "f", "g", "j", "k", "n", and "s"; subsection 2, paragraph "a", subparagraphs (3), (5), (6), (8), and (11); and subsection 5, paragraph "b", all resources of the family, other than monthly income, shall be disregarded.

5B. In determining eligibility for adults under subsection 1, paragraphs "b", "e", "h", "j", "k", "n", "s", and "t"; subsection 2, paragraph "a", subparagraphs (4), (5), (8), (11), and (12); and subsection 5, paragraph "b", one motor vehicle per household shall be disregarded.

6. In determining the eligibility of an individual for medical assistance under this chapter, for resources transferred to the individual's spouse before October 1, 1989, or to a person other than the individual's spouse before July 1, 1989, the department shall include, as resources still available to the individual, those nonexempt resources or interests in resources, owned by the individual within the preceding twenty-four months, which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter.

a. A transaction described in this subsection is presumed to have been for the purpose of establishing eligibility for medical assistance under this chapter unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

b. The value of a resource or an interest in a resource in determining eligibility under this subsection is the fair market value of the resource or interest at the time of the transaction less the amount of any compensation received.

c. If a transaction described in this subsection results in uncompensated value exceeding twelve thousand dollars, the department shall provide by rule for a period of ineligibility which exceeds twenty-four months and has a reasonable relationship to the uncompensated value above twelve thousand dollars.

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual's spouse on or after October 1, 1989, or to a person other than the individual's spouse on or after July 1, 1989, and prior to August 11, 1993, as provided by the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 303(b), as amended by the federal Family Support Act of 1988,

Pub. L. No. 100-485, § 608(d)(16)(B), (D), and the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6411(e)(1).

8. Medicare cost sharing shall be provided in accordance with the provisions of Tit. XIX of the federal Social Security Act, section 1902(a)(10)(E), as codified in 42 U.S.C. § 1396a(a)(10)(E), to or on behalf of an individual who is a resident of the state or a resident who is temporarily absent from the state, and who is a member of any of the following eligibility categories:

a. A qualified Medicare beneficiary as defined under Tit. XIX of the federal Social Security Act, section 1905(p)(1), as codified in 42 U.S.C. § 1396d(p)(1).

b. A qualified disabled and working person as defined under Tit. XIX of the federal Social Security Act, section 1905(s), as codified in 42 U.S.C. § 1396d(s).

c. A specified low-income Medicare beneficiary as defined under Tit. XIX of the federal Social Security Act, section 1902(a)(10)(E)(iii), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iii).

d. An additional specified low-income Medicare beneficiary as described under Tit. XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(I), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(I).

e. An additional specified low-income Medicare beneficiary described under Tit. XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(II), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(II).

9. Beginning October 1, 1990, in determining the eligibility of an institutionalized individual for assistance under this chapter, the department shall establish a minimum community spouse resource allowance amount of twenty-four thousand dollars to be retained for the benefit of the institutionalized individual's community spouse in accordance with the federal Social Security Act, section 1924(f) as codified in 42 U.S.C. § 1396r-5(f).

10. Group health plan cost sharing shall be provided as required by Tit. XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.

11. a. In determining the eligibility of an individual for medical assistance, the department shall consider transfers of assets made on or after August 11, 1993, as provided by the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. § 1396p(c).

b. The department shall exercise the option provided in 42 U.S.C. § 1396p(c) to provide a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual. For noninstitutionalized individuals, the number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual or the individual's spouse on or after the look-back date specified in 42 U.S.C. § 1396p(c)(1)(B)(i), divided by the average monthly cost to a private patient for nursing facility services in Iowa at the time of application. The services for which noninstitutionalized individuals shall be made ineligible shall include any long-term care services for which medical assistance is otherwise available. Notwithstanding section 17A.4, the department may adopt rules providing a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual without notice of opportunity for public comment, to be effective immediately upon filing under section 17A.5, subsection 2, paragraph "b", subparagraph (1).

c. A disclaimer of any property, interest, or right pursuant to section 633E.5 constitutes a transfer of assets for the purpose of determining eligibility for medical assistance in an amount equal to the value of the property, interest, or right disclaimed.

d. Unless a surviving spouse is precluded from making an election under the terms of a premarital agreement, the failure of a surviving spouse to take an elective share pursuant to chapter 633, division V, constitutes a transfer of assets for the purpose of determining eligibility for medical assistance to the extent that the value received by taking an elective share would have exceeded the value of the inheritance received under the will.

12. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established on or before August 10, 1993, as available to the individual, in accordance with the federal Comprehensive Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272,

§ 9506(a), as amended by the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9435(c).

13. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established after August 10, 1993, as available to the individual, in accordance with 42 U.S.C. § 1396p(d) and sections 633C.2 and 633C.3.

14. Once initial ongoing eligibility for medical assistance is determined for a child under the age of nineteen, the department shall provide continuous eligibility for a period of up to twelve months regardless of changes in family circumstances, until the child's next annual review of eligibility under the medical assistance program, with the exception of the following children:

- a. A newborn child of a medical assistance-eligible woman.
- b. A child whose eligibility was determined under the medically needy program.
- c. A child who is eligible under a state-only funded program.
- d. A child who is no longer an Iowa resident.
- e. A child who is incarcerated in a jail or other correctional institution.

[C62, 66, §249A.3, 249A.4; C71, 73, 75, 77, 79, 81, §249A.3; 81 Acts, ch 7, §15, ch 82, §1] 84 Acts, ch 1297, §3 – 5; 85 Acts, ch 146, §2; 89 Acts, ch 104, §2 – 4; 89 Acts, ch 304, §202; 90 Acts, ch 1258, §6; 90 Acts, ch 1270, §48; 91 Acts, ch 158, §3, 4; 92 Acts, ch 1043, §4; 92 Acts, 2nd Ex, ch 1001, §420; 93 Acts, ch 97, §37; 94 Acts, ch 1120, §1, 8, 9, 16; 95 Acts, ch 68, §1; 96 Acts, ch 1129, §64; 97 Acts, ch 41, §26 – 28; 98 Acts, ch 1218, §77; 99 Acts, ch 94, §1; 99 Acts, ch 203, §50; 99 Acts, ch 208, §50; 2000 Acts, ch 1060, §1 – 3; 2000 Acts, ch 1221, §6; 2000 Acts, ch 1228, §41; 2001 Acts, ch 184, §9; 2003 Acts, ch 62, §2; 2004 Acts, ch 1015, §1; 2005 Acts, ch 38, §1, 55; 2006 Acts, ch 1104, §1; 2006 Acts, ch 1159, §4, 8; 2007 Acts, ch 218, §41 – 43, 124, 126; 2008 Acts, ch 1014, §1; 2008 Acts, ch 1188, §2, 3, 55; 2009 Acts, ch 41, §242; 2009 Acts, ch 118, §16; 2009 Acts, ch 182, §132, 134; 2011 Acts, ch 98, §16; 2011 Acts, ch 120, §3

Spousal support debt for medical assistance to institutionalized spouse; community spouse resource allowance; chapter 249B  
2009 amendment to subsection 14 by 2009 Acts, ch 182, §132, takes effect May 26, 2009, and applies retroactively to July 1, 2008; 2009 Acts, ch 182, §134

Subsection 2, paragraph a, subparagraphs (1) and (10) amended

#### **249A.4B Medical assistance advisory council.**

1. A medical assistance advisory council is created to comply with 42 C.F.R. § 431.12 based on section 1902(a)(4) of the federal Social Security Act and to advise the director about health and medical care services under the medical assistance program. The council shall meet no more than quarterly. The director of public health shall serve as chairperson of the council.

2. The council shall include all of the following members:

a. The president, or the president's representative, of each of the following professional or business entities, or a member of each of the following professional or business entities, selected by the entity:

- (1) The Iowa medical society.
- (2) The Iowa osteopathic medical association.
- (3) The Iowa academy of family physicians.
- (4) The Iowa chapter of the American academy of pediatrics.
- (5) The Iowa physical therapy association.
- (6) The Iowa dental association.
- (7) The Iowa nurses association.
- (8) The Iowa pharmacy association.
- (9) The Iowa podiatric medical society.
- (10) The Iowa optometric association.
- (11) The Iowa association of community providers.
- (12) The Iowa psychological association.
- (13) The Iowa psychiatric society.
- (14) The Iowa chapter of the national association of social workers.
- (15) The coalition for family and children's services in Iowa.
- (16) The Iowa hospital association.
- (17) The Iowa association of rural health clinics.

- (18) The Iowa primary care association.
- (19) Free clinics of Iowa.
- (20) The opticians' association of Iowa, inc.
- (21) The Iowa association of hearing health professionals.
- (22) The Iowa speech and hearing association.
- (23) The Iowa health care association.
- (24) The Iowa association of area agencies on aging.
- (25) AARP.
- (26) The Iowa caregivers association.
- (27) The Iowa coalition of home and community-based services for seniors.
- (28) The Iowa adult day services association.
- (29) The Iowa association of homes and services for the aging.
- (30) The Iowa association for home care.
- (31) The Iowa council of health care centers.
- (32) The Iowa physician assistant society.
- (33) The Iowa association of nurse practitioners.
- (34) The Iowa nurse practitioner society.
- (35) The Iowa occupational therapy association.
- (36) The ARC of Iowa, formerly known as the association for retarded citizens of Iowa.
- (37) The alliance for the mentally ill of Iowa.
- (38) The Iowa state association of counties.
- (39) The governor's developmental disabilities council.
- (40) The Iowa chiropractic society.

b. Public representatives which may include members of consumer groups, including recipients of medical assistance or their families, consumer organizations, and others, equal in number to the number of representatives of the professional and business entities specifically represented under paragraph "a", appointed by the governor for staggered terms of two years each, none of whom shall be members of, or practitioners of, or have a pecuniary interest in any of the professional or business entities specifically represented under paragraph "a", and a majority of whom shall be current or former recipients of medical assistance or members of the families of current or former recipients.

c. The director of public health, or the director's designee.

d. The director of the department on aging, or the director's designee.

e. The dean of Des Moines university — osteopathic medical center, or the dean's designee.

f. The dean of the university of Iowa college of medicine, or the dean's designee.

g. The following members of the general assembly, each for a term of two years as provided in section 69.16B:

(1) Two members of the house of representatives, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives from their respective parties.

(2) Two members of the senate, one appointed by the president of the senate after consultation with the majority leader of the senate and one appointed by the minority leader of the senate.

3. a. An executive committee of the council is created and shall consist of the following members of the council:

(1) Five of the professional or business entity members designated pursuant to subsection 2, paragraph "a", and selected by the members specified under that paragraph.

(2) Five of the public members appointed pursuant to subsection 2, paragraph "b", and selected by the members specified under that paragraph. Of the five public members, at least one member shall be a recipient of medical assistance.

(3) The director of public health, or the director's designee.

b. The executive committee shall meet on a monthly basis. The director of public health shall serve as chairperson of the executive committee.

c. Based upon the deliberations of the council and the executive committee, the executive

committee shall make recommendations to the director regarding the budget, policy, and administration of the medical assistance program.

4. For each council meeting, other than those held during the time the general assembly is in session, each legislative member of the council shall be reimbursed for actual travel and other necessary expenses and shall receive a per diem as specified in section 7E.6 for each day in attendance, as shall the members of the council or the executive committee who are recipients or the family members of recipients of medical assistance, regardless of whether the general assembly is in session.

5. The department shall provide staff support and independent technical assistance to the council and the executive committee.

6. The director shall consider the recommendations offered by the council and the executive committee in the director's preparation of medical assistance budget recommendations to the council on human services pursuant to section 217.3 and in implementation of medical assistance program policies.

2005 Acts, ch 120, §3; 2008 Acts, ch 1156, §36, 58; 2009 Acts, ch 23, §55; 2011 Acts, ch 129, §93, 156

Subsection 2, paragraph a, subparagraph (18) amended

#### **249A.7 Fraudulent practices — investigations and audits — Medicaid fraud fund.**

1. A person who obtains assistance or payments for medical assistance under this chapter by knowingly making or causing to be made, a false statement or a misrepresentation of a material fact or by knowingly failing to disclose a material fact required of an applicant for aid under the provisions of this chapter and a person who knowingly makes or causes to be made, a false statement or a misrepresentation of a material fact or knowingly fails to disclose a material fact concerning the applicant's eligibility for aid under this chapter commits a fraudulent practice.

2. The department of inspections and appeals shall conduct investigations and audits as deemed necessary to ensure compliance with the medical assistance program administered under this chapter. The department of inspections and appeals shall cooperate with the department of human services on the development of procedures relating to such investigations and audits to ensure compliance with federal and state single state agency requirements.

3. *a.* A Medicaid fraud fund is created in the state treasury under the authority of the department of inspections and appeals. Moneys from penalties, investigative costs recouped by the Medicaid fraud control unit, and other amounts received as a result of prosecutions involving the department of inspections and appeals investigations and audits to ensure compliance with the medical assistance program that are not credited to the program shall be credited to the fund.

*b.* Notwithstanding section 8.33, moneys credited to the fund from any other account or fund shall not revert to the other account or fund. Moneys in the fund shall only be used as provided in appropriations from the fund and shall be used in accordance with applicable laws, regulations, and the policies of the office of inspector general of the United States department of health and human services.

*c.* For the purposes of this subsection, "*investigative costs*" means the reasonable value of a Medicaid fraud control unit investigator's, auditor's or employee's time, any moneys expended by the Medicaid fraud control unit, and the reasonable fair market value of resources used or expended by the Medicaid fraud control unit in a case resulting in a criminal conviction of a provider under this chapter or chapter 714 or 715A.

[C62, 66, §249A.15; C71, 73, 75, 77, 79, 81, §249A.7]

90 Acts, ch 1204, §63; 97 Acts, ch 56, §3; 2009 Acts, ch 136, §10; 2011 Acts, ch 52, §1; 2011 Acts, ch 127, §49, 89

See §714.8 et seq.

Funds reverting to Medicaid fraud account on or after June 30, 2011, to be credited to Medicaid fraud fund; appropriations from Medicaid fraud account for fiscal years beginning July 1, 2011, and July 1, 2012, to be charged to Medicaid fraud fund; 2011 Acts, ch 127, §59

Subsection 3 stricken and rewritten

**249A.15A Licensed marital and family therapists, licensed master social workers, licensed mental health counselors, and certified alcohol and drug counselors.**

1. The department shall adopt rules pursuant to chapter 17A entitling marital and family therapists who are licensed pursuant to chapter 154D to payment for behavioral health services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations.

2. The department shall adopt rules pursuant to chapter 17A entitling master social workers who hold a master's degree approved by the board of social work, are licensed as a master social worker pursuant to section 154C.3, subsection 1, paragraph "b", and provide treatment services under the supervision of an independent social worker licensed pursuant to section 154C.3, subsection 1, paragraph "c", to payment for behavioral health services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations.

3. The department shall adopt rules pursuant to chapter 17A entitling mental health counselors who are licensed pursuant to chapter 154D to payment for behavioral health services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations.

4. The department shall adopt rules pursuant to chapter 17A entitling alcohol and drug counselors who are certified by the nongovernmental Iowa board of substance abuse certification to payment for behavioral health services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations.

2008 Acts, ch 1187, §123; 2011 Acts, ch 29, §1

Section amended

**249A.30A Medical assistance — personal needs allowance.**

The personal needs allowance under the medical assistance program, which may be retained by a person who is a resident of a nursing facility, an intermediate care facility for persons with mental retardation, or an intermediate care facility for persons with mental illness, as defined in section 135C.1, or a person who is a resident of a psychiatric medical institution for children as defined in section 135H.1, shall be fifty dollars per month. A resident who has income of less than fifty dollars per month shall receive a supplement from the state in the amount necessary to receive a personal needs allowance of fifty dollars per month, if funding is specifically appropriated for this purpose.

2006 Acts, ch 1113, §1; 2007 Acts, ch 218, §44; 2008 Acts, ch 1032, §41

FY 2011-2012 and FY 2012-2013 allocations for monthly personal needs allowance of fifty dollars; 2011 Acts, ch 129, §10, 122, 156  
Section not amended; footnote revised

**249A.38 Inmates of public institutions — suspension or termination of medical assistance.**

1. The following conditions shall apply to an individual who is an inmate of a public institution as defined in 42 C.F.R. § 435.1010, who is enrolled in the medical assistance program at the time of commitment to the public institution, and who is eligible for medical assistance by reason of disability or being sixty-five years of age or older:

a. The department shall suspend the individual's eligibility for up to the initial twelve months of the period of commitment. The department shall delay the suspension of eligibility for a period of up to the first thirty days of commitment if such delay is approved by the centers for Medicare and Medicaid services of the United States department of health and human services. If such delay is not approved, the department shall suspend eligibility during the entirety of the initial twelve months of the period of commitment. Claims submitted on behalf of the individual under the medical assistance program for covered services provided during the delay period shall only be reimbursed if federal financial participation is applicable to such claims.

b. The department shall terminate an individual's eligibility following a twelve-month period of suspension of the individual's eligibility under paragraph "a".

2. a. A public institution shall provide the department and the social security

administration with a monthly report of the individuals who are committed to the public institution and of the individuals who are discharged from the public institution.

b. The department shall provide a public institution with the forms necessary to be used by the individual in expediting restoration of the individual's medical assistance benefits upon discharge from the public institution.

3. This section applies to individuals as specified in subsection 1 on or after January 1, 2012.

4. The department may adopt rules pursuant to chapter 17A to implement this section. 2011 Acts, ch 98, §13, 15

NEW section

## CHAPTER 249J

### IOWACARE

Chapter to be repealed October 31, 2013; see §249J.26  
Tuition assistance for individuals serving  
individuals with disabilities pilot program;  
2008 Acts, ch 1187, §45, 130

#### **249J.6 Expansion population benefits.**

1. The expansion population shall be eligible for all of the following expansion population services:

a. Inpatient hospital procedures described in the diagnostic related group codes or other applicable inpatient hospital reimbursement methods designated by the department.

b. Outpatient hospital services described in the ambulatory patient groupings or non-inpatient services designated by the department.

c. Physician and advanced registered nurse practitioner services described in the current procedural terminology codes specified by the department.

d. Dental services described in the dental codes specified by the department.

e. Limited pharmacy benefits provided by an expansion population provider network hospital pharmacy and solely related to an appropriately billed expansion population service.

f. Transportation to and from an expansion population provider network provider only if the provider offers such transportation services or the transportation is provided by a volunteer.

2. a. Each expansion population member shall receive a comprehensive medical examination annually. The department may implement a web-based health risk assessment for expansion population members that may include facilitation, if deemed to be cost-effective to the program.

b. Refusal of an expansion population member to participate in a comprehensive medical examination or any health risk assessment implemented by the department shall not be a basis for ineligibility for or disenrollment from the expansion population. Refusal of an expansion population member to participate in a comprehensive medical examination or other preventative health service shall not negatively affect the calculation of performance payments for an expansion population network provider medical home.

3. Expansion population members, including members assigned to an expansion population network provider medical home, shall be provided access to an IowaCare nurse helpline, accessible twenty-four hours per day, seven days per week, to assist expansion population members in making appropriate choices about the use of emergency room and other health care services.

4. Membership in the expansion population shall not preclude an expansion population member from eligibility for services not covered under the expansion population for which the expansion population member is otherwise entitled under state or federal law.

5. Members of the expansion population shall not be considered full benefit dually eligible Medicare Part D beneficiaries for the purposes of calculating the state's payment

under Medicare Part D, until such time as the expansion population is eligible for all of the same benefits as full benefit recipients under the medical assistance program.

2005 Acts, ch 167, §6, 66; 2006 Acts, ch 1184, §113, 114, 128; 2010 Acts, ch 1141, §2 – 4; 2011 Acts, ch 120, §4, 5

Subsection 2, paragraph b amended  
Subsection 3 amended

#### **249J.7 Expansion population provider network.**

1. a. Expansion population members shall only be eligible to receive expansion population services through a provider included in the expansion population provider network. Except as otherwise provided in this chapter, the expansion population provider network shall be limited to a publicly owned acute care teaching hospital located in a county with a population over three hundred fifty thousand, the university of Iowa hospitals and clinics, and a regional provider network utilizing the federally qualified health centers or federally qualified health center look-alikes in the state, to provide primary care to members.

b. (1) The department shall develop a plan to phase in the regional provider network by determining the most highly underserved areas on a statewide and regional basis, and targeting these areas for prioritization in implementing the regional provider network. In developing the phase-in plan the department shall consult with the medical assistance projections and assessment council created in section 249J.20. Any plan developed shall be approved by the council prior to implementation. The phase-in of the regional provider network shall be implemented in a manner that ensures that program expenditures do not exceed budget neutrality limits and funded program capacity, and that ensures compliance with the eligibility maintenance of effort requirements of the federal American Recovery and Reinvestment Act of 2009.

(2) Payment shall only be made to designated participating primary care providers for eligible primary care services provided to a member.

(3) The department shall adopt rules pursuant to chapter 17A, in collaboration with the medical home advisory council established pursuant to section 135.159, specifying requirements for medical homes including certification, with which regional provider network participating providers shall comply, as appropriate.

(4) The department may also designate other private providers and hospitals to participate in the regional provider network, to provide primary and specialty care, subject to the availability of funds.

(5) Notwithstanding any provision to the contrary, the department shall develop a methodology to reimburse regional provider network participating providers designated under this subsection.

c. (1) Tertiary care shall only be provided to eligible expansion population members residing in any county in the state at the university of Iowa hospitals and clinics.

(2) Secondary care shall be provided by the publicly owned acute care teaching hospital located in a county with a population over three hundred fifty thousand and the university of Iowa hospitals and clinics, based on county of residence, only to the extent specified in the phase-in of the regional provider network designated by the department.

d. Until such time as the publicly owned acute care teaching hospital located in a county with a population over three hundred fifty thousand notifies the department that such hospital has reached service capacity, the hospital and the university of Iowa hospitals and clinics shall remain the only expansion population providers for the residents of such county.

2. Expansion population services provided to expansion population members by the publicly owned acute care teaching hospital located in a county with a population over three hundred fifty thousand and the university of Iowa hospitals and clinics shall be payable at the full benefit recipient rates.

3. Providers included in the expansion population provider network shall submit clean claims within twenty days of the date of provision of an expansion population service to an expansion population member.

4. Unless otherwise prohibited by law, a provider under the expansion population

provider network may deny care to an individual who refuses to apply for coverage under the expansion population.

5. Notwithstanding the provision of section 347.16, subsection 2, requiring the provision of free care and treatment to the persons described in that subsection, the publicly owned acute care teaching hospital described in subsection 1 may require any sick or injured person seeking care or treatment at that hospital to be subject to financial participation, including but not limited to copayments or premiums, and may deny nonemergent care or treatment to any person who refuses to be subject to such financial participation.

6. The department shall utilize up to seven million three hundred thousand dollars in certified public expenditures at the university of Iowa hospitals and clinics to maximize the availability of state funding to provide necessary access to both primary and specialty physician care to expansion population members. The resulting savings to the state shall be utilized to reimburse physician services provided to expansion population members at the university of Iowa hospitals and clinics and to reimburse providers designated to participate in the regional provider network for services provided to expansion population members.

7. The department shall adopt rules to establish clinical transfer and referral protocols to be used by providers included in the expansion population provider network.

2005 Acts, ch 167, §7, 66; 2010 Acts, ch 1193, §201; 2011 Acts, ch 120, §6

Department of human services directed to provide expansion population services through the expansion population network within the budget neutrality cap and subject to availability of state matching funds; 2010 Acts, ch 1134, §5  
Subsection 1, paragraph c amended

#### **249J.8 Expansion population members — financial participation.**

1. *a.* The total monthly premium and other cost-sharing for an expansion population member whose family income exceeds one hundred fifty percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services shall not exceed one-twelfth of five percent of the annual family income regardless of the number of expansion population members in the household. The department shall adopt rules to establish a premium schedule in accordance with this subsection that is calculated based on a member's family income for each ten percent increment of the federal poverty level.

*b.* An expansion population member whose family income is equal to or less than one hundred fifty percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services shall not be subject to payment of a monthly premium.

*c.* All premiums shall be paid by the last day of the month of coverage.

*d.* The department shall deduct the amount of any monthly premiums paid by an expansion population member for benefits under the healthy and well kids in Iowa program when computing the amount of monthly premiums owed under this subsection.

*e.* An expansion population member shall respond to the monthly premium notices either through timely payment or a request for a hardship exemption during the entire period of the member's enrollment.

*f.* Regardless of the length of enrollment, the member is subject to payment of the premium for a minimum of four consecutive months. However, an expansion population member who complies with the requirement of payment of the premium for a minimum of four consecutive months during a consecutive twelve-month period of enrollment shall be deemed to have complied with this requirement for the subsequent consecutive twelve-month period of enrollment and shall only be subject to payment of the monthly premium on a month-by-month basis.

*g.* Timely payment of premiums is a condition of receiving any expansion population services. An expansion population member who does not provide timely payment within sixty days of the date the premium is due is subject to disenrollment.

*h.* Any unpaid premiums are a debt owed to the department.

*i.* The payment to and acceptance by an automated case management system or the department of the premium required under this subsection shall not automatically confer initial or continuing program eligibility on an individual.

*j.* A premium paid to and accepted by the department's premium payment process that

is subsequently determined to be untimely or to have been paid on behalf of an individual ineligible for the program shall be refunded to the remitter in accordance with rules adopted by the department.

k. Premiums collected under this subsection shall be deposited in the premiums subaccount of the account for health care transformation created pursuant to section 249J.23.

l. An expansion population member shall also pay the same copayments required of other adult recipients of medical assistance.

2. The department may reduce the required out-of-pocket expenditures for an individual expansion population member based upon the member's increased wellness activities such as smoking cessation or compliance with the personal health improvement plan completed by the member. The department shall also waive the required out-of-pocket expenditures for an individual expansion population member based upon a hardship that would accrue from imposing such required expenditures. Information regarding the premium payment obligation and the hardship exemption, including the process by which a prospective enrollee may apply for the hardship exemption, shall be provided to a prospective enrollee at the time of application. The prospective enrollee shall acknowledge, in writing, receipt and understanding of the information provided.

3. The department shall track out-of-pocket expenditures by expansion population members and shall report the data on the department's internet website. The report shall include estimates of the number of expansion population members complying and not complying with payment of required out-of-pocket expenditures. To the extent possible, the department shall track the income level of the member, the health condition of the member, and the family status of the member relative to the out-of-pocket information.

2005 Acts, ch 167, §8, 66; 2005 Acts, ch 175, §117; 2006 Acts, ch 1184, §115, 127; 2007 Acts, ch 218, §104, 112; 2008 Acts, ch 1014, §3; 2010 Acts, ch 1141, §6; 2011 Acts, ch 120, §7

Healthy and well kids in Iowa program, see chapter 514I  
Subsection 1 amended

#### **249J.14 Health promotion partnerships.**

1. *Dietary counseling.* If a cost-effective strategy with a measurable return on investment or an impact on health care outcomes is identified, the department may design and implement a strategy to provide dietary counseling and support to child and adult recipients of medical assistance and to expansion population members to assist these recipients and members in avoiding excessive weight gain or loss and to assist in development of personal weight loss programs for recipients and members determined by the recipient's or member's health care provider to be clinically overweight.

2. *Medical assistance health information technology program.* The department shall develop a medical assistance health information technology program for promoting the adoption and meaningful use of electronic medical recordkeeping by providers under the medical assistance program and the Iowa Medicaid enterprise pursuant to the federal American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5. The department shall do all of the following:

a. Design and implement a program for distribution and monitoring of provider incentive payments, including development of a definition of "meaningful use" for purposes of promoting the use of electronic medical recordkeeping by providers. The department shall develop this program in collaboration with the department of public health and the electronic health information advisory council and executive committee created pursuant to section 135.156.

b. Develop the medical assistance health information technology plan as required by the centers for Medicare and Medicaid services of the United States department of health and human services. The plan shall provide detailed implementation plans for the medical assistance program for promotion of the adoption and meaningful use of health information technology by medical assistance providers and the Iowa Medicaid enterprise. The plan shall include the integration of health information technology and health information exchange with the medical assistance management information system. The plan shall be developed

in collaboration with the department of public health and the electronic health information advisory council and executive committee created pursuant to section 135.156.

3. *Provider incentive payment programs.* If a cost-effective strategy with a measurable return on investment or an impact on health care outcomes is identified, the department may design and implement a provider incentive payment program for providers under the medical assistance program and providers included in the expansion population provider network.

4. *Smoking cessation.* The department, in collaboration with department of public health programs relating to tobacco use prevention and cessation, shall implement a program with the goal of reducing smoking among recipients of medical assistance and among expansion population members.

5. *Dental home for children.*

a. The department shall enter into an interagency agreement with the department of public health for infrastructure development and oral health coordination services for recipients of medical assistance to increase access to dental care for medical assistance recipients.

b. By July 1, 2013, every recipient of medical assistance who is a child twelve years of age or younger shall have a designated dental home and shall be provided with the dental screenings, preventive services, diagnostic services, treatment services, and emergency services as defined under the early and periodic screening, diagnostic, and treatment program.

6. *Reports.* The department shall issue a report on the department's internet website on a quarterly basis regarding any changes or updates to the health promotion partnerships described in this section. To the greatest extent feasible, and if applicable to a data set, the data reported shall include demographic information concerning the population served including but not limited to economic status, as specified by the department.

2005 Acts, ch 167, §15, 66; 2006 Acts, ch 1030, §29; 2008 Acts, ch 1188, §48; 2010 Acts, ch 1141, §11; 2011 Acts, ch 120, §8

Subsection 5 amended

#### **249J.24A Nonparticipating provider reimbursement for covered services — reimbursement fund.**

1. A nonparticipating provider may be reimbursed for covered expansion population services provided to an expansion population member if any of the following conditions is met:

a. If the nonparticipating provider determines that the medical status of the expansion population member indicates it is not medically advisable to postpone provision of services, the nonparticipating provider shall provide medically necessary services.

b. If the nonparticipating provider and the participating provider agree that transfer of the expansion population member is not possible due to lack of available inpatient capacity, the nonparticipating provider shall provide medically necessary services.

c. If the medical status of the expansion population member indicates a medical emergency and the nonparticipating provider is not able to contact the appropriate participating provider prior to providing medically necessary services, the nonparticipating provider shall document the medical emergency and inform the appropriate participating provider immediately after the member has been stabilized of any covered services provided.

2. a. If the nonparticipating provider meets the requirements specified in subsection 1, the nonparticipating provider shall be reimbursed for covered expansion population services, limited to emergency and other inpatient hospital services provided to the expansion population member up to the point of transfer to another provider, discharge, or transfer to another level of care, through the nonparticipating provider reimbursement fund in accordance with rules adopted by the department of human services. However, any funds received from participating providers, appropriated to participating providers, or deposited in the IowaCare account pursuant to section 249J.24, shall not be transferred or appropriated to the nonparticipating provider reimbursement fund or otherwise used to reimburse nonparticipating providers.

b. Reimbursement of nonparticipating providers under this section shall be based on the

reimbursement rates and policies applicable to the nonparticipating provider under the full benefit medical assistance program, subject to the availability of funds in the nonparticipating provider reimbursement fund and subject to the appropriation of moneys in the fund to the department.

c. The department shall reimburse the nonparticipating provider only if the recipient of the services is an expansion population member with active eligibility status at the time the services are provided.

3. a. A nonparticipating provider reimbursement fund is created in the state treasury under the authority of the department. Moneys designated for deposit in the fund that are received from sources including but not limited to appropriations from the general fund of the state, grants, and contributions, shall be deposited in the fund. However, any funds received from participating providers, appropriated to participating providers, or deposited in the IowaCare account pursuant to section 249J.24 shall not be transferred or appropriated to the nonparticipating provider reimbursement fund or otherwise used to reimburse nonparticipating providers.

b. Moneys in the fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys deposited in the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes specified in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

c. Moneys deposited in the fund shall be used only to reimburse nonparticipating providers who provide covered services to expansion population members if no other third party is liable for reimbursement and as specified in subsection 1.

d. The department shall attempt to maximize receipt of federal matching funds under the medical assistance program for covered services provided under this section if such attempt does not directly or indirectly limit the federal funds available to participating providers.

4. For the purposes of this section, “*nonparticipating provider*” means a hospital licensed pursuant to chapter 135B that is not a member of the expansion population provider network as specified in section 249J.7.

2009 Acts, ch 182, §127; 2011 Acts, ch 120, §9, 10

Beginning July 1, 2010, medical assistance program waivers relating to continuation of IowaCare program to include provisions relating to reimbursement of nonparticipating providers; 2009 Acts, ch 182, §128

Subsection 1 amended

Subsection 2, paragraph a amended

## CHAPTER 249M

### HOSPITAL HEALTH CARE ACCESS ASSESSMENT PROGRAM

Legislative intent; pilot program; 2010 Acts, ch 1135, §1

For contingency provisions relating to implementation of this chapter and collection of hospital health care access assessment; see 2010 Acts, ch 1135, §7 - 9

#### **249M.3 Hospital health care access assessment program — termination of program.**

1. A hospital health care access assessment is imposed on each participating hospital in this state to be used to promote access to health care services for Iowans, including those served by the medical assistance program.

2. The assessment rate for a participating hospital shall be calculated as one and twenty-six one hundredths percent of net patient revenue as specified in the hospital’s fiscal year 2008 Medicare cost report.

3. If a participating hospital’s fiscal year 2008 Medicare cost report is not contained in the file of the centers for Medicare and Medicaid services health care cost report information system dated June 30, 2009, the hospital shall submit a copy of the hospital’s 2008 Medicare

cost report to the department to allow the department to determine the hospital's net patient revenue for fiscal year 2008.

4. A participating hospital paid under the prospective payment system by Medicare and the medical assistance program that was not in existence prior to fiscal year 2008, shall submit a prospective Medicare cost report to the department to determine anticipated net patient revenue.

5. Net patient revenue as reported on each participating hospital's fiscal year 2008 Medicare cost report, or as reported under subsection 4 if applicable, shall be the sole basis for the health care access assessment for the duration of the program.

6. A participating hospital shall pay the assessment to the department in equal amounts on a quarterly basis. A participating hospital shall submit the assessment amount no later than thirty days following the end of each calendar quarter.

7. A participating hospital shall retain and preserve the Medicare cost report and financial statements used to prepare the cost report for a period of three years. All information obtained by the department under this subsection is confidential and does not constitute a public record.

8. The department shall collect the assessment imposed and shall deposit all revenues collected in the hospital health care access trust fund created in section 249M.4.

9. If the department determines that a participating hospital has underpaid or overpaid the assessment, the department shall notify the participating hospital of the amount of the unpaid assessment or refund due. Such payment or refund shall be due or refunded within thirty days of the issuance of the notice.

10. *a.* A participating hospital that fails to pay the assessment within the time frame specified in this section shall pay, in addition to the outstanding assessment, a penalty of one and five-tenths percent of the assessment amount owed for each month or portion of each month that the payment is overdue. However, if the department determines that good cause is shown for failure to comply with payment of the assessment, the department shall waive the penalty or a portion of the penalty.

*b.* If an assessment is not received by the department by the last day of the month in which the payment is due, the department shall withhold an amount equal to the assessment and penalty owed from any payment due such participating hospital under the medical assistance program.

*c.* The assessment imposed under this chapter constitutes a debt due the state and may be collected by civil action under any method provided for by law.

*d.* Any penalty collected pursuant to this subsection shall be credited to the hospital health care access trust fund created in section 249M.4.

11. If the federal government fully funds Iowa's medical assistance program, if federal law changes to negatively impact the assessment program as determined by the department, or if a federal audit determines the assessment program is invalid, the department shall terminate the imposition of the assessment and the program beginning on the date the federal statutory, regulatory, or interpretive change takes effect.

2010 Acts, ch 1135, §4, 9; 2011 Acts, ch 34, §63

For contingency provisions relating to implementation of this chapter and collection of hospital health care access assessment; see 2010 Acts, ch 1135, §7 - 9

Subsection 5 amended

## CHAPTER 252A

### SUPPORT OF DEPENDENTS

See also chapter 252K, the Uniform Interstate Family Support Act

#### **252A.3 Liability for support.**

For the purpose of this chapter:

1. A spouse is liable for the support of the other spouse and any child or children under

eighteen years of age and any other dependent. The court shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21A or 598.21B, as applicable.

2. A parent is liable for the support of the parent's child or children under eighteen years of age, whenever the other parent of such child or children is dead, or cannot be found, or is incapable of supporting the child or children, and, if the liable parent is possessed of sufficient means or able to earn the means. The court having jurisdiction of the respondent in a proceeding instituted under this chapter shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B. The support obligation shall include support of a parent's child between the ages of eighteen and nineteen years if the child is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.

3. The parents are severally liable for the support of a dependent child eighteen years of age or older, whenever such child is unable to maintain the child's self and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

5. *a.* A child born of parents who at any time prior to the birth of the child entered into a civil or religious marriage ceremony is deemed the legitimate child of both parents, regardless of the validity of such marriage, if all of the following conditions are met:

(1) The marriage was not thereafter dissolved prior to the death of either parent.

(2) The child was conceived and born after the death of a parent or was born as the result of the implantation of an embryo after the death of a parent.

(3) A genetic parent-child relationship between the child and the deceased parent is established.

(4) The deceased parent, in a signed writing, authorized the other parent to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth, or the deceased parent, by a specific reference to the genetic material, bequeathed the genetic material to the other parent in a valid will.

(5) The child is born within two years of the death of the deceased parent.

*b.* For the purposes of this subsection, "*genetic material*" means sperm, eggs, or embryos.

6. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage are deemed the legitimate child or children of both parents.

7. *a.* A child born of parents who at any time prior to the birth of the child held themselves out as spouses by virtue of a common law marriage is deemed the legitimate child of both parents, if all of the following conditions are met:

(1) The marriage was not thereafter dissolved prior to the death of either parent.

(2) The child was conceived and born after the death of a parent or was born as the result of the implantation of an embryo after the death of a parent.

(3) A genetic parent-child relationship between the child and the deceased parent is established.

(4) The deceased parent, in a signed writing, authorized the other parent to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth, or the deceased parent, by a specific reference to the genetic material, bequeathed the genetic material to the other parent in a valid will.

(5) The child is born within two years of the death of the deceased parent.

*b.* For purposes of this subsection, "*genetic material*" means sperm, eggs, or embryos.

8. A man or woman who was or is held out as the person's spouse by a person by virtue of a common law marriage is deemed the legitimate spouse of such person.

9. Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from the respondent's spouse or a decree dissolving the marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

10. The parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the father shall not be enforceable unless paternity has been legally established. Paternity may be established as follows:

a. By order of a court of competent jurisdiction or by administrative order when authorized by state law.

b. By the statement of the person admitting paternity in court and upon concurrence of the mother. If the mother was married, at the time of conception, birth, or at any time during the period between conception and birth of the child, to an individual other than the person admitting paternity, the individual to whom the mother was married at the time of conception, birth, or at any time during the period between conception and birth must deny paternity in order to establish the paternity of the person admitting paternity upon the sole basis of the admission.

c. Subject to the right of any signatory to rescind as provided in section 252A.3A, subsection 12, by the filing and registration by the state registrar of an affidavit of paternity executed on or after July 1, 1993, as provided in section 252A.3A, provided that the mother of the child was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child or if the mother was married at the time of conception, birth, or at any time during the period between conception and birth of the child, a court of competent jurisdiction has determined that the individual to whom the mother was married at that time is not the father of the child.

d. By establishment of paternity in a foreign jurisdiction in any manner provided for by the laws of that jurisdiction.

11. If paternity of a child born out of wedlock is established as provided in subsection 10, the court shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B. The support obligation shall include support of the child between the ages of eighteen and nineteen years if the child is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.

12. The court may order a party to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, including medical support as defined in chapter 252E, expenses of confinement, expenses of education of a child, funeral expenses, and such other reasonable and proper expenses of the dependent as justice requires, giving due regard to the circumstances of the respective parties.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.3]

89 Acts, ch 166, §2; 93 Acts, ch 79, §12; 94 Acts, ch 1171, §12; 96 Acts, ch 1141, §16; 97 Acts, ch 175, §1, 10, 11; 2005 Acts, ch 69, §2, 3; 2011 Acts, ch 18, §1

Spousal support debt for medical assistance to institutionalized spouse; chapter 249B

NEW subsection 5 and former subsection 5 renumbered as 6

NEW subsection 7 and former subsections 6 - 10 renumbered as 8 - 12

### **252A.3A Establishing paternity by affidavit.**

1. The paternity of a child born out of wedlock may be legally established by the completion, filing, and registration by the state registrar of an affidavit of paternity only as provided by this section.

2. When paternity has not been legally established, paternity may be established by affidavit under this section for the following children:

a. The child of a woman who was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child.

b. The child of a woman who is married at the time of conception, birth, or at any time during the period between conception and birth of the child if a court of competent jurisdiction has determined that the individual to whom the mother was married at that time is not the father of the child.

3. a. Prior to or at the time of completion of an affidavit of paternity, written and oral information about paternity establishment, developed by the child support recovery unit created in section 252B.2, shall be provided to the mother and putative father. Video or audio equipment may be used to provide oral information.

b. The information provided shall include a description of parental rights and responsibilities, including the duty to provide financial support for the child, the benefits of establishing paternity, and the alternatives to and legal consequences of signing an affidavit of paternity, including the rights available if a parent is a minor.

c. Copies of the written information shall be made available by the child support recovery unit or the Iowa department of public health to those entities where an affidavit of paternity may be obtained as provided under subsection 4.

4. a. The affidavit of paternity form developed and used by the Iowa department of public health is the only affidavit of paternity form recognized for the purpose of establishing paternity under this section. It shall include the minimum requirements specified by the secretary of the United States department of health and human services pursuant to 42 U.S.C. § 652(a)(7). A properly completed affidavit of paternity form developed by the Iowa department of public health and existing on or after July 1, 1993, but which is superseded by a later affidavit of paternity form developed by the Iowa department of public health, shall have the same legal effect as a paternity affidavit form used by the Iowa department of public health on or after July 1, 1997, regardless of the date of the filing and registration of the affidavit of paternity, unless otherwise required under federal law.

b. The form shall be available from the state registrar, each county registrar, the child support recovery unit, and any institution in the state.

c. The Iowa department of public health shall make copies of the form available to the entities identified in paragraph "b" for distribution.

5. A completed affidavit of paternity shall contain or have attached all of the following:

a. A statement by the mother consenting to the assertion of paternity and the identity of the father and acknowledging either of the following:

(1) That the mother was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child.

(2) That the mother was married at the time of conception, birth, or at any time during the period between conception and birth of the child, and that a court order has been entered ruling that the individual to whom the mother was married at that time is not the father of the child.

b. If paragraph "a", subparagraph (2), is applicable, a certified copy of the filed order ruling that the husband is not the father of the child.

c. A statement from the putative father that the putative father is the father of the child.

d. The name of the child at birth and the child's birth date.

e. The signatures of the mother and putative father.

f. The social security numbers of the mother and putative father.

g. The addresses of the mother and putative father, as available.

h. The signature of a notary public attesting to the identities of the parties signing the affidavit of paternity.

i. Instructions for filing the affidavit.

6. A completed affidavit of paternity shall be filed with the state registrar. However, if the affidavit of paternity is obtained directly from the county registrar, the completed affidavit may be filed with the county registrar who shall forward the original affidavit to the state registrar. For the purposes of legal establishment of paternity under this section, paternity is legally established only upon filing of the affidavit with and registration of the affidavit by the state registrar subject to the right of any signatory to rescission pursuant to subsection 12.

7. The state registrar shall make copies of affidavits of paternity and identifying information from the affidavits filed and registered pursuant to this section available to the child support recovery unit created under section 252B.2 in accordance with section 144.13, subsection 4, and any subsequent rescission form which rescinds the affidavit.

8. An affidavit of paternity completed and filed with and registered by the state registrar pursuant to this section has all of the following effects:

a. Is admissible as evidence of paternity.

b. Has the same legal force and effect as a judicial determination of paternity subject to the right of any signatory to rescission pursuant to subsection 12.

c. Serves as a basis for seeking child or medical support without further determination of paternity subject to the right of any signatory to rescission pursuant to subsection 12.

9. All institutions in the state shall provide the following services with respect to any newborn child born out of wedlock:

a. Prior to discharge of the newborn from the institution, the institution where the birth occurs shall provide the mother and, if present, the putative father, with all of the following:

(1) Written and oral information about establishment of paternity pursuant to subsection 3. Video or audio equipment may be used to provide oral information.

(2) An affidavit of paternity form.

(3) An opportunity for consultation with the staff of the institution regarding the written information provided under subparagraph (1).

(4) An opportunity to complete an affidavit of paternity at the institution, as provided in this section.

b. The institution shall file any affidavit of paternity completed at the institution with the state registrar, pursuant to subsection 6, accompanied by a copy of the child's birth certificate, within ten days of the birth of the child.

10. a. An institution may be reimbursed by the child support recovery unit created in section 252B.2 for providing the services described under subsection 9, or may provide the services at no cost.

b. An institution electing reimbursement shall enter into a written agreement with the child support recovery unit for this purpose.

c. An institution entering into an agreement for reimbursement shall assist the parents of a child born out of wedlock in completing and filing an affidavit of paternity.

d. Reimbursement shall be based only on the number of affidavits completed in compliance with this section and submitted to the state registrar during the duration of the written agreement with the child support recovery unit.

e. The reimbursement rate is twenty dollars for each completed affidavit filed with the state registrar.

11. The state registrar, upon request of the mother or the putative father, shall provide the following services with respect to a child born out of wedlock:

a. Written and oral information about the establishment of paternity pursuant to subsection 3. Video or audio equipment may be used to provide oral information.

b. An affidavit of paternity form.

c. An opportunity for consultation with staff regarding the information provided under paragraph "a".

12. a. A completed affidavit of paternity may be rescinded by registration by the state registrar of a completed and notarized rescission form signed by either the mother or putative father who signed the affidavit of paternity that the putative father is not the father of the child. The completed and notarized rescission form shall be filed with the state registrar for the purpose of registration prior to the earlier of the following:

(1) Sixty days after the latest notarized signature of the mother or putative father on the affidavit of paternity.

(2) Entry of a court order pursuant to a proceeding in this state to which the signatory is a party relating to the child, including a proceeding to establish a support order under this chapter, chapter 252C, 252F, 598, or 600B or other law of this state.

b. Unless the state registrar has received and registered an order as provided in section 252A.3, subsection 10, paragraph "a", which legally establishes paternity, upon registration of a timely rescission form the state registrar shall remove the father's information from the certificate of birth, and shall send a written notice of the rescission to the last known address of the signatory of the affidavit of paternity who did not sign the rescission form.

c. The Iowa department of public health shall develop a rescission form and an administrative process for rescission. The form shall be the only rescission form recognized for the purpose of rescinding a completed affidavit of paternity. A completed rescission form shall include the signature of a notary public attesting to the identity of the party signing the rescission form. The Iowa department of public health shall adopt rules which establish a fee, based upon the average administrative cost, to be collected for the registration of a rescission.

d. If an affidavit of paternity has been rescinded under this subsection, the state registrar shall not register any subsequent affidavit of paternity signed by the same mother and putative father relating to the same child.

13. The child support recovery unit may enter into a written agreement with an entity designated by the secretary of the United States department of health and human services to offer voluntary paternity establishment services.

a. The agreement shall comply with federal requirements pursuant to 42 U.S.C. § 666(a)(5)(C) including those regarding notice, materials, training, and evaluations.

b. The agreement may provide for reimbursement of the entity by the state if reimbursement is permitted by federal law.

93 Acts, ch 79, §13; 94 Acts, ch 1171, §13; 95 Acts, ch 52, §2; 97 Acts, ch 175, §2; 98 Acts, ch 1170, §28 – 31

Section not amended; internal reference change applied

## CHAPTER 252B

### CHILD SUPPORT RECOVERY

#### **252B.20 Suspension of support.**

1. If the unit is providing child support enforcement services pursuant to this chapter, the parents of a dependent child for whom support has been ordered pursuant to chapter 252A, 252C, 252F, 598, 600B, or any other chapter, may jointly request the assistance of the unit in suspending the obligation for support if all of the following conditions exist:

a. The parents have reconciled and are cohabiting, and the child for whom support is ordered is living in the same residence as the parents, or the child is currently residing with the parent who is ordered to pay support. If the basis for suspension under this paragraph applies to at least one but not all of the children for whom support is ordered, the condition of this paragraph is met only if the support order includes a step change.

b. The child for whom support is ordered is not receiving public assistance pursuant to chapter 239B, 249A, or a comparable law of a foreign jurisdiction, unless the person against whom support is ordered is considered to be a member of the same household as the child for the purposes of public assistance eligibility.

c. The parents have signed a notarized affidavit attesting to the conditions under paragraphs “a” and “b”, have consented to suspension of the support order or obligation, and have submitted the affidavit to the unit.

d. No prior request for suspension has been filed with the unit during the two-year period preceding the request, unless the request was filed during the two-year period preceding July 1, 2005, the unit denied the request because the suspension did not apply to all children for whom support is ordered, and the parents jointly file a request on or after July 1, 2005.

e. Any other criteria established by rule of the department.

2. Upon receipt of the application for suspension and properly executed and notarized affidavit, the unit shall review the application and affidavit to determine that the necessary criteria have been met. The unit shall then do one of the following:

a. Deny the request and notify the parents in writing that the application is being denied, providing reasons for the denial and notifying the parents of the right to proceed through private counsel. Denial of the application is not subject to contested case proceedings or further review pursuant to chapter 17A.

b. Approve the request and prepare an order which shall be submitted, along with the affidavit, to a judge of a district court for approval, suspending the accruing support obligation and, if requested by the obligee, and if not prohibited by chapter 252K, satisfying the obligation of support due the obligee. If the basis for suspension applies to at least one but not all of the children for whom support is ordered and the support order includes a step

change, the unit shall prepare an order suspending the accruing support obligation for each child to whom the basis for suspension applies.

3. An order approved by the court for suspension of an accruing support obligation is effective upon the date of filing of the suspension order. The satisfaction of an obligation of support due the obligee shall be final upon the filing of the suspension order. A support obligation which is satisfied is not subject to the reinstatement provisions of this section.

4. An order suspending an accruing support obligation entered by the court pursuant to this section shall be considered a temporary order for the period of six months from the date of filing of the suspension order. However, the six-month period shall not include any time during which an application for reinstatement is pending before the court.

5. During the six-month period the unit may request that the court reinstate the accruing support order or obligation if any of the following conditions exist:

a. Upon application to the unit by either parent or other person who has physical custody of the child.

b. Upon the receipt of public assistance benefits, pursuant to chapter 239B, 249A, or a comparable law of a foreign jurisdiction, by the person entitled to receive support and the child on whose behalf support is paid, provided that the person owing the support is not considered to be a member of the same household as the child for the purposes of public assistance eligibility.

6. If a condition under subsection 5 exists, the unit may request that the court reinstate an accruing support obligation as follows:

a. If the basis for the suspension no longer applies to any of the children for whom an accruing support obligation was suspended, the unit shall request that the court reinstate the accruing support obligations for all of the children.

b. If the basis for the suspension continues to apply to at least one but not all of the children for whom an accruing support obligation was suspended and if the support order includes a step change, the unit shall request that the court reinstate the accruing support obligation for each child for whom the basis for the suspension no longer applies.

7. Upon filing of an application for reinstatement, service of the application shall be made either in person or by first class mail upon both parents. Within ten days following the date of service, the parents may file a written objection with the clerk of the district court to the entry of an order for reinstatement.

a. If no objection is filed, the court may enter an order reinstating the accruing support obligation without additional notice.

b. If an objection is filed, the clerk of court shall set the matter for hearing and send notice of the hearing to both parents and the unit.

8. The reinstatement is effective as follows:

a. For reinstatements initiated under subsection 5, paragraph "a", the date the notices were served on both parents pursuant to subsection 7.

b. For reinstatements initiated under subsection 5, paragraph "b", the date the child began receiving public assistance benefits during the suspension of the obligation.

c. Support which became due during the period of suspension but prior to the reinstatement is waived and not due and owing unless the parties requested and agreed to the suspension under false pretenses.

9. If the order suspending a support obligation has been on file with the court for a period exceeding six months as computed pursuant to subsection 4, the order becomes final by operation of law and terminates the support obligation, and thereafter, a party seeking to establish a support obligation against either party shall bring a new action for support as provided by law.

10. This section shall not limit the rights of the parents or the unit to proceed by other means to suspend, terminate, modify, reinstate, or establish support.

11. This section does not provide for the suspension or retroactive modification of support obligations which accrued prior to the entry of an order suspending enforcement and collection of support pursuant to this section. However, if in the application for suspension, an obligee elects to satisfy an obligation of accrued support due the obligee, the suspension order may satisfy the obligation of accrued support due the obligee.

12. Nothing in this section shall prohibit or limit the unit or a party entitled to receive support from enforcing and collecting any unpaid or unsatisfied support that accrued prior to the suspension of the accruing obligation.

13. For the purposes of chapter 252H, subchapter II, regarding the criteria for a review or for a cost-of-living alteration under chapter 252H, subchapter IV, if a support obligation is terminated or reinstated under this section, such termination or reinstatement shall not be considered a modification of the support order.

14. As used in this section, unless the context otherwise requires, “*step change*” means a change designated in a support order specifying the amount of the child support obligation as the number of children entitled to support under the order changes.

93 Acts, ch 79, §24; 94 Acts, ch 1171, §18; 96 Acts, ch 1141, §4; 97 Acts, ch 41, §32; 98 Acts, ch 1170, §46, 47; 2005 Acts, ch 112, §2 – 5; 2011 Acts, ch 25, §20

Subsection 13 amended

## CHAPTER 252D

### SUPPORT PAYMENTS — INCOME WITHHOLDING

#### SUBCHAPTER III

#### GENERAL PROVISIONS

##### **252D.18 Modification or termination of withholding.**

1. The court or the child support recovery unit may, by ex parte order, modify a previously entered income withholding order if the court or the unit determines any of the following:

- a. There has been a change in the amount of the current support obligation.
- b. The amount required to be withheld under the income withholding order is in error.
- c. Any past due support debt has been paid in full. Should a delinquency later accrue, the withholding order may be modified to secure payment toward the delinquency.
- d. There has been a change in the rules adopted by the department pursuant to chapter 17A regarding the amount of income to be withheld to pay a delinquency.

2. The child support recovery unit may modify an amount specified in an income withholding order or notice of income withholding by providing notice to the payor of income and the obligor pursuant to sections 252D.17 and 252D.17A.

3. The court or the child support recovery unit may, by ex parte order, terminate an income withholding order when the current support obligation has terminated and when the delinquent support obligation has been fully satisfied as applicable to all of the children covered by the income withholding order. The unit may, by ex parte order, terminate an income withholding order when the unit will no longer be providing services under chapter 252B, or when a foreign jurisdiction will be providing services under Tit. IV-D of the federal Social Security Act.

4. In no case shall payment of overdue support be the sole basis for termination of withholding.

90 Acts, ch 1123, §8; 91 Acts, ch 177, §6; 92 Acts, ch 1195, §106; 93 Acts, ch 78, §13; 98 Acts, ch 1170, §44; 2006 Acts, ch 1119, §5, 11; 2011 Acts, ch 67, §1

Subsection 3 amended

## CHAPTER 252H

## ADJUSTMENT AND MODIFICATION OF SUPPORT ORDERS

## SUBCHAPTER I

## GENERAL PROVISIONS

**252H.2 Definitions.**

1. As used in this chapter, unless the context otherwise requires, “*administrator*”, “*caretaker*”, “*court order*”, “*department*”, “*dependent child*”, “*medical support*”, and “*responsible person*” mean the same as defined in section 252C.1.

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

a. “*Act*” means the federal Social Security Act.

b. “*Adjustment*” applies only to the child support provisions of a support order and means either of the following:

(1) A change in the amount of child support based upon an application of the child support guidelines established pursuant to section 598.21B.

(2) An addition of or change to provisions for medical support as provided in chapter 252E.

c. “*Child*” means a child as defined in section 252B.1.

d. “*Child support agency*” means any state, county, or local office or entity of another state that has the responsibility for providing child support enforcement services under Tit. IV-D of the Act.

e. “*Child support recovery unit*” or “*unit*” means the child support recovery unit created pursuant to section 252B.2.

f. “*Cost-of-living alteration*” means a change in an existing child support order which equals an amount which is the amount of the support obligation following application of the percentage change of the consumer price index for all urban consumers, United States city average, as published in the federal register by the federal department of labor, bureau of labor statistics.

g. “*Determination of controlling order*” means the process of identifying a child support order which must be recognized pursuant to section 252K.207 and 28 U.S.C. § 1738B, when more than one state has issued a support order for the same child and the same obligor, and may include a reconciliation of arrearages with information related to the calculation. Registration of a foreign order is not necessary for a court or the unit to make a determination of controlling order.

h. “*Modification*” means either of the following:

(1) A change, correction, or termination of an existing support order.

(2) The establishment of a child or medical support obligation in a previously established order entered pursuant to chapter 234, 252A, 252C, 598, 600B, or any other support proceeding, in which such support was not previously established, or in which support was previously established and subsequently terminated prior to the emancipation of the children affected.

i. “*Parent*” means, for the purposes of requesting a review of a support order and for being entitled to notice under this chapter:

(1) The individual ordered to pay support pursuant to the order.

(2) An individual or entity entitled to receive current or future support payments pursuant to the order, or pursuant to a current assignment of support including but not limited to an agency of this or any other state that is currently providing public assistance benefits to the child for whom support is ordered and any child support agency. Service of notice of an action initiated under this chapter on an agency is not required, but the agency may be advised of the action by other means.

j. “*Public assistance*” means benefits received in this state or any other state, under Tit.

IV-A (temporary assistance to needy families), IV-E (foster care), or XIX (Medicaid) of the Act.

k. “Review” means an objective evaluation conducted through a proceeding before a court, administrative body, or an agency, of information necessary for the application of a state’s mandatory child support guidelines to determine:

- (1) The appropriate monetary amount of support.
- (2) Provisions for medical support.

l. “State” means “state” as defined in section 252K.101.

m. “Support order” means an order for support issued pursuant to chapter 232, 234, 252A, 252C, 252E, 252F, 252H, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction as registered with the clerk of court or certified to the child support recovery unit.

93 Acts, ch 78, §25; 93 Acts, ch 79, §47; 97 Acts, ch 175, §94 – 96; 98 Acts, ch 1170, §35; 2002 Acts, ch 1018, §10; 2005 Acts, ch 69, §20; 2007 Acts, ch 218, §179, 180, 187; 2008 Acts, ch 1019, §18, 20; 2009 Acts, ch 41, §263; 2011 Acts, ch 67, §2

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Subsection 2, paragraph g amended

## SUBCHAPTER II

### REVIEW AND ADJUSTMENT

#### **252H.14A Reviews initiated by the child support recovery unit — abbreviated method.**

1. Notwithstanding section 252H.15, the unit may use procedures under this section to review a support order if all the following apply:

a. One of the following applies:

(1) The right to ongoing child support is assigned to the state of Iowa due to the receipt of family investment program assistance, and a review of the support order is required under section 7302 of the federal Deficit Reduction Act of 2005, Pub. L. No. 109-171.

(2) A parent requests a review, provides the unit with financial information as part of that request, and the order meets the criteria for review under this subchapter.

b. The unit has access to information concerning the financial circumstances of each parent and one of the following applies:

(1) The parent is a recipient of family investment program assistance, medical assistance, or food assistance from the department.

(2) The parent’s income is from supplemental security income paid pursuant to 42 U.S.C. § 1381a.

(3) The parent is a recipient of disability benefits under the Act because of the parent’s disability.

(4) The parent is an inmate of an institution under the control of the department of corrections.

(5) The unit has access to information described in section 252B.7A, subsection 1, paragraph “c”.

2. If the conditions of subsection 1 are met, the unit may conduct a review and determine whether an adjustment is appropriate using information accessible by the unit without issuing a notice under section 252H.15 or requesting additional information from the parent.

3. Upon completion of the review, the unit shall issue a notice of decision to each parent, or if applicable, to each parent’s attorney. The notice shall be served in accordance with the rules of civil procedure or as provided in section 252B.26, except that a parent requesting a review pursuant to section 252H.13 shall waive the right to personal service of the notice in writing and accept service by regular mail. If the service by regular mail does not occur within ninety days of the written waiver of personal service, personal service of the notice is required unless a new waiver of personal service is obtained.

4. All of the following shall be included in the notice of decision:

a. The legal basis and purpose of the action, including an explanation of the procedures

for determining child support, the criteria for determining the appropriateness of an adjustment, and a statement that the unit used the child support guidelines established pursuant to section 598.21B and the provisions for medical support pursuant to chapter 252E.

b. Information sufficient to identify the affected parties and the support order or orders affected.

c. An explanation of the legal rights and responsibilities of the affected parties, including time frames in which the parties must act.

d. A statement indicating whether the unit finds that an adjustment is appropriate and the basis for the determination.

e. Procedures for contesting the action, including that if a parent requests a second review both parents will be requested to submit financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21B.

f. Other information as appropriate.

5. Section 252H.16, subsection 5, regarding a revised notice of decision shall apply to a notice of decision issued under this section.

6. Each parent shall have the right to challenge the notice of decision issued under this section by requesting a second review by the unit as provided in section 252H.17. If there is no new or different information to consider for the second review, the unit shall issue a second notice of decision based on prior information. Each parent shall have the right to challenge the second notice of decision by requesting a court hearing as provided in section 252H.8.

2007 Acts, ch 218, §151, 156; 2010 Acts, ch 1142, §7; 2011 Acts, ch 67, §3

Existing administrative rules applicable to review and adjustment of support orders apply to review under this section as amended by 2010 Acts, except that a provision for a time limit, notice, or other procedure that conflicts with this section, as amended by 2010 Acts, is inapplicable; 2010 Acts, ch 1142, §10

Subsection 3 amended

## CHAPTER 252J

### CHILD SUPPORT — LICENSING SANCTIONS

#### 252J.4 Conference.

1. The individual may schedule a conference with the unit following mailing of the notice pursuant to section 252J.3, or at any time after service of notice of suspension, revocation, denial of issuance, or nonrenewal of a license from a licensing authority, to challenge the unit's actions under this chapter.

2. The request for a conference shall be made to the unit, in writing, and, if requested after mailing of the notice pursuant to section 252J.3, shall be received by the unit within twenty days following mailing of the notice.

3. The unit shall notify the individual of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than ten days following issuance of notice of the conference by the unit, unless the individual and the unit agree to an earlier date which may be the same date the individual requests the conference. If the individual fails to appear at the conference, the unit shall issue a certificate of noncompliance.

4. Following the conference, the unit shall issue a certificate of noncompliance unless any of the following applies:

a. The unit finds a mistake in the identity of the individual.

b. The unit finds a mistake in determining that the amount of delinquent support is equal to or greater than three months.

c. The obligor enters a written agreement with the unit to comply with a support order, the obligor complies with an existing written agreement to comply with a support order, or the obligor pays the total amount of delinquent support due.

d. Issuance of a certificate of noncompliance is not appropriate under other criteria established in accordance with rules adopted by the department pursuant to chapter 17A.

e. The unit finds a mistake in determining the compliance of the individual with a subpoena or warrant.

f. The individual complies with a subpoena or warrant.

5. The unit shall grant the individual a stay of the issuance of a certificate of noncompliance upon receiving a timely written request for a conference, and if a certificate of noncompliance has previously been issued, shall issue a withdrawal of a certificate of noncompliance if the obligor enters into a written agreement with the unit to comply with a support order or if the individual complies with a subpoena or warrant.

6. If the individual does not timely request a conference or does not comply with a subpoena or warrant or if the obligor does not pay the total amount of delinquent support owed within twenty days of mailing of the notice pursuant to section 252J.3, the unit shall issue a certificate of noncompliance.

95 Acts, ch 115, §4; 95 Acts, ch 209, §23; 97 Acts, ch 175, §116; 2005 Acts, ch 112, §16; 2011 Acts, ch 67, §4

Subsection 3 amended

## CHAPTER 256

### DEPARTMENT OF EDUCATION

Department includes Iowa advance funding authority; §7E.7, chapter 257C

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **256.7 Duties of state board.**

Except for the college student aid commission, the commission of libraries and division of library services, and the public broadcasting board and division, the state board shall:

1. Adopt and establish policy for programs and services of the department pursuant to law.

2. Constitute the state board for vocational education under chapter 258.

3. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs offered in this state by practitioner preparation institutions located within or outside this state and by area education agencies. Procedures provided for approval of programs shall include procedures for enforcement of the prescribed standards and shall not include a procedure for the waiving of any of the standards prescribed. The board may establish by rule and collect from practitioner preparation institutions located outside this state an amount equivalent to the department's necessary travel and actual expenses incurred while engaged in the program approval process for the institution located outside this state. Amounts collected under this subsection shall be deposited in the general fund of the state.

4. Adopt, and update annually, a five-year plan for the achievement of educational goals in Iowa.

5. Adopt rules under chapter 17A for carrying out the responsibilities of the department.

6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board may review the record and shall review the decision of the director of the department of education or the administrative law judge designated for any appeals heard and decided by the director under chapter 290, and may affirm, modify, or vacate the decision, or may direct a rehearing before the director.

7. Adopt rules under chapter 17A for the use of telecommunications as an instructional

tool for students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the state board of regents, and independent colleges and universities in elementary and secondary school classes and courses. The rules shall include but need not be limited to rules relating to programs, educational policy, instructional practices, staff development, use of pilot projects, curriculum monitoring, and the accessibility of licensed teachers.

a. When curriculum is provided by means of telecommunications, it shall be taught by an appropriately licensed teacher. The teacher shall either be present in the classroom, or be present at the location at which the curriculum delivered by means of telecommunications originates.

b. The rules shall provide that when the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originates, the curriculum received at a remote site shall be under the supervision of a licensed teacher. The licensed teacher at the originating site may provide supervision of students at a remote site or the school district in which the remote site is located may provide for supervision at the remote site if the school district deems it necessary or if requested to do so by the licensed teacher at the originating site. For the purposes of this subsection, “*supervision*” means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

c. The state board shall establish an advisory committee to make recommendations for rules required under this subsection on the use of telecommunications as an instructional tool. The committee shall be composed of representatives from community colleges, area education agencies, accredited or approved nonpublic schools, and local school districts from various enrollment categories. The representatives shall include board members, school administrators, teachers, parents, students, and associations interested in education.

d. For the purpose of the rules adopted by the state board, telecommunications means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications.

8. Rules adopted under this section shall provide that telecommunications shall not be used by school districts as the exclusive means to provide any course which is required by the minimum educational standards for accreditation.

9. Develop evaluation procedures that will measure the effects of instruction by means of telecommunications on student achievement, socialization, intellectual growth, motivation, and other related factors deemed relevant by the state board, for the development of an educational database. The state board shall consult with the state board of regents and the practitioner preparation departments at its institutions, other practitioner preparation departments located within private colleges and universities, educational research agencies or facilities, and other agencies deemed appropriate by the state board, in developing these procedures.

10. Adopt rules pursuant to chapter 17A relating to educational programs and budget limitations for educational programs pursuant to sections 282.29, 282.30, 282.31, and 282.33.

11. Prescribe guidelines for facility standards, maximum class sizes, and maximum in classroom pupil-teacher and teacher-aide ratios for grades kindergarten through three and before and after school and summer child care programs provided under the direction of the school district. The department also shall indicate modifications to such guidelines necessary to address the needs of at-risk children.

12. Elect to a two-year term, from its members in each even-numbered year, a president of the state board, who shall serve until a successor is elected and qualified.

13. Adopt rules and a procedure for accrediting all apprenticeship programs in the state which receive state or federal funding. In developing the rules, the state board shall consult with schools and labor or trade organizations affected by or currently operating apprenticeship or training programs. Rules adopted shall be the same or similar to criteria established for the operation of apprenticeship programs at community colleges.

14. Require each community college which establishes a new jobs training project

or projects and receives funds derived from or associated with the project or projects to establish a separate account to act as a repository for any funds received.

15. If funds are appropriated by the general assembly for the program, adopt rules for the administration of the teacher exchange program, including, but not limited to, rules for application to participate in the program, rules relating to the number of times that a given applicant may participate in the program, and rules describing reimbursable expenses and establishing honoraria for teacher participants.

16. Adopt rules that set standards for approval of family support preservice and in-service training programs, offered by area education agencies and practitioner preparation institutions, and family support programs offered by or through local school districts.

17. Receive and review the budget and unified plan of service submitted by the division of library services.

18. Adopt rules that include children who retain some sight but who have a medically diagnosed expectation of visual deterioration within the definition of children requiring special education pursuant to section 256B.2, subsection 1. Rules adopted pursuant to this subsection shall provide for or include, but are not limited to, the following:

a. A presumption that proficiency in braille reading and writing is essential for satisfactory educational progress for a visually impaired student who is not able to communicate in print with the same level of proficiency as a student of otherwise comparable ability at the same grade level. This presumption includes a student as defined in paragraph "b". A student for whom braille services are appropriate, as defined in this subsection, is entitled to instruction in braille reading and writing that is sufficient to enable the pupil to communicate with the same level of proficiency as a pupil of otherwise comparable ability at the same grade level.

b. A pupil who retains some sight but who has a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

c. Instruction in braille reading and writing may be used in combination with other special education services appropriate to a pupil's educational needs.

d. The annual review of a pupil's individual education plan shall include discussion of instruction in braille reading and writing and a written explanation of the reasons why the pupil is using a given reading and writing medium or media. If the reasons have not changed since the previous year, the written explanation for the current year may refer to the fuller explanation from the previous year.

e. A pupil as defined in paragraph "b" whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the pupil can effectively use.

f. A pupil who receives instruction in braille reading and writing pursuant to this subsection shall be taught by a teacher licensed to teach students with visual impairments.

19. Define the minimum school day as a day consisting of five and one-half hours of instructional time for grades one through twelve. The minimum hours shall be exclusive of the lunch period, but may include passing time between classes. Time spent on parent-teacher conferences shall be considered instructional time. A school or school district may record a day of school with less than the minimum instructional hours as a minimum school day if any of the following apply:

a. If emergency health or safety factors require the late arrival or early dismissal of students on a specific day.

b. If the total hours of instructional school time for grades one through twelve for any five consecutive school days equal a minimum of twenty-seven and one-half hours, even though any one day of school is less than the minimum instructional hours because of a staff development opportunity provided for the professional instructional staff or because parent-teacher conferences have been scheduled beyond the regular school day. Furthermore, if the total hours of instructional time for the first four consecutive days equal at least twenty-seven and one-half hours because parent-teacher conferences have been scheduled beyond the regular school day, a school or school district may record zero hours of instructional time on the fifth consecutive school day as a minimum school day.

20. Adopt rules that require the board of directors of a school district to waive school fees for indigent families.

21. Develop and adopt rules incorporating accountability for, and reporting of, student achievement into the standards and accreditation process described in section 256.11. The rules shall provide for all of the following:

a. Requirements that all school districts and accredited nonpublic schools develop, implement, and file with the department a comprehensive school improvement plan that includes, but is not limited to, demonstrated school, parental, and community involvement in assessing educational needs, establishing local education standards and student achievement levels, and, as applicable, the consolidation of federal and state planning, goal-setting, and reporting requirements.

b. A set of core academic indicators in mathematics and reading in grades four, eight, and eleven, a set of core academic indicators in science in grades eight and eleven, and another set of core indicators that includes, but is not limited to, graduation rate, postsecondary education, and successful employment in Iowa. Annually, the department shall report state data for each indicator in the condition of education report.

c. A requirement that all school districts and accredited nonpublic schools annually report to the department and the local community the district-wide progress made in attaining student achievement goals on the academic and other core indicators and the district-wide progress made in attaining locally established student learning goals. The school districts and accredited nonpublic schools shall demonstrate the use of multiple assessment measures in determining student achievement levels. The school districts and accredited nonpublic schools shall also report the number of students who graduate; the number of students who drop out of school; the number of students who are tested and the percentage of students who are so tested annually; and the percentage of students who graduated during the prior school year and who completed a core curriculum. The board shall develop and adopt uniform definitions consistent with the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110 and any federal regulations adopted pursuant to the federal Act. The school districts and accredited nonpublic schools may report on other locally determined factors influencing student achievement. The school districts and accredited nonpublic schools shall also report to the local community their results by individual attendance center.

22. Adopt rules and a procedure for the approval of para-educator preparation programs offered by a public school district, area education agency, community college, institution of higher education under the state board of regents, or an accredited private institution as defined in section 261.9, subsection 1. The programs shall train and recommend individuals for para-educator certification under section 272.12.

23. Adopt rules directing the community colleges to annually and uniformly submit data from the most recent fiscal year to the division of community colleges and workforce preparation, using criteria determined and prescribed by the division via the management information system.

a. Financial data submitted to the division by a community college shall be broken down by fund.

b. Community colleges shall provide data to the division by a deadline set by the division. The deadline shall be set for a date that permits the division to include the data in a report submitted for state board approval and for review by December 15 of each year by the house and senate standing education committees and the joint subcommittee on education appropriations.

c. The department shall include a statewide summary of the financial data submitted in accordance with paragraph "a" in the annual condition of community colleges report, which upon approval of the state board, shall be submitted to the general assembly on or before February 1 of each year.

24. Adopt rules on or before January 1, 2001, to require school districts and accredited nonpublic schools to adopt local policies relating to health services, media services programs, and guidance programs, as part of the general accreditation standards applicable to school districts pursuant to section 256.11. This subsection shall be applicable strictly for reporting

purposes and shall not be interpreted to require school districts and accredited nonpublic schools to provide or offer health services, media services programs, or guidance programs.

25. Adopt rules establishing standards for school district and area education agency professional development programs and for individual teacher professional development plans in accordance with section 284.6.

26. a. Adopt rules that establish a core curriculum and high school graduation requirements for all students in school districts and accredited nonpublic schools that include at a minimum satisfactory completion of four years of English and language arts, three years of mathematics, three years of science, and three years of social studies.

(1) The rules establishing high school graduation requirements shall authorize a school district or accredited nonpublic school to consider that any student who satisfactorily completes a high school-level unit of English or language arts, mathematics, science, or social studies has satisfactorily completed a unit of the high school graduation requirements for that area as specified in this lettered paragraph, and shall authorize the school district or accredited nonpublic school to issue high school credit for the unit to the student.

(2) The rules establishing a core curriculum shall address the core content standards in subsection 28 and the skills and knowledge students need to be successful in the twenty-first century. The core curriculum shall include social studies and twenty-first century learning skills which include but are not limited to civic literacy, health literacy, technology literacy, financial literacy, and employability skills; and shall address the curricular needs of students in kindergarten through grade twelve in those areas. The department shall further define the twenty-first century learning skills components by rule.

b. Continue the inclusive process begun during the initial development of a core curriculum for grades nine through twelve including stakeholder involvement, including but not limited to representatives from the private sector and the business community, and alignment of the core curriculum to other recognized sets of national and international standards. The state board shall also recommend quality assessments to school districts and accredited nonpublic schools to measure the core curriculum.

c. Neither the state board nor the department shall require school districts or accredited nonpublic schools to adopt a specific textbook, textbook series, or specific instructional methodology, or acquire specific textbooks, curriculum materials, or educational products from a specific vendor in order to meet the core curriculum requirements of this subsection or the core content standards adopted pursuant to subsection 28.

27. Adopt by rule the Iowa standards for school administrators, including the knowledge and skill criteria developed by the director in accordance with section 256.9, subsection 51.

28. Adopt a set of core content standards applicable to all students in kindergarten through grade twelve in every school district and accredited nonpublic school. For purposes of this subsection, “*core content standards*” includes reading, mathematics, and science. The core content standards shall be identical to the core content standards included in Iowa’s approved 2006 standards and assessment system under Tit. I of the federal Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended by the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110. School districts and accredited nonpublic schools shall include, at a minimum, the core content standards adopted pursuant to this subsection in any set of locally developed content standards. School districts and accredited nonpublic schools are strongly encouraged to set higher expectations in local standards. As changes in federal law or regulation occur, the state board is authorized to amend the core content standards as appropriate.

29. Adopt rules establishing nutritional content standards for foods and beverages sold or provided on the school grounds of any school district or accredited nonpublic school during the school day exclusive of the food provided by any federal school food program or pursuant to an agreement with any agency of the federal government in accordance with the provisions of chapter 283A, and exclusive of foods sold for fundraising purposes and foods and beverages sold at concession stands. The standards shall be consistent with the dietary guidelines for Americans issued by the United States department of agriculture food and nutrition service.

30. Set standards and procedures for the approval of training programs for individuals

who seek an authorization issued by the board of educational examiners for employment as a school business official responsible for the financial operations of a school district.

86 Acts, ch 1245, §1407; 87 Acts, ch 224, §24, 25; 87 Acts, ch 207, §1; 87 Acts, ch 211, §2; 87 Acts, ch 233, §449; 88 Acts, ch 1266, §1; 89 Acts, ch 8, §1; 89 Acts, ch 206, §5; 89 Acts, ch 210, §1 – 3; 89 Acts, ch 265, §19 – 22; 90 Acts, ch 1249, §2, 3; 90 Acts, ch 1253, §5, 122; 90 Acts, ch 1272, §37; 91 Acts, ch 84, §1; 92 Acts, ch 1158, §2; 92 Acts, ch 1246, §26; 93 Acts, ch 48, §13; 93 Acts, ch 59, §1; 93 Acts, ch 82, §1; 94 Acts, ch 1043, §1; 94 Acts, ch 1091, §1 – 3; 94 Acts, ch 1193, §17; 96 Acts, ch 1007, §1; 96 Acts, ch 1127, §2; 98 Acts, ch 1176, §1; 98 Acts, ch 1202, §39, 46; 2000 Acts, ch 1098, §1; 2000 Acts, ch 1167, §1; 2000 Acts, ch 1170, §1; 2001 Acts, ch 24, §66, 74; 2001 Acts, ch 26, §1; 2002 Acts, ch 1140, §4; 2002 Acts, ch 1152, §1; 2003 Acts, ch 178, §56; 2003 Acts, ch 180, §2; 2004 Acts, ch 1145, §1; 2005 Acts, ch 149, §1, 2; 2006 Acts, ch 1152, §3, 4; 2007 Acts, ch 108, §1, 2; 2007 Acts, ch 214, §16, 17; 2008 Acts, ch 1127, §1; 2008 Acts, ch 1187, §140; 2008 Acts, ch 1191, §155; 2009 Acts, ch 54, §1; 2010 Acts, ch 1099, §1; 2011 Acts, ch 20, §4, 5; 2011 Acts, ch 71, §1; 2011 Acts, ch 131, §58, 158; 2011 Acts, ch 132, §41, 42, 106

Unnumbered paragraph 1 amended  
Subsections 14, 17, and 23 amended  
Subsection 26, paragraph a amended

### **256.9 Duties of director.**

Except for the college student aid commission, the commission of libraries and division of library services, and the public broadcasting board and division, the director shall:

1. Carry out programs and policies as determined by the state board.
2. Recommend to the state board rules necessary to implement programs and services of the department.
3. Establish divisions of the department as necessary or desirable in addition to divisions required by law. The organization of the department shall promote coordination of functions and services relating to administration, supervision, and improvement of instruction.
4. Employ personnel and assign duties and responsibilities of the department. The director shall appoint a deputy director and division administrators deemed necessary. They shall be appointed on the basis of their professional qualifications, experience in administration, and background. Members of the professional staff are not subject to the merit system provisions of chapter 8A, subchapter IV, and are subject to section 256.10.
5. Transmit to the department of management information about the distribution of state and federal funds pursuant to state law and rules of the department.
6. Develop a budget and transmit to the department of management estimates of expenditure requirements for all functions and services of the department.
7. Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department.
8. Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education.
9. Conduct research on education matters.
10. Submit to each regular session of the general assembly recommendations relating to revisions or amendments to the school laws.
11. Approve, coordinate, and supervise the use of electronic data processing by school districts, area education agencies, and merged areas.
12. Act as the executive officer of the state board.
13. Act as custodian of a seal for the director's office and authenticate all true copies of decisions or documents.
14. Appoint advisory committees, in addition to those required by law, to advise in carrying out the programs, services, and functions of the department.
15. Provide the same educational supervision for the schools maintained by the director of human services as is provided for the public schools of the state and make recommendations to the director of human services for the improvement of the educational program in those institutions.

16. Interpret the school laws and rules relating to the school laws.
17. Hear and decide appeals arising from the school laws not otherwise specifically granted to the state board.
18. Prepare forms and procedures as necessary to be used by area education agency boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports, and notify the area education agency board, district board, or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited until the report has been properly filed.
19. The department shall compile the financial information related to chapters 423E and 423F from the certified annual reports of each school district received pursuant to section 291.10, subsection 2, and shall submit the information to the general assembly in an annual report each February 1.
20. Determine by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of the schools, and request a state audit of the accounts of a school district, area education agency, school official, or school employee handling school funds when it is apparent that an audit should be made.
21. Preserve reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions.
22. Keep a record of the business transacted by the director.
23. Endeavor to promote among the people of the state an interest in education.
24. Classify and define the various schools under the supervision of the department, formulate suitable courses of study, and publish and distribute the classifications and courses of study and promote their use.
25. Direct area education agency administrators to arrange for professional teachers' meetings, demonstration teaching, or other field work for the improvement of instruction as best fits the needs of the public schools in each area.
26. Cause to be printed in book form, during the months of June and July in the year 1987 and every four years thereafter, if deemed necessary, all school laws then in force with forms, rulings, decisions, notes, and suggestions which may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to school officers, directors, superintendents, area administrators, members of the general assembly, and others as reasonably requested.
27. Direct that any amendments or changes in the school laws, with necessary notes and suggestions, be distributed as prescribed in subsection 26 annually.
28. Approve the salaries of area education agency administrators.
29. Develop criteria and procedures to assist in the identification of at-risk children and their developmental needs.
30. Develop, in conjunction with the child development coordinating council or other similar agency, child-to-staff ratio recommendations and standards for at-risk programs based on national literature and test results and Iowa longitudinal test results.
31. Develop programs in conjunction with the center for early development education to be made available to the school districts to assist them in identification of at-risk children and their developmental needs.
32. *a.* Conduct or direct the area education agency to conduct feasibility surveys and studies, if requested under section 282.11, of the school districts within the area education agency service areas and all adjacent territory, including but not limited to contiguous districts in other states, for the purpose of evaluating and recommending proposed whole grade sharing agreements requested under section 282.7 and section 282.10, subsections 1 and 4. The surveys and studies shall be revised periodically to reflect reorganizations which may have taken place in the area education agency, adjacent territory, and contiguous districts in other states. The surveys and studies shall include a cover page containing

recommendations and a short explanation of the recommendations. The factors to be used in determining the recommendations include, but are not limited to:

- (1) The possibility of long-term survival of the proposed alliance.
  - (2) The adequacy of the proposed educational programs versus the educational opportunities offered through a different alliance.
  - (3) The financial strength of the new alliance.
  - (4) Geographical factors.
  - (5) The impact of the alliance on surrounding schools.
- b. Copies of the completed surveys and studies shall be transmitted to the affected districts' school boards.

33. a. Develop standards and instructional materials to do all of the following:

- (1) Assist school districts in developing appropriate before and after school programs for elementary school children.
- (2) Assist school districts in the development of child care services and programs to complement half-day and all-day kindergarten programs.
- (3) Assist school districts in the development of appropriate curricula for all-day, everyday kindergarten programs.
- (4) Assist school districts in the development of appropriate curricula for the early elementary grades one through three.
- (5) Assist prekindergarten instructors in the development of appropriate curricula and teaching practices.

b. Standards and materials developed shall include materials which employ developmentally appropriate practices and incorporate substantial parental involvement. The materials and standards shall include alternative teaching approaches including collaborative teaching and alternative dispute resolution training. The department shall consult with the child development coordinating council, the state child care advisory committee established pursuant to section 135.173A, the department of human services, the state board of regents center for early developmental education, the area education agencies, the department of human development and family studies in the college of human sciences at Iowa state university of science and technology, the early childhood elementary division of the college of education at the university of Iowa, and the college of education at the university of northern Iowa, in developing these standards and materials.

c. For purposes of this section "*substantial parental involvement*" means the physical presence of parents in the classroom, learning experiences designed to enhance the skills of parents in parenting and in providing for their children's learning and development, or educational materials which may be borrowed for home use.

34. Develop, or direct the area education agencies to develop, a statewide technical assistance support network to provide school districts or district subcontractors under section 279.49 with assistance in creating developmentally appropriate programs under section 279.49.

35. Administer and approve grants to school districts which provide innovative in-school programming for at-risk children in grades kindergarten through three, in addition to regular school curricula for children participating in the program, with the funds for the grants being appropriated for at-risk children by the general assembly. Grants approved shall be for programs in schools with a high percentage of at-risk children. Preference shall be given to programs which integrate at-risk children with the rest of the school population, which agree to limit class size and pupil-teacher ratios, which include parental involvement, which demonstrate community support, which cooperate with other community agencies, which provide appropriate guidance counseling services, and which use teachers with an early childhood endorsement. Grant programs shall contain an evaluation component that measures student outcomes.

36. Develop a model written publications code including reasonable provisions for the regulation of the time, place, and manner of student expression.

37. Provide educational resources and technical assistance to schools relating to the implementation of the nutritional guidelines for food and beverages sold on public school grounds or on the grounds of nonpublic schools receiving funds under section 283A.10.

38. Explore, in conjunction with the state board of regents, the need for coordination between school districts, area education agencies, regents institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include but is not limited to coordination of calendars, programs, schedules, or telecommunications emissions.

39. Develop an application and review process for approval of administrative and program sharing agreements between two or more community colleges or a community college and an institution of higher education under the board of regents entered into pursuant to section 260C.46.

40. If funds are appropriated by the general assembly for the program, administer the teacher exchange program, develop forms for requests to participate in the program, and process requests from teacher participants for reimbursement of expenses incurred as a result of participating in the program.

41. Develop in-service and preservice training programs through the area education agencies and practitioner preparation institutions and guidelines for school districts for the establishment of family support programs. Guidelines developed shall describe barriers to learning and development which can affect children served by family support programs.

42. Serve as an ex officio member of the commission of libraries.

43. a. Grant annual exemptions from one or more of the minimum education standards contained in section 256.11 and rules adopted by the state board of education to nonpublic schools or public school districts who are engaging in comprehensive school transformation efforts that are broadly consistent with the current standards, but require exemption from one or more standards in order to implement the comprehensive school transformation effort within the nonpublic school or school district. Nonpublic schools or public school districts wishing to be exempted from one or more of the minimum standards contained in section 256.11 and rules adopted by the state board of education shall file a request for an exemption with the department. Requests for exemption shall include all of the following:

(1) A description of the nonpublic school or public school district's school transformation plan, including but not limited to new structures, methodologies, and creative approaches designed to help students achieve at higher levels.

(2) Identification of the standard or standards for which the exemption is being sought, including a statement of the reasons for requesting the exemption from the standard or standards.

(3) Identification of a method for periodic demonstration that student achievement will not be lessened by the granting of the exemption.

b. The director shall develop a procedure for application for exemption and receipt, review, and evaluation of nonpublic school and public school district requests, including but not limited to development of criteria for the granting or denying of requests for exemptions and a time line for the submission, review, and granting or denying of requests for exemption from one or more standards.

44. Develop and administer, with the cooperation of the department of veterans affairs, a program which shall be known as operation recognition. The purpose of the program is to award high school diplomas to veterans of World War I, World War II, and the Korean and Vietnam conflicts who left high school prior to graduation to enter United States military service. The department of education and the department of veterans affairs shall jointly develop an application procedure, distribute applications, and publicize the program to school districts, accredited nonpublic schools, county commissions of veteran affairs, veterans organizations, and state, regional, and local media. All honorably discharged veterans who are residents or former residents of the state; who served at any time between April 6, 1917, and November 11, 1918, at any time between September 16, 1940, and December 31, 1946, at any time between June 25, 1950, and January 31, 1955, or at any time between February 28, 1961, and May 5, 1975, all dates inclusive; and who did not return to school and complete their education after the war or conflict shall be eligible to receive a diploma. Diplomas may be issued posthumously. Upon approval of an application, the department shall issue an honorary high school diploma for an eligible veteran. The diploma shall indicate the veteran's school of attendance. The department of education and

the department of veterans affairs shall work together to provide school districts, schools, communities, and county commissions of veteran affairs with information about hosting a diploma ceremony on or around Veterans Day. The diploma shall be mailed to the veteran or, if the veteran is deceased, to the veteran's family.

45. Reconcile, with the assistance of the community colleges, audited financial statements and the financial data submitted to the department. The reconciliation shall include an analysis of funding by funding source.

46. Develop core knowledge and skill criteria, based upon the Iowa teaching standards, for the evaluation, the advancement, and for teacher career development purposes pursuant to chapter 284. The criteria shall further define the characteristics of quality teaching as established by the Iowa teaching standards. The director, in consultation with the board of educational examiners, shall also develop a transition plan for implementation of the career development standards developed pursuant to section 256.7, subsection 25, with regard to licensure renewal requirements. The plan shall include a requirement that practitioners be allowed credit for career development completed prior to implementation of the career development standards developed pursuant to section 256.7, subsection 25.

47. Disburse, transfer, or receive funds as authorized or required under federal or state law or regulation in a manner that utilizes electronic transfer of the funds whenever possible.

48. Develop and implement a comprehensive management information system designed for the purpose of establishing standardized electronic data collections and reporting protocols that facilitate compliance with state and federal reporting requirements, improve school-to-school and district-to-district information exchanges, and maintain the confidentiality of individual student and staff data. The system shall provide for the electronic transfer of individual student records between schools, districts, postsecondary institutions, and the department. The director may establish, to the extent practicable, a uniform coding and reporting system, including a statewide uniform student identification system.

49. Prepare and submit to the chairpersons and ranking members of the senate and house education committees a report on the state's progress toward closing the achievement gap, including student achievement for minority subgroups, and a comprehensive summary of state agency and local district activities and practices taken in the past year to close the achievement gap.

50. *a.* Develop and make available to school districts, examples of age-appropriate and research-based materials and lists of resources which parents may use to teach their children to recognize unwanted physical and verbal sexual advances, to not make unwanted physical and verbal sexual advances, to effectively reject unwanted sexual advances, that it is wrong to take advantage of or exploit another person, about the dangers of sexual exploitation by means of the internet including specific strategies to help students protect themselves and their personally identifiable information from such exploitation, and about counseling, medical, and legal resources available to survivors of sexual abuse and sexual assault, including resources for escaping violent relationships. The materials and resources shall cover verbal, physical, and visual sexual harassment, including nonconsensual sexual advances, and nonconsensual physical sexual contact. In developing the materials and resource list, the director shall consult with entities that shall include, but not be limited to, the departments of human services, public health, and public safety, education stakeholders, and parent-teacher organizations. School districts shall provide age-appropriate and research-based materials and a list of available community and web-based resources to parents at registration and shall also include the age-appropriate and research-based materials and resource list in the student handbook. School districts are encouraged to work with their communities to provide voluntary parent education sessions to provide parents with the skills and appropriate strategies to teach their children as described in this subsection. School districts shall incorporate the age-appropriate and research-based materials into relevant curricula and shall reinforce the importance of preventive measures when reasonable with parents and students.

*b.* Make available scientifically based research studies in the area of health and wellness literacy for use by school districts and nonpublic schools in educating students. The

content shall include but not be limited to research on instructional materials and teaching strategies that have proven effective in teaching students the knowledge and skills included in paragraph “a” and section 256.11. School districts are encouraged to incorporate as much of this material as practical.

51. Develop Iowa standards for school administrators, including knowledge and skill criteria, and develop, based on the Iowa standards for administrators, mentoring and induction, evaluation processes, and professional development plans pursuant to chapter 284A. The criteria shall further define the characteristics of quality administrators as established by the Iowa standards for school administrators.

52. Establish and maintain a process and a procedure, in cooperation with the board of educational examiners, to compare a practitioner’s teaching assignment with the license and endorsements held by the practitioner. The director may report noncompliance issues identified by this process to the board of educational examiners pursuant to section 272.15, subsection 3.

53. a. Develop and distribute, in collaboration with the area education agencies, core curriculum technical assistance and implementation strategies that school districts and accredited nonpublic schools shall utilize, including but not limited to the development and delivery of formative and end-of-course model assessments classroom teachers may use to measure student progress on the core curriculum adopted pursuant to section 256.7, subsection 26. The department shall, in collaboration with the advisory group convened in accordance with paragraph “b” and educational assessment providers, identify and make available to school districts end-of-course and additional model end-of-course and additional assessments to align with the expectations included in the Iowa core curriculum. The model assessments shall be suitable to meet the multiple assessment measures requirement specified in section 256.7, subsection 21, paragraph “c”.

b. Convene an advisory group comprised of education stakeholders including but not limited to school district and accredited nonpublic school teachers, school administrators, higher education faculty who teach in the subjects for which the curriculum is being adopted, private sector employers, members of the boards of directors of school districts, and individuals representing the educational assessment providers. The task force shall review the national assessment of educational progress standards and assessments used by other states, and shall consider standards identified as best practices in the field of study by the national councils of teachers of English and mathematics, the national council for the social studies, the national science teachers association, and other recognized experts.

54. Submit an annual report to the general assembly by January 1 regarding activities, findings, and student progress under the core curriculum established pursuant to section 256.7, subsection 26. The annual report shall include the state board’s findings and recommendations.

55. Convene, in collaboration with the department of public health, a nutrition advisory panel to review research in pediatric nutrition conducted in compliance with accepted scientific methods by recognized professional organizations and agencies including but not limited to the institute of medicine. The advisory panel shall submit its findings and recommendations, which shall be consistent with the dietary guidelines for Americans published jointly by the United States department of health and human services and department of agriculture if in the judgment of the advisory panel the guidelines are supported by the research findings, in a report to the state board. The advisory panel may submit to the state board recommendations on standards related to federal school food programs if the recommendations are intended to exceed the existing federal guidelines. The state board shall consider the advisory panel report when establishing or amending the nutritional content standards required pursuant to section 256.7, subsection 29. The director shall convene the advisory panel by July 1, 2008, and every five years thereafter to review the report and make recommendations for changes as appropriate. The advisory panel shall include but is not limited to at least one Iowa state university extension nutrition and health field specialist and at least one representative from each of the following:

- a. The Iowa dietetic association.
- b. The school nutrition association of Iowa.

- c. The Iowa association of school boards.
- d. The school administrators of Iowa.
- e. The Iowa chapter of the American academy of pediatrics.
- f. A school association representing parents.
- g. The Iowa grocery industry association.
- h. An accredited nonpublic school.
- i. The Iowa state education association.
- j. The farm-to-school council established pursuant to section 190A.2.

56. Monitor school districts and accredited nonpublic schools for compliance with the nutritional content standards for foods and beverages adopted by the state board in accordance with section 256.7, subsection 29. School districts and accredited nonpublic schools shall annually make the standards available to students, parents, and the local community. A school district or accredited nonpublic school found to be in noncompliance with the nutritional content standards by the director shall submit a corrective action plan to the director for approval which sets forth the steps to be taken to ensure full compliance.

57. Develop and implement a plan to provide, at least twice annually to all principals and guidance counselors employed by school districts and accredited nonpublic schools, notice describing how students can find and use the articulation information available on the website maintained by the state board of regents. The plan shall include suggested methods for elementary and secondary schools and community colleges to effectively communicate information about the articulation website to the following:

a. To all elementary and secondary school students interested in or potentially interested in attending a community college or institution of higher education governed by the state board of regents.

b. To all community college students interested in or potentially interested in admission to a baccalaureate degree program offered by an institution of higher education governed by the state board of regents.

58. Grant to public school districts and accredited nonpublic schools waivers from statutory obligations with which the entities cannot reasonably comply within two years after a disaster as defined in section 29C.2, subsection 2.

59. Report to the general assembly annually by January 1, beginning January 1, 2010, about the necessity of waiving any statutory obligations for school districts, as authorized under section 256.7, due to a disaster as defined in section 29C.2, subsection 2. The department's report shall specify each waiver and the determination for granting each waiver. The department shall provide the report to the speaker of the house and president of the senate and to the chairpersons of the appropriate standing committees of the general assembly.

60. Provide guidance and standards to area education agencies for federal and state education initiatives which the area education agencies must implement statewide.

61. a. Require a school district that has one or more attendance centers identified by the department as a persistently lowest-achieving school to implement one or more of the interventions mandated by the United States department of education for a persistently lowest-achieving school pursuant to the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110 § 1003(g), 20 U.S.C. § 6303(g), and any federal regulations adopted pursuant to the federal Act.

b. A school district required to implement one or more interventions pursuant to paragraph "a" and the employee organization representing the school district's teachers shall meet at reasonable times to negotiate a memorandum of understanding that contains an agreement on the specific intervention to be implemented and a provision stating that the terms of any collective bargaining agreement between the parties shall remain in effect and unaltered except as specifically agreed to in the memorandum of understanding. If the parties are unable to reach an agreement on the memorandum of understanding within forty-five days of the date the school district is notified that it has a persistently lowest-achieving school, the school district and the employee organization representing the school district's teachers shall, within five days, select an impartial and disinterested person to serve as a mediator. The mediator shall attempt to bring the parties together to

effectuate a settlement of the dispute, but the mediator shall not compel the parties to agree. If mediation fails to result in a mutually agreed to memorandum of understanding, not later than thirty days after selecting the mediator the school district shall not receive any school improvement funds under Tit. I of the federal Elementary and Secondary Education Act of 1965 for the attendance center identified as a persistently lowest-achieving school. The memorandum of understanding remains in effect for the period of time that an attendance center is identified as a persistently lowest-achieving school unless a duration period is included in the memorandum of understanding or the parties mutually agree to amend the memorandum of understanding.

86 Acts, ch 1245, §1409; 87 Acts, ch 115, §36; 88 Acts, ch 1114, §1; 88 Acts, ch 1158, §54; 88 Acts, ch 1263, §1; 89 Acts, ch 155, §2; 89 Acts, ch 206, §6; 90 Acts, ch 1152, §1; 90 Acts, ch 1253, §6, 122; 90 Acts, ch 1271, §1101; 91 Acts, ch 84, §2; 91 Acts, ch 126, §1; 92 Acts, ch 1158, §3; 92 Acts, ch 1159, §1, 6; 92 Acts, ch 1221, §2; 92 Acts, ch 1246, §27; 93 Acts, ch 48, §14, 15; 94 Acts, ch 1091, §4 – 12; 98 Acts, ch 1215, §23, 63; 99 Acts, ch 192, §30; 2000 Acts, ch 1081, §1; 2000 Acts, ch 1167, §2; 2001 Acts, ch 161, §14; 2001 Acts, ch 181, §12; 2002 Acts, ch 1140, §5; 2002 Acts, ch 1152, §2; 2002 Acts, 2nd Ex, ch 1003, §92, 95; 2003 Acts, ch 145, §222; 2003 Acts, ch 180, §3, 4; 2005 Acts, ch 115, §29, 40; 2005 Acts, ch 169, §18; 2005 Acts, ch 179, §91; 2006 Acts, ch 1152, §18; 2007 Acts, ch 98, §1; 2007 Acts, ch 108, §3; 2007 Acts, ch 214, §18; 2008 Acts, ch 1127, §2, 3; 2008 Acts, ch 1187, §141; 2008 Acts, ch 1191, §156; 2009 Acts, ch 54, §2; 2009 Acts, ch 65, §2, 3; 2009 Acts, ch 168, §1; 2010 Acts, ch 1001, §1; 2010 Acts, ch 1031, §269, 359, 361; 2010 Acts, ch 1193, §118; 2011 Acts, ch 132, §43, 106

2010 amendment to subsection 33, paragraph b takes effect July 1, 2011; 2010 Acts, ch 1031, §361

Unnumbered paragraph 1 amended  
Subsection 33, paragraph b amended

### **256.30 Educational expenses for American Indians.**

1. For the fiscal year beginning July 1, 2011, and ending June 30, 2012, and for each succeeding fiscal year, there is appropriated from the general fund of the state to the department the sum of one hundred thousand dollars. The department shall distribute the appropriation to the tribal council of the Sac and Fox Indian settlement for expenses of educating American Indian children residing in the Sac and Fox Indian settlement on land held in trust by the secretary of the interior of the United States in excess of federal moneys paid to the tribal council for educating the American Indian children when moneys are appropriated for that purpose. The tribal council shall administer the moneys distributed pursuant to this section and shall submit an annual report and other reports as required by the department to the department on the expenditure of the moneys.

2. The tribal council shall first use moneys distributed to it by the department of education for the purposes of this section to pay the additional costs of salaries for licensed instructional staff for educational attainment and full-time equivalent years of experience to equal the salaries listed on the proposed salary schedule for the school at the Sac and Fox Indian settlement for that school year, but the salary for a licensed instructional staff member employed on a full-time basis shall not be less than eighteen thousand dollars. The department of management shall approve allotments of moneys appropriated in this section when the department of education certifies to the department of management that the requirements of this section have been met.

87 Acts, ch 233, §453; 88 Acts, ch 1284, §43; 89 Acts, ch 265, §40; 2011 Acts, ch 131, §4, 158

Unnumbered paragraph 1 stricken and rewritten and editorially designated as subsection 1  
Former unnumbered paragraph 2 editorially designated as subsection 2

### **256.31 Community college council.**

1. A community college council is established consisting of six members. Membership of the council shall be as follows:

a. The three members of the state board of education who have knowledge of issues and concerns affecting the community college system as provided in section 256.3.

b. An additional member of the state board of education appointed annually by the president of the state board of education.

c. A community college president appointed by an association which represents the largest number of community college presidents in the state.

d. A community college trustee appointed by an association which represents the largest number of community college trustees in the state.

2. The nonboard members shall serve staggered terms of three years beginning on May 1 of the year of appointment. Vacancies on the council shall be filled in the same manner as the original appointment. A person appointed to fill a vacancy shall commence service on the date of appointment and shall serve only for the unexpired portion of the term.

3. The council shall assist the state board of education with substantial issues which are directly related to the community college system. The state board shall refer all substantial issues directly related to the community college system to the council. The council shall formulate recommendations on each issue referred to it by the state board and shall submit the recommendations to the state board within any specified time periods.

90 Acts, ch 1253, §7; 92 Acts, ch 1027, §1, 2; 2000 Acts, ch 1167, §3; 2011 Acts, ch 20, §6; 2011 Acts, ch 118, §85, 89

With respect to proposed amendment to former subsection 4 by 2011 Acts, ch 118, §85, see Code editor's note on simple harmonization  
Subsection 4 stricken

### **256.32 Council for agricultural education.**

1. An advisory council for agricultural education is established, which consists of nine members appointed by the governor. The nine members shall include the following:

- a. Five persons representing all areas of agriculture and diverse geographical areas.
- b. The individual representing agriculture on the state council for vocational education.
- c. A secondary school program instructor, a postsecondary school program instructor, and a teacher educator.

2. The council may also include as ex officio members the following persons, as determined by the voting members of the council:

- a. The state future farmers of America president.
- b. The current state future farmers of America alumni association president.
- c. The current postsecondary agriculture students president.
- d. The current young farmers educational association president.
- e. A state consultant in agricultural education.
- f. The secretary of agriculture or the secretary's designee.
- g. Two members of each house of the general assembly. This membership shall be bipartisan in composition and one member each shall be selected by the president of the senate, after consultation with the majority leader of the senate, and by the minority leader of the senate, and one member each shall be selected by the speaker of the house of representatives and by the minority leader of the house of representatives.

3. The duties of the council are to review, develop, and recommend standards for secondary and postsecondary agricultural education. The council shall annually issue a report to the state board of education and the chairpersons of the house and senate agriculture and education committees regarding both short-term and long-term curricular standards for agricultural education and the council's activities. The council shall meet a minimum of twice annually, and must have a quorum consisting of a majority of voting members present to hold an official meeting and to take any final council action. However, hearings may be held without a quorum. The chairperson shall be elected annually by and from the voting membership. The initial organizational meeting shall be called by the director of the department of education.

4. The term of membership is three years. The terms shall be staggered so that three of the terms end each year, but no member serving on the initial council shall serve less than one year. The governor shall determine the length of the initial terms of office. However, the terms of office for members of the general assembly shall be as provided in section 69.16B.

2011 Acts, ch 85, §1

Former §256.32 repealed by 2010 Acts, ch 1031, §277  
NEW section

**256.38 School-to-work transition system.**

1. It is the policy of the state of Iowa to provide an education system that prepares the students of this state to meet the high skills demands of today's workplace. The general assembly recognizes the need to prepare students for any postsecondary opportunity that leads to high-wage, high-skill careers. In order to meet this need, the high school curriculum must be redesigned so students appreciate the relevance of academic course work, reach higher levels of learning in science, math, and communications skills, and acquire the ability to apply this knowledge. Career pathways will modify high school curricula and instruction to provide students with opportunities to achieve high levels of skills and knowledge within a broad range of related career areas, which will require a variety of levels of preparation.

2. The departments of education and workforce development and the economic development authority shall develop a statewide school-to-work transition system in consultation with local school districts, community colleges, and labor, business, and industry interests. The system shall be designed to attain the following objectives:

- a. Motivate youths to stay in school and become productive citizens.
- b. Set high standards by promoting higher academic performance levels.
- c. Connect work and learning so that the classroom is linked to worksite learning and experience.
- d. Ready students for work in order to improve their prospects for immediate employment after leaving school through career pathways that provide significant opportunity to continued education and career development.
- e. Engage employers and workers by promoting their participation in the education of youth in order to ensure the development of a skilled, flexible, entry-level workforce.
- f. Provide a framework to position the state to access federal resources for state youth apprenticeship systems and local programs.

95 Acts, ch 196, §1; 96 Acts, ch 1186, §23; 2011 Acts, ch 118, §87, 89

Code editor directive applied

**256.39 Career pathways program.**

1. If the general assembly appropriates moneys for the establishment of a career pathways program, the department of education shall develop a career pathways grant program, criteria for the formation of ongoing career pathways consortia in each merged area, and guidelines and a process to be used in selecting career pathways consortium grant recipients, including a requirement that grant recipients shall provide matching funds or match grant funds with in-kind resources on a dollar-for-dollar basis. A portion of the moneys appropriated by the general assembly shall be made available to schools to pay for the issuance of employability skills assessments to public or nonpublic school students. An existing partnership or organization, including a regional school-to-work partnership, that meets the established criteria, may be considered a consortium for grant application purposes. One or more school districts may be considered a consortium for grant application purposes, provided the district can demonstrate the manner in which a community college, area education agency, representatives from business and labor organizations, and others as determined within the region will be involved. Existing school-to-work partnerships are encouraged to assist the local consortia in developing a plan and budget. The department shall provide assistance to consortia in planning and implementing career pathways program efforts.

2. To be eligible for a career pathways grant, a career pathways consortium shall develop a career pathways program that includes, but is not limited to, the following:

- a. Measure the employability skills of students. Employability skills shall include, but are not limited to, reading for information, applied mathematics, listening, and writing.
- b. Curricula designed to integrate academic and work-based learning to achieve high employability skills by all students related to career pathways. The curricula shall be designed through the cooperative efforts of secondary and postsecondary education professionals, business professionals, and community services professionals.
- c. Staff development to implement the high-standard curriculum. These efforts may

include team teaching techniques that utilize expertise from partnership businesses and postsecondary institutions.

3. In addition to the provisions of subsection 2, a career pathways program may include, but is not limited to, the following:

- a. Career guidance and exploration for students.
- b. Involvement and recognition of business, labor, and community organizations as partners in the career pathways program.
- c. Provision for program accountability.
- d. Encouragement of team teaching within the school or in partnership with postsecondary schools, and business, labor, community, and nonprofit organizations.
- e. Service learning opportunities for students.

4. Business, labor, and community organizations are encouraged to market the career pathways program to the local community and provide students with mentors, shadow professionals, speakers, field trip sites, summer jobs, internships, and job offers for students who graduate with high performance records. Students are encouraged to volunteer their time to community organizations in exchange for workplace learning opportunities that do not displace current employees.

5. In developing career pathways program efforts, each consortium shall make every effort to cooperate with the juvenile courts, the economic development authority, the department of workforce development, the department of human services, and the new Iowa schools development corporation.

6. The department of education shall direct and monitor the progress of each career pathways consortium in developing career pathways programs. By January 15, 1998, the department shall submit to the general assembly any findings and recommendations of the career pathways consortia, along with the department's recommendations for specific career pathways program efforts and for appropriate funding levels to implement and sustain the recommended programs.

7. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for the purposes of this section.

95 Acts, ch 196, §2; 96 Acts, ch 1186, §23; 2003 Acts, ch 180, §7; 2011 Acts, ch 118, §85, 89  
Code editor directive applied

#### **256.40 Statewide work-based learning intermediary network — fund — steering committee — regional networks.**

1. A statewide work-based learning intermediary network program is established in the department and shall be administered by the department. A separate, statewide work-based learning intermediary network fund is created in the state treasury under the control of the department. The fund shall consist of all moneys deposited in the fund, including any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the department from federal or private sources for purposes of the program. Notwithstanding section 8.33, moneys in the fund at the end of a fiscal year shall not revert to the general fund of the state. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

2. The purpose of the program shall be to build a seamless career, future workforce, and economic development system in Iowa to accomplish all of the following:

- a. Better prepare students to make informed postsecondary education and career decisions.
- b. Provide communication and coordination in order to build and sustain relationships between employers and local youth, the education system, and the community at large.
- c. Connect students to local career opportunities, creating economic capital for the region using a skilled and available workforce.
- d. Facilitate the sharing of best practices statewide by business and education leaders.
- e. Provide a one-stop contact point for information useful to both educators and employers, including a state-level clearinghouse for internships, job shadowing experiences,

and other workplace learning opportunities for students that are linked to the state's economic goals.

f. Implement services for all students, staff, and districts within the region and integrate workplace skills into the curriculum.

g. Develop work-based capacity with employers.

h. Improve the skills of Iowa's future workforce.

i. Provide core services, which may include student job shadowing, student internships, and teacher or student tours.

3. The department shall establish and facilitate a steering committee comprised of representatives from the department of workforce development, the economic development authority, the community colleges, the institutions under the control of the state board of regents, accredited private institutions, area education agencies, school districts, and the workplace learning connection. The steering committee shall be responsible for the development and implementation of the statewide work-based learning intermediary network.

4. The steering committee shall develop a design for a statewide network comprised of fifteen regional work-based learning intermediary networks. The design shall include network specifications, strategic functions, and desired outcomes.

5. Each regional network shall establish an advisory council to develop and implement the regional network.

6. Funds deposited in the statewide work-based learning intermediary network fund created in subsection 1 shall be distributed to each region for the implementation of the statewide work-based learning intermediary network based upon the distribution of the kindergarten through grade twelve student enrollments in each region. The amount shall not exceed three dollars per student.

7. The department shall provide oversight of the statewide work-based learning intermediary network and shall annually evaluate the statewide and regional network progress toward the outcomes identified by the steering committee pursuant to subsection 4.

8. Each regional network shall match the funds received pursuant to subsection 6 with financial resources equal to at least twenty-five percent of the amount of the funds received pursuant to subsection 6. The financial resources used to provide the match may include private donations, in-kind contributions, or public funds other than the funds received pursuant to subsection 6.

2005 Acts, ch 154, §1; 2006 Acts, ch 1030, §31; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### SUBCHAPTER III

#### LIBRARY SERVICES

#### PART 1

#### GENERAL PROVISIONS

##### **256.50 Division of library services — definitions.**

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

1. "Commission" means the commission of libraries.
2. "Division" means the division of library services of the department of education.
3. "State agency" means a legislative, executive, or judicial office of the state and all of its respective officers, departments, divisions, bureaus, boards, commissions, and committees, except the state institutions of higher education governed by the state board of regents.
4. "State publications" means all multiply produced publications regardless of format, which are issued by a state agency and supported by public funds, but it does not include:
  - a. Correspondence and memoranda intended solely for internal use within the agency or between agencies.

b. Materials excluded from this definition by the commission through the adoption and enforcement of rules.

93 Acts, ch 48, §17; 2011 Acts, ch 132, §44, 106

Subsection 2 amended

### **256.51 Division of library services — duties and responsibilities.**

1. The division of library services is attached to the department of education for administrative purposes. The state librarian shall be responsible for the division's budgeting and related management functions in accordance with section 256.52, subsection 3. The division shall do all of the following:

a. Provide support services to libraries, including but not limited to consulting, continuing education, interlibrary loan services, and references services to assure consistency of service statewide and to encourage local financial support for library services.

b. Determine policy for providing information service to the three branches of state government and to the legal community in this state.

c. Coordinate a statewide interregional interlibrary loan and information network among libraries in this state and support activities which increase cooperation among all types of libraries.

d. Establish and administer a program for the collection and distribution of state publications to depository libraries.

e. Develop, in consultation with the area education agency media centers, a biennial unified plan of service and service delivery for the division of library services.

f. Establish and administer a statewide continuing education program for librarians and trustees.

g. Give to libraries advice and counsel in specialized areas which may include, but are not limited to, building construction and space utilization, children's services, and technological developments.

h. Obtain from libraries reports showing the condition, growth, and development of services provided and disseminate this information in a timely manner to the citizens of Iowa.

i. Establish and administer certification guidelines for librarians not covered by other accrediting agencies.

j. Foster public awareness of the condition of libraries in Iowa and of methods to improve library services to the citizens of the state.

k. Establish and administer standards for state agency libraries and public libraries.

l. Allow a public library that receives state assistance under section 256.57, or financial support from a city or county pursuant to section 256.69, to dispose of, through sale, conveyance, or exchange, any library materials that may be obsolete or worn out or that may no longer be needed or appropriate to the mission of the public library. These materials may be sold by the public library directly or the governing body of the public library may sell the materials by consignment to a public agency or to a private agency organized to raise funds solely for support of the public library. Proceeds from the sale of the library materials may be remitted to the public library and may be used by the public library for the purchase of books and other library materials or equipment, or for the provision of library services.

2. The division may do all of the following:

a. Enter into interstate library compacts on behalf of the state of Iowa with any state which legally joins in the compacts as provided in section 256.70.

b. Receive and expend money for providing programs and services. The division may receive, accept, and administer any moneys appropriated or granted to it, separate from the general library fund, by the federal government or by any other public or private agency.

c. Accept gifts, contributions, bequests, endowments, or other moneys, including but not limited to the Westgate endowment fund, for any or all purposes of the division. Interest earned on moneys accepted under this paragraph shall be credited to the fund or funds to which the gifts, contributions, bequests, endowments, or other moneys have been deposited, and is available for any or all purposes of the division. The division shall report annually to the commission and the general assembly regarding the gifts, contributions, bequests,

endowments, or other moneys accepted pursuant to this paragraph and the interest earned on them.

93 Acts, ch 48, §18; 2001 Acts, ch 158, §12; 2006 Acts, ch 1152, §21; 2010 Acts, ch 1031, §316, 321; 2010 Acts, ch 1183, §15; 2010 Acts, ch 1193, §44, 80; 2011 Acts, ch 132, §45 – 50, 106

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, NEW paragraph a and former paragraphs a – j redesignated as b – k

Subsection 1, paragraphs e and k amended

Subsection 1, former paragraph k stricken

Subsection 1, NEW paragraph l

Subsection 2, paragraph c amended

**256.52 Commission of libraries established — duties of commission and state librarian — state library fund created.**

1. a. The state commission of libraries consists of one member appointed by the supreme court, the director of the department of education, or the director's designee, and the following seven members who shall be appointed by the governor to serve four-year terms beginning and ending as provided in section 69.19.

(1) Two members shall be employed in the state as public librarians.

(2) One member shall be a public library trustee.

(3) One member shall be employed in this state as an academic librarian.

(4) One member shall be employed as a librarian by a school district or area education agency.

(5) Two members shall be selected at large.

b. The members shall be reimbursed for their actual expenditures necessitated by their official duties. Members may also be eligible for compensation as provided in section 7E.6.

2. The commission shall elect one of its members as chairperson. The commission shall meet at the time and place specified by call of the chairperson. Five members are a quorum for the transaction of business.

3. a. The commission shall appoint the state librarian who shall administer the division, and serve at the pleasure of the commission.

b. The state librarian shall do all of the following:

(1) Organize, staff, and administer the division so as to render the greatest benefit to libraries in the state.

(2) Submit a biennial report to the governor on the activities and an evaluation of the division and its programs and policies.

(3) Control all property of the division. The state librarian may dispose of, through sale, conveyance, or exchange, any library materials that may be obsolete or worn out or that may no longer be needed or appropriate to the mission of the state library of Iowa. These materials may be sold by the state library directly or the library may sell the materials by consignment with an outside entity. A state library fund is created in the state treasury. Proceeds from the sale of the library materials shall be remitted to the treasurer of state and credited to the state library fund and shall be used for the purchase of books and other library materials. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

(4) Appoint and approve the technical, professional, secretarial, and clerical staff necessary to accomplish the purposes of the division subject to chapter 8A, subchapter IV.

(4A) (a) Assume all of the outstanding obligations of the library service areas and be liable for and recognize, assume, and carry out all valid contracts and obligations of the library service areas that are consolidated under the commission and administered by the division effective beginning July 1, 2011. Each library service area shall transfer, prior to July 1, 2011, its state-funded assets and title to any state-funded real estate owned by the library service area to the state librarian. In the event that the remaining assets and liabilities cannot be transferred to the state librarian, the board of directors of a library service area shall liquidate all assets, settle existing liabilities, and transfer remaining moneys to the general fund of the state. In addition, all fund balances from appropriations of state funds allocated to the library service areas remaining unobligated and unencumbered on the date of the transfer shall be transferred to the general fund of the state.

(b) This subparagraph is repealed July 1, 2015.

(5) Perform other duties imposed by law.

4. The commission shall adopt rules under chapter 17A for carrying out the responsibilities of the division.

5. The commission shall receive and approve the budget and unified plan of service submitted by the division.

93 Acts, ch 48, §19; 94 Acts, ch 1193, §18; 96 Acts, ch 1215, §21; 2003 Acts, ch 145, §223; 2010 Acts, ch 1031, §317, 318, 321; 2010 Acts, ch 1061, §180; 2011 Acts, ch 132, §51 – 54, 69, 106

Governor's appointee serving on commission on July 27, 2011, shall continue to serve until expiration of term; provision applies retroactively to June 30, 2011; 2011 Acts, ch 132, §67, 106

Subsection 1 amended

Subsection 3, paragraph b, subparagraphs (1) and (4) amended

Subsection 3, paragraph b, NEW subparagraph (4A)

Subsection 5 amended

#### **256.54 State library — law library.**

1. The state library includes but is not limited to the library support network, the specialized library services unit, and the state data center. The law library shall be under the direction of the specialized library services unit.

2. The law library shall be administered by a law librarian appointed by the state librarian subject to chapter 8A, subchapter IV, who shall do all of the following:

a. Operate the law library which shall be maintained in the state capitol or in rooms convenient to the state supreme court and which shall be available for free use by the residents of Iowa under rules the commission adopts.

b. Maintain, as an integral part of the law library, reports of various boards and agencies, copies of bills, journals, other information relating to current or proposed legislation, and copies of the Iowa administrative bulletin and Iowa administrative code and any publications incorporated by reference in the bulletin or code.

c. Arrange to make exchanges of all printed material published by the states and the government of the United States.

d. Perform other duties imposed by law or by the rules of the commission.

93 Acts, ch 48, §21; 95 Acts, ch 14, §2; 2003 Acts, ch 145, §224, 225; 2010 Acts, ch 1031, §319 – 321; 2011 Acts, ch 132, §55, 56, 106

Subsection 1 amended

Subsection 2, unnumbered paragraph 1 amended

#### **256.55 State data center.**

A state data center is established in the division. The state data center shall be administered by the state data center coordinator, who shall do all of the following:

1. Manage the state data center program to make United States census data available to the residents of Iowa under rules the commission adopts.

2. Act as the state's liaison with the United States census bureau in matters relating to United States decennial, economic, and agricultural census data, and population estimates and projections.

3. Perform other duties imposed by law or prescribed by the commission.

93 Acts, ch 48, §22; 2011 Acts, ch 132, §57, 106

Unnumbered paragraph 1 amended

#### **256.57 Enrich Iowa program.**

1. An enrich Iowa program is established in the division to provide direct state assistance to public libraries, to support the open access and access plus programs, to provide public libraries with an incentive to improve library services that are in compliance with performance measures, and to reduce inequities among communities in the delivery of library services based on performance measures adopted by rule by the commission. The commission shall adopt rules governing the allocation of funds appropriated by the general assembly for purposes of this section to provide direct state assistance to eligible public libraries. A public library is eligible for funds under this chapter if it is in compliance with the commission's performance measures.

2. The amount of direct state assistance distributed to each eligible public library shall be based on the following:

a. The level of compliance by the eligible public library with the performance measures adopted by the commission as provided in this section.

b. The number of people residing within an eligible library's geographic service area for whom the library provides services.

c. The amount of other funding the eligible public library received in the previous fiscal year for providing services to rural residents and to contracting communities.

3. Moneys received by a public library pursuant to this section shall supplement, not supplant, any other funding received by the library.

4. For purposes of this section, "*eligible public library*" means a public library that meets all of the following requirements:

a. Submits to the division all of the following:

(1) The report provided for under section 256.51, subsection 1, paragraph "h".

(2) An application and accreditation report, in a format approved by the commission, that provides evidence of the library's compliance with at least one level of the standards established in accordance with section 256.51, subsection 1, paragraph "k".

(3) Any other application or report the division deems necessary for the implementation of the enrich Iowa program.

b. Participates in the library resource and information sharing programs established by the state library.

c. Is a public library established by city ordinance or a library district as provided in chapter 336.

5. Each eligible public library shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section, and shall annually submit this listing to the division.

6. By January 15, annually, the division shall submit a program evaluation report to the general assembly and the governor detailing the uses and the impacts of funds allocated under this section.

7. A public library that receives funds in accordance with this section shall have an internet use policy in place, which may or may not include internet filtering. The library shall submit a report describing the library's internet use efforts to the division.

8. A public library that receives funds in accordance with this section shall provide open access, the reciprocal borrowing program, as a service to its patrons, at a reimbursement rate determined by the state library.

9. Funds appropriated for purposes of this section shall not be used by the division for administrative purposes.

2006 Acts, ch 1180, §16; 2007 Acts, ch 126, §46 – 48

Section not amended; internal reference changes applied

### **256.58 Library support network.**

1. A library support network is established in the division to offer services and programs for libraries, including but not limited to individualized, locally delivered consulting and training, and to facilitate resource sharing and innovation through the use of technology, administer enrich Iowa programs, advocate for libraries, promote excellence and innovation in library services, encourage governmental subdivisions to provide local financial support for local libraries, and ensure the consistent availability of quality service to all libraries throughout the state, regardless of location or size.

2. The organizational structure to deliver library support network services shall include district offices. The district offices shall serve as a basis for providing field services to local libraries in the counties comprising the district. The division shall determine which counties are served by each district office. The number of district offices established to provide services pursuant to this section shall be six.

2011 Acts, ch 132, §58, 106

NEW section

**256.59 Specialized library services.**

The specialized library services unit is established in the division to provide information services to the three branches of state government and to offer focused information services to the general public in the areas of Iowa law, Iowa state documents, and Iowa history and culture.

2011 Acts, ch 132, §59, 106  
NEW section

## PART 2

## LIBRARY SERVICES ADVISORY PANEL AND LOCAL FINANCIAL SUPPORT

**256.60 and 256.61** Repealed by 2011 Acts, ch 132, § 66, 106.

**256.62 Library services advisory panel.**

1. The state librarian shall convene a library services advisory panel to advise and recommend to the commission and the division evidence-based best practices, to assist the commission and division to determine service priorities and launch programs, articulate the needs and interests of Iowa librarians, and share research and professional development information.

2. The library services advisory panel shall consist of no fewer than eleven members representing libraries of all sizes and types, and various population levels and geographic regions of the state. A simple majority of the members appointed shall be appointed by the executive board of the Iowa library association and the remaining members shall be appointed by the state librarian. Terms of members shall begin and end as provided in section 69.19. Any vacancy shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term. Members shall serve four-year terms which are staggered at the discretion of the state librarian. A member is eligible for reappointment for three successive terms. The members shall elect a chairperson annually.

3. The library services advisory panel shall meet at least twice annually and shall submit its recommendations in a report to the commission and the state librarian at least once annually. The report shall be timely submitted to allow for consideration of the recommendations prior to program planning and budgeting for the following fiscal year.

4. Members of the library services advisory panel shall receive actual and necessary expenses incurred in the performance of their duties. Expenses shall be paid from funds appropriated to the department for purposes of the division.

2011 Acts, ch 132, §60, 106  
NEW section

**256.66 through 256.68** Repealed by 2011 Acts, ch 132, § 66, 106.

Length of service of library service area employees hired by division of library services on or after July 1, 2011, to be prorated and credited as state employment service for certain purposes; personnel records to be submitted to division by July 1, 2011; 2011 Acts, ch 132, §68, 106

## PART 3

## LIBRARY COMPACT

**256.70 Library compact authorized.**

The division of library services of the department of education is hereby authorized to enter into interstate library compacts on behalf of the state of Iowa with any state bordering on Iowa which legally joins therein in substantially the following form and the contracting states agree that:

1. *Article I — Purpose.* Because the desire for the services provided by public libraries transcends governmental boundaries and can be provided most effectively by giving such services to communities of people regardless of jurisdictional lines, it is the policy of the states

who are parties to this compact to cooperate and share their responsibilities in providing joint and cooperative library services in areas where the distribution of population makes the provision of library service on an interstate basis the most effective way to provide adequate and efficient services.

2. *Article II — Procedure.* The appropriate state library officials and agencies having comparable powers with those of the Iowa commission of libraries of the party states or any of their political subdivisions may, on behalf of said states or political subdivisions, enter into agreements for the cooperative or joint conduct of library services when they shall find that the execution of agreements to that end as provided herein will facilitate library services.

3. *Article III — Content.* Any such agreement for the cooperative or joint establishment, operation or use of library services, facilities, personnel, equipment, materials or other items not excluded because of failure to enumerate shall, as among the parties of the agreement:

a. Detail the specific nature of the services, facilities, properties or personnel to which it is applicable;

b. Provide for the allocation of costs and other financial responsibilities;

c. Specify the respective rights, duties, obligations and liabilities;

d. Stipulate the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of said agreement.

4. *Article IV — Conflict of laws.* Nothing in this compact or in any agreement entered into hereunder shall alter, or otherwise impair any obligation imposed on any public library by otherwise applicable laws, or be constituted to supersede.

5. *Article V — Administrator.* Each state shall designate a compact administrator with whom copies of all agreements to which the state or any subdivision thereof is party shall be filed. The administrator shall have such powers as may be conferred by the laws of the administrator's state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact.

6. *Article VI — Effective date.* This compact shall become operative when entered in by two or more entities having the powers enumerated herein.

7. *Article VII — Renunciation.* This compact shall continue in force and remain binding upon each party state until six months after any such state has given notice of repeal by the legislature. Such withdrawal shall not be construed to relieve any party to an agreement authorized by articles II and III of the compact from the obligation of that agreement prior to the end of its stipulated period of duration.

8. *Article VIII — Severability — construction.* The provisions of this compact shall be severable. It is intended that the provisions of this compact be reasonably and liberally construed.

93 Acts, ch 48, §33; 2008 Acts, ch 1032, §201; 2011 Acts, ch 132, §61, 106

Unnumbered paragraph 1 amended

### **256.71 Administrator.**

The administrator of the division of library services shall be the compact administrator. The compact administrator shall receive copies of all agreements entered into by the state or its political subdivisions and other states or political subdivisions; consult with, advise and aid such governmental units in the formulation of such agreements; make such recommendations to the governor, legislature, governmental agencies and units as the administrator deems desirable to effectuate the purposes of this compact and consult and cooperate with the compact administrators of other party states.

93 Acts, ch 48, §34; 2011 Acts, ch 132, §62, 106

Section amended

## CHAPTER 256B

### SPECIAL EDUCATION

#### **256B.3 Powers and duties of division of special education.**

The division of special education has the following duties and powers:

1. To aid in the organization of special schools, classes and instructional facilities for children requiring special education, and to supervise the system of special education for children requiring special education.
2. To administer rules adopted by the state board that are consistent with this chapter for the approval of plans for special education programs and services submitted by the director of special education of the area education agency.
3. To adopt plans for the establishment and maintenance of day classes, schools, home instruction, and other methods of special education for children requiring special education.
4. To purchase and otherwise acquire special equipment, appliances and other aids for use in special education, and to loan or lease same under such rules and regulations as the department may prescribe.
5. To prescribe courses of study, and curricula for special schools, special classes and special instruction of children requiring special education, including physical and psychological examinations, and to prescribe minimum requirements for children requiring special education to be admitted to any such special schools, classes or instruction.
6. To provide for certification by the director of special education of the eligibility of children requiring special education for admission to, or discharge from, special schools, classes or instruction.
7. To initiate the establishment of classes for children requiring special education or home study services in hospitals, nursing, convalescent, juvenile and private homes, in cooperation with the management thereof and local school districts or area education agency boards.
8. To cooperate with school districts or area education agency boards in arranging for any child requiring special education to attend school in a district other than the one in which the child resides when there is no available special school, class, or instruction in the districts in which the child resides.
9. To cooperate with existing agencies such as the department of human services, the Iowa department of public health, the state school for the deaf, the Iowa braille and sight saving school, the children's hospitals, or other agencies concerned with the welfare and health of children requiring special education in the coordination of their educational activities for such children.
10. To investigate and study the needs, methods and costs of special education for children requiring special education.
11. To provide for the employment and establish standards for the performance of special education support personnel required to assist in the identification of and educational programs for children requiring special education.
12. To provide for the establishment of special education research and demonstration projects and models for special education program development.
13. To establish a special education resource, materials and training system for the purposes of developing specialized instructional materials and provide in-service training to personnel employed to provide educational services to children requiring special education.
14. To approve the acquisition and use of special facilities designed for the purpose of providing educational services to children requiring special education.
15. To submit copies of all reports the division provides to the United States department of education under part B of the federal Individuals with Disabilities Education Act, as amended, including but not limited to any report concerning disproportionate representation in special education based on race or ethnicity, to the general assembly on the date each such report is provided to the United States department of education.
16. To make rules to carry out the powers and duties provided for in this section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.3]

83 Acts, ch 96, §160; 83 Acts, ch 101, §64; 86 Acts, ch 1245, §1477, 1478  
 C93, §256B.3  
 2010 Acts, ch 1016, §2; 2011 Acts, ch 34, §64  
 Subsection 9 amended

## CHAPTER 256C

### STATEWIDE PRESCHOOL PROGRAM FOR FOUR-YEAR-OLD CHILDREN

#### **256C.5 Funding formula.**

1. *Definitions.* For the purposes of this section and section 256C.4:
  - a. “*Base year*”, “*budget year*”, “*regular program state cost per pupil*”, and “*school district*” mean the same as defined or described in chapter 257.
  - b. “*Eligible student*” means a child who meets eligibility requirements under section 256C.4.
  - c. “*Preschool budget enrollment*” means the figure that is equal to fifty percent of the actual enrollment of eligible students in the preschool programming provided by a school district approved to participate in the preschool program on October 1 of the base year, or the first Monday in October if October 1 falls on a Saturday or Sunday.
  - d. “*Preschool foundation aid*” means the product of the regular program state cost per pupil for the budget year multiplied by the school district’s preschool budget enrollment.
2. *Preschool foundation aid district amount.*
  - a. For the initial school year for which a school district approved to participate in the preschool program receives that approval and implements the preschool program, the funding for the preschool foundation aid payable to that school district shall be paid from the appropriation made for that school year in section 256C.6\* or in another appropriation made for purposes of this chapter. For that school year, the preschool foundation aid payable to the school district is the product of the regular program state cost per pupil for the school year multiplied by sixty percent of the school district’s eligible student enrollment on the date in the school year determined by rule.
  - b. For budget years subsequent to the initial school year for which a school district approved to participate in the preschool program receives that initial approval and implements the preschool program, the funding for the preschool foundation aid payable to that school district shall be paid from the appropriation made in section 257.16. Continuation of a school district’s participation in the preschool program for a second or subsequent budget year is subject to the approval of the department based upon the school district’s compliance with accountability provisions and the department’s on-site review of the school district’s implementation of the preschool program.
3. *Aid payments.* Preschool foundation aid shall be paid as part of the state aid payments made to school districts in accordance with section 257.16.
4. *Administration and oversight.* Except as otherwise provided by law for a fiscal year, of the amount appropriated for that fiscal year for payment of preschool foundation aid statewide, the department may use an amount sufficient to fund up to three full-time equivalent positions which shall be in addition to the number of positions authorized for the fiscal year, as necessary to provide administration and oversight of the preschool program.

2007 Acts, ch 148, §5; 2008 Acts, ch 1181, §69, 74; 2011 Acts, ch 131, §91, 101

\*§256C.6 is repealed; corrective legislation is pending

2011 amendment to subsection 1 takes effect July 27, 2011, and applies retroactively to budget years beginning on or after July 1, 2011; 2011 Acts, ch 131, §101

Subsection 1, paragraph c amended

#### **256C.6 Phase-in — appropriations.** Repealed by its own terms; 2007 Acts, ch 148, §6.

Section repeal is effective July 1, 2011; 2007 Acts, ch 148, §6

## CHAPTER 256F

## CHARTER SCHOOLS AND INNOVATION ZONE SCHOOLS

**256F.5 Application — definition.**

An application to the state board for the approval of a charter school or innovation zone school shall include but shall not be limited to a description of the following:

1. The method for admission to the charter school or innovation zone school.
2. The mission, purpose, innovation, and specialized focus of the charter school or innovation zone school.
3. Performance goals and objectives in addition to those required under section 256.7, subsection 21, by which the school's student achievement shall be judged, the measures to be used to assess progress, and the current baseline status with respect to the goals.
4. The method for appointing or forming an advisory council for the charter school or innovation zone school. The membership of an advisory council appointed or formed in accordance with this chapter shall not include more than one member of a participating school board.
5. Procedures for teacher evaluation and professional development for teachers and administrators.
6. The charter school or innovation zone school governance and bylaws.
7. The financial plan for the operation of the charter school or innovation zone school including, at a minimum, a listing of the support services the school district or innovation zone consortium will provide, and the charter school or innovation zone school's revenues, budgets, and expenditures.
8. The educational program and curriculum, instructional methodology, and services to be offered to students.
9. The number and qualifications of teachers and administrators to be employed.
10. The organization of the charter school or innovation zone school in terms of ages of students or grades to be taught along with an estimate of the total enrollment of the charter school or innovation zone school.
11. The provision of school facilities.
12. A statement indicating how the charter school or innovation zone school will meet the requirements of section 256F.1, as applicable; section 256F.4, subsection 2, paragraph "a"; and section 256F.4, subsection 3.
13. Assurance of the assumption of liability by the charter school or the innovation zone consortium for the innovation zone school.
14. The types and amounts of insurance coverage to be obtained by the charter school or innovation zone consortium for the innovation zone school.
15. A plan of operation to be implemented if the charter school or innovation zone consortium revokes or fails to renew its contract.
16. The means, costs, and plan for providing transportation for students enrolled in the charter school or innovation zone school.
17. The specific statutes, administrative rules, and school board policies with which the charter school or innovation zone school does not intend to comply.

2002 Acts, ch 1124, §5, 16; 2003 Acts, ch 79, §7, 8; 2010 Acts, ch 1001, §15, 16; 2011 Acts, ch 34, §65

Subsection 10 amended

## CHAPTER 256H

### INTERSTATE COMPACT ON EDUCATION OF MILITARY CHILDREN

#### **256H.1 Interstate compact on educational opportunity for military children.**

The interstate compact on educational opportunity for military children is enacted into law and entered into by this state with any other state or jurisdiction legally joining the compact in the form substantially as follows:

1. *Article I—Purpose.* It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

a. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance and age requirements.

b. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

c. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

d. Facilitating the on-time graduation of children of military families.

e. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

f. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

g. Promoting coordination between this compact and other compacts affecting military children.

h. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

2. *Article II—Definitions.* As used in this compact, unless the context clearly requires a different construction:

a. “*Active duty*” means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. § 1209 and 1211.

b. “*Children of military families*” means a school-aged child, enrolled in kindergarten through twelfth grade, in the household of an active duty member.

c. “*Compact commissioner*” means the voting representative of each compacting state appointed pursuant to article VIII of this compact.

d. “*Deployment*” means the period one month prior to the service members’ departure from their home station on military orders through six months after return to their home station.

e. “*Education records*” or “*educational records*” means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student’s cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

f. “*Extracurricular activities*” means a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include but are not limited to preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

g. “*Interstate commission*” means the commission on educational opportunity for military children that is created under article IX of this compact.

h. “*Local education agency*” means a public authority legally constituted by the state as

an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

i. “*Member state*” means a state that has enacted this compact.

j. “*Military installation*” means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States department of defense, including any leased facility, which is located within any state. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

k. “*Nonmember state*” means a state that has not enacted this compact.

l. “*Receiving state*” means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

m. “*Rule*” means a written statement by the interstate commission promulgated pursuant to article XII of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

n. “*Sending state*” means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

o. “*State*” means the same as defined in section 4.1.

p. “*Student*” means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

q. “*Transition*” means the formal and physical process of transferring from school to school or the period of time in which a student moves from one school in the sending state to another school in the receiving state.

r. “*Uniformed service*” means the army, navy, air force, marine corps, coast guard, commissioned corps of the national oceanic and atmospheric administration, or commissioned corps of the public health services.

s. “*Veteran*” means a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

3. *Article III — Applicability.*

a. Except as otherwise provided in paragraph “b”, this compact shall apply to the children of:

(1) Active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. § 1209 and 1211.

(2) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement.

(3) Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

b. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

c. The provisions of this compact shall not apply to the children of any of the following:

(1) Inactive members of the national guard and military reserves.

(2) Members of the uniformed services now retired, except as provided in paragraph “a”.

(3) Veterans of the uniformed services, except as provided in paragraph “a”.

(4) Other United States department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

4. *Article IV — Educational records and enrollment.*

a. *Unofficial or hand-carried education records.* In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the interstate commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

b. *Official education records or transcripts.* Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

c. *Immunizations.* Compacting states shall give students thirty days from the date of enrollment or such time as is reasonably determined under the rules promulgated by the interstate commission, to obtain any immunization required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

d. *Kindergarten and first grade entrance age.* Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition, regardless of age. A student who has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on the student's validated level from an accredited school in the sending state.

5. *Article V — Placement and attendance.*

a. *Course placement.* When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school or educational assessments conducted at the school in the sending state if the courses are offered, or both. Course placement includes but is not limited to honors, international baccalaureate, advanced placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course.

b. *Educational program placement.* The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation and placement in like programs in the sending state. Such programs include but are not limited to gifted and talented programs and English as a second language programs. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

c. *Special education services.* In compliance with the federal requirements of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current individualized education program; and, in compliance with the requirements of section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and with Tit. II of the Americans with Disabilities Act, 42 U.S.C. § 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing section 504 or Tit. II plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

d. *Placement flexibility.* Local education agency administrative officials shall have flexibility in waiving course and program prerequisites, or other preconditions for placement in courses and programs offered under the jurisdiction of the local education agency.

e. *Absence as related to deployment activities.* A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by this compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of

the local education agency superintendent to visit with the student's parent or legal guardian relative to such leave or deployment of the parent or guardian.

6. *Article VI — Eligibility.*

a. *Eligibility for enrollment.*

(1) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which the child was enrolled while residing with the custodial parent.

b. *Eligibility for extracurricular participation.* State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

7. *Article VII — Graduation.* In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

a. *Waiver requirements.* Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

b. *Exit exams.*

(1) States shall accept any of the following in lieu of testing requirements for graduation in the receiving state:

- (a) Exit or end-of-course exams required for graduation from the sending state.
- (b) National norm-referenced achievement tests.
- (c) Alternative testing.

(2) In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in the student's senior year, then the provisions of paragraph "c" shall apply.

c. *Transfers during senior year.* Should a military student transferring at the beginning or during the student's senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with paragraphs "a" and "b".

8. *Article VIII — State coordination.*

a. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and interstate commission activities. While each member state may determine the membership of its own state council, its membership must include at least: the director of the department of education, a superintendent of a school district with a high concentration of military children, a representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

b. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

c. The compact commissioner responsible for the administration and management of the state's participation in this compact shall be appointed by the governor or as otherwise determined by each member state.

d. The compact commissioner and the military family education liaison designated in sections 256H.2 and 256H.3 shall be ex officio members of the state council, unless either is already a full voting member of the state council.

9. *Article IX — Interstate commission on educational opportunity for military children.* The member states hereby create the interstate commission on educational opportunity for military children. The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall:

a. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

b. Consist of one interstate commission voting representative from each member state who shall be that state's compact commissioner.

(1) Each member state represented at a meeting of the interstate commission is entitled to one vote.

(2) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(3) A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the interstate commission, the governor or state council may delegate voting authority to another person from the compact commissioner's state for a specified meeting.

(4) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

c. Consist of ex officio, nonvoting representatives who are members of interested organizations. Such ex officio members, as defined in the bylaws, may include but not be limited to members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States department of defense, the education commission of the states, the interstate agreement on the qualification of educational personnel and other interstate compacts affecting the education of children of military members.

d. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

e. Establish an executive committee, whose members shall include the officers of the interstate commission and such other members of the interstate commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of this compact including enforcement and compliance with the provisions of this compact, its bylaws and rules, and other such duties as deemed necessary. The United States department of defense shall serve as an ex officio, nonvoting member of the executive committee.

f. Establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent disclosure would adversely affect personal privacy rights or proprietary interests.

g. Give public notice of all meetings and all meetings shall be open to the public, except

as set forth in the rules or as otherwise provided in this compact. The interstate commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would likely do any of the following:

- (1) Relate solely to the interstate commission's internal personnel practices and procedures.
- (2) Disclose matters specifically exempted from disclosure by federal and state statute.
- (3) Disclose trade secrets or commercial or financial information which is privileged or confidential.
- (4) Involve accusing a person of a crime, or formally censuring a person.
- (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.
- (6) Disclose investigative records compiled for law enforcement purposes.
- (7) Specifically relate to the interstate commission's participation in a civil action or other legal proceeding.

*h.* Cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission.

*i.* Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

*j.* Create a process that permits military officials, education officials, and parents to inform the interstate commission if and when there are alleged violations of this compact or its rules or when issues subject to the jurisdiction of this compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the interstate commission or any member state.

10. *Article X — Powers and duties of the interstate commission.* The interstate commission shall have the following powers:

- a.* To provide for dispute resolution among member states.
- b.* To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.
- c.* To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of this compact, its bylaws, rules, and actions.
- d.* To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.
- e.* To establish and maintain offices which shall be located within one or more of the member states.
- f.* To purchase and maintain insurance and bonds.
- g.* To borrow, accept, hire, or contract for services of personnel.
- h.* To establish and appoint committees including but not limited to an executive committee as required by article IX of this compact which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties under this compact.
- i.* To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish

the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

j. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

k. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

l. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

m. To establish a budget and make expenditures.

n. To adopt a seal and bylaws governing the management and operation of the interstate commission.

o. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

p. To coordinate education, training, and public awareness regarding this compact, its implementation and operation for officials and parents involved in such activity.

q. To establish uniform standards for the reporting, collecting, and exchanging of data.

r. To maintain corporate books and records in accordance with the bylaws.

s. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

t. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

11. *Article XI — Organization and operation of the interstate commission.*

a. The interstate commission shall, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of this compact, including but not limited to:

(1) Establishing the fiscal year of the interstate commission.

(2) Establishing an executive committee, and such other committees as may be necessary.

(3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the interstate commission.

(4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting.

(5) Establishing the titles and responsibilities of the officers and staff of the interstate commission.

(6) Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of this compact after the payment and reserving of all of its debts and obligations.

(7) Providing start-up rules for initial administration of this compact.

b. The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the interstate commission.

c. (1) The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to the following:

(a) Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission.

(b) Overseeing an organizational structure within, and appropriate procedures for the interstate commission to provide for the creation of rules, operating procedures, and administrative and technical support functions.

(c) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the interstate commission.

(2) The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

d. The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state shall not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this paragraph "d" shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(2) The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

12. *Article XII — Rulemaking functions of the interstate commission.*

a. The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted under this compact, then such an action by the interstate commission shall be invalid and have no force or effect.

b. Rules shall be made pursuant to a rulemaking process that substantially conforms to the model state administrative procedure Act of 1981, uniform laws annotated, as amended, as may be appropriate to the operations of the interstate commission.

c. Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the

interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

d. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt this compact, then such rule shall have no further force and effect in any compacting state.

13. *Article XIII — Oversight, enforcement, and dispute resolution.*

a. *Oversight.*

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate this compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact shall have standing as statutory law.

(2) All courts shall take judicial notice of this compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission.

(3) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, this compact, or promulgated rules.

b. *Default, technical assistance, suspension, and termination.*

(1) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

(a) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default.

(b) Provide remedial training and specific technical assistance regarding the default.

(2) If the defaulting state fails to cure the default, the defaulting state shall be terminated from this compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(3) Suspension or termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(4) The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(5) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(6) The defaulting state may appeal the action of the interstate commission by petitioning the United States district court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

c. *Dispute resolution.*

(1) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to this compact and which may arise among member states and between member and nonmember states.

(2) The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

d. *Enforcement.*

(1) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) The interstate commission, may by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of this compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(3) The remedies in this compact shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

14. *Article XIV — Financing of the interstate commission.*

a. The interstate commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

b. The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

c. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

d. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

15. *Article XV — Member states, effective date, and amendment.*

a. Any state is eligible to become a member state.

b. This compact shall become effective and binding upon legislative enactment of this compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of this compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of this compact by all states.

c. The interstate commission may propose amendments to this compact for enactment by the member states. An amendment shall not become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

16. *Article XVI — Withdrawal and dissolution.*

a. *Withdrawal.*

(1) Once effective, this compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from this compact by specifically repealing the statute which enacted this compact into law.

(2) Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member jurisdiction.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt of the notice.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities

incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting this compact or upon such later date as determined by the interstate commission.

*b. Dissolution of compact.*

(1) This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in this compact to one member state.

(2) Upon the dissolution of this compact, this compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

17. *Article XVII — Severability and construction.*

a. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

b. The provisions of this compact shall be liberally construed to effectuate its purposes.

c. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

18. *Article XVIII — Binding effect of compact and other laws.*

*a. Other laws.*

(1) Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

(2) All member states' laws conflicting with this compact are superseded to the extent of the conflict.

*b. Binding effect of the compact.*

(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

(2) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(3) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

2009 Acts, ch 31, §1, 4; 2011 Acts, ch 34, §66

Subsection 8, paragraph a amended

## CHAPTER 256I

### EARLY CHILDHOOD IOWA INITIATIVE

Initial early childhood Iowa state board membership to be composed of Iowa empowerment board membership; transition from community empowerment areas and boards to early childhood Iowa areas and boards; rules adopted to implement community empowerment initiative under former chapter 28 applicable until superseded; transition of contracts and remission of unobligated or unexpended community empowerment initiative funds to early childhood Iowa initiative; 2010 Acts, ch 1031, §310

#### **256I.3 Early childhood Iowa state board created.**

1. The early childhood Iowa state board is created to promote a vision for a comprehensive early care, education, health, and human services system in this state. The board shall oversee state and local efforts. The vision shall be achieved through strategic planning, funding identification, guidance, and decision-making authority to assure collaboration among state and local early care, education, health, and human services systems.

2. a. The board shall consist of twenty-one voting members with fifteen citizen members and six state agency members. The six state agency members shall be the directors or their designees of the following departments: economic development authority, education, human rights, human services, public health, and workforce development. The designees

of state agency directors shall be selected on an annual basis. The citizen members shall be appointed by the governor, subject to confirmation by the senate. The governor's appointments of citizen members shall be made in a manner so that each of the state's congressional districts is represented by at least two citizen members and so that all the appointments as a whole reflect the ethnic, cultural, social, and economic diversity of the state. A member of the state board shall not be a provider of services or other entity receiving funding through the early childhood Iowa initiative or be employed by such a provider or other entity.

b. The governor's appointees shall be selected from individuals nominated by area boards. The nominations shall reflect the range of interests represented on the area boards so that the governor is able to appoint one or more members each for early care, education, health, human services, business, faith, and public interests. At least one of the citizen members shall be a service consumer or the parent of a service consumer. The term of office of the citizen members is three years. A citizen member vacancy on the board shall be filled in the same manner as the original appointment for the balance of the unexpired term.

3. Citizen members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Citizen members shall be paid a per diem as specified in section 7E.6.

4. In addition to the voting members, the state board shall include four members of the general assembly with not more than one member from each chamber being from the same political party. The two senators shall be appointed one each by the majority leader of the senate and by the minority leader of the senate. The two representatives shall be appointed one each by the speaker of the house of representatives and by the minority leader of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

5. The state board shall elect a chairperson from among the citizen members and may select other officers from the voting members as determined to be necessary by the board. The board shall meet regularly as determined by the board, upon the call of the board's chairperson, or upon the call of a majority of voting members. The board shall meet at least quarterly.

2010 Acts, ch 1031, §280; 2011 Acts, ch 118, §87, 89

Confirmation; see §2.32

Initial early childhood Iowa state board membership to be composed of Iowa empowerment board membership; transition from community empowerment areas and boards to early childhood Iowa areas and boards; 2010 Acts, ch 1031, §310

Code editor directive applied

### **256I.5 Early childhood Iowa coordination staff.**

1. The department shall provide administrative support for implementation of the early childhood Iowa initiative and for the state board. The department shall adopt rules in consultation with the state board to provide fiscal oversight of the initiative. The fiscal oversight measures adopted shall include but are not limited to all of the following:

a. Reporting and other requirements to address the financial activities employed by area boards.

b. Regular audits and other requirements of fiscal agents for area boards.

c. Requirements for area boards to undertake and report on fiscal and performance reviews of the programs, contracts, services, and other functions funded by the area boards.

2. An early childhood Iowa office is established in the department to provide leadership for facilitation, communication, and coordination for the early childhood Iowa initiative activities and funding and for improvement of the early care, education, health, and human services systems. An administrator for the early childhood Iowa office shall be appointed by the director of the department. Other staff may also be designated, subject to appropriation made for this purpose.

3. The state agencies represented on the state board may designate additional staff, as part of the early childhood Iowa initiative, to work as a technical assistance team with the office in providing coordination and other support to the state's comprehensive early care, education, health, and human services system.

4. The office shall work with the state and area boards to provide leadership for comprehensive system development. The office shall also do all of the following:

a. Enter into memoranda of agreement with the departments of education, human rights, human services, public health, and workforce development and the economic development authority to formalize the respective departments' commitments to collaborating with and integrating a comprehensive early care, education, health, and human services system. Items addressed in the memoranda shall include but are not limited to data sharing and providing staffing to the technical assistance team.

b. Work with private businesses, foundations, and nonprofit organizations to develop sustained funding.

c. Maintain the internet site in accordance with section 256I.10.

d. Propose any needed revisions to administrative rules based on stakeholder input.

e. Provide technical support to the state and area boards and to the early childhood Iowa areas through staffing services made available through the state agencies that serve on the state board.

f. Develop, collect, disseminate, and provide guidance for common performance measures for the programs receiving funding under the auspices of the area boards.

g. If a disagreement arises within an early childhood Iowa area regarding the interests represented on the area's board, board decisions, or other disputes that cannot be locally resolved, upon request, provide state or regional technical assistance as deemed appropriate by the office to assist the area in resolving the disagreement.

2010 Acts, ch 1031, §282; 2011 Acts, ch 118, §87, 89

Code editor directive applied

#### **256I.9 School ready children grant program.**

1. The state board shall develop and promote a school ready children grant program which shall provide for all of the following components:

a. Identify the performance measures that will be used to assess the effectiveness of the school ready children grants, including the amount of early intellectual stimulation of very young children, the basic skill levels of students entering school, the health status of children, the incidence of child abuse and neglect, the level of involvement by parents with their children, and the degree of quality of an accessibility to child care.

b. Identify guidelines and a process to be used for determining the readiness of an early childhood Iowa area board for administering a school ready children grant.

c. Provide for technical assistance concerning funding sources, program design, and other pertinent areas.

2. The state board shall provide maximum flexibility to grantees for the use of the grant moneys included in a school ready children grant, including but not limited to authorizing an area board to use grant moneys to pay for regular audits required pursuant to section 256I.5, subsection 1, if moneys distributed to an area board for administrative costs are insufficient to pay for the required audits.

3. A school ready children grant shall, to the extent possible, be used to support programs that meet quality standards identified by the state board. At a minimum, a grant shall be used to provide all of the following:

a. Preschool services provided on a voluntary basis to children deemed at risk.

b. (1) Family support services and parent education programs promoted to parents of children from zero through age five. Family support services shall include but are not limited to home visitation. Of the state funding that an area board designates for family support programs, at least sixty percent shall be committed to programs with a home visitation component.

(2) It is the intent of the general assembly that priority for home visitation program funding be given to programs using evidence-based or promising models for home visitation.

c. Other services to support the strategic plan developed by the state board.

d. Services to improve the quality and availability of all types of child care. The services may include but are not limited to making nurse consultants available to support quality improvement.

4. *a.* A school ready children grant shall be awarded to an area board annually, as funding is available. Receipt of continued funding is subject to submission of the required annual report and the state board's determination that the area board is measuring, through the use of performance measures and community-wide indicators developed by the state board with input from area boards, progress toward and is achieving the desired results and other results identified in the community plan. Each area board shall participate in the levels of excellence rating system to measure the area's success. If the use of performance measures and community-wide indicators does not show that an area board has made progress toward achieving the results identified in the community plan, the state board shall require a plan of corrective action, withhold any increase in funding, or withdraw grant funding.

*b.* The state board shall distribute school ready children grant moneys to area boards with approved comprehensive community plans based upon a determination of an early childhood Iowa area's readiness to effectively utilize the grant moneys. The grant moneys shall be adjusted for other federal and state grant moneys to be received by the area for services to children from zero through age five.

*c.* An area board's readiness shall be determined by evidence of successful collaboration among public and private early care, education, health, and human services interests in the area or a documented program design that supports a strong likelihood of a successful collaboration between these interests. Other criteria which may be used by the state board to determine readiness and funding amounts for an area include one or more of the following:

(1) The levels of excellence rating received by the area.

(2) Evidence of the area's capacity to successfully implement the services in the area's community plan.

(3) Local public and private funding and other resources committed to implementation of the community plan.

(4) The adequacy of plans for commitment of local funding and other resources for implementation of the community plan.

*d.* The provisions for distribution of school ready children grant moneys shall be determined by the state board.

*e.* The amount of school ready children grant funding an area board may carry forward from one fiscal year to the succeeding fiscal year shall not exceed twenty percent of the grant amount for the fiscal year. All of the school ready children grant funds received by an area board for a fiscal year which remain unencumbered or unobligated at the close of a fiscal year shall be carried forward to the succeeding fiscal year. However, the grant amount for the succeeding fiscal year shall be reduced by the amount in excess of twenty percent of the grant amount received for the fiscal year.

2010 Acts, ch 1031, §286; 2011 Acts, ch 132, §10, 11, 106

If sufficient funding is available, eligibility for preschool tuition assistance may be extended to children with a family income in excess of the basic income eligibility requirement; 2011 Acts, ch 132, §5, 102, 106

Subsection 2 amended

Subsection 3, paragraph b amended and editorially internally redesignated

## CHAPTER 257

### FINANCING SCHOOL PROGRAMS

#### **257.8 State percent of growth — allowable growth.**

1. *State percent of growth.* The state percent of growth for the budget year beginning July 1, 2010, is two percent. The state percent of growth for the budget year beginning July 1, 2012, is two percent. The state percent of growth for each subsequent budget year shall be established by statute which shall be enacted within thirty days of the submission in the year preceding the base year of the governor's budget under section 8.21. The establishment of the state percent of growth for a budget year shall be the only subject matter of the bill which enacts the state percent of growth for a budget year.

2. *Categorical state percent of growth.* The categorical state percent of growth for the budget year beginning July 1, 2010, is two percent. The categorical state percent of growth for the budget year beginning July 1, 2012, is two percent. The categorical state percent of growth for each budget year shall be established by statute which shall be enacted within thirty days of the submission in the year preceding the base year of the governor's budget under section 8.21. The establishment of the categorical state percent of growth for a budget year shall be the only subject matter of the bill which enacts the categorical state percent of growth for a budget year. The categorical state percent of growth may include state percents of growth for the teacher salary supplement, the professional development supplement, and the early intervention supplement.

3. *Allowable growth calculation.* The department of management shall calculate the regular program allowable growth for a budget year by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year and shall calculate the special education support services allowable growth for the budget year by multiplying the state percent of growth for the budget year by the special education support services state cost per pupil for the base year.

4. *Alternate allowable growth — gifted and talented programs.* Notwithstanding the calculation in subsection 3, the department of management shall calculate the regular program allowable growth for the budget year beginning July 1, 1999, by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year, and add to the resulting product thirty-eight dollars. For purposes of determining the amount of a budget adjustment as defined in section 257.14, for a school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to this subsection, thirty-eight dollars shall be subtracted from the school district's regular program cost per pupil for the budget year beginning July 1, 1999, prior to determining the amount of the adjustment.

5. *Alternate allowable growth — regular program state cost.* A school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to the provisions of subsection 4, shall calculate allowable growth pursuant to the provisions of subsection 3 for the school budget year beginning July 1, 2000, and succeeding budget years, utilizing a regular program state cost per pupil figure which incorporates the thirty-eight dollar increase in regular program allowable growth calculated for the budget year beginning July 1, 1999.

6. *Combined allowable growth.* The combined allowable growth per pupil for each school district is the sum of the regular program allowable growth per pupil and the special education support services allowable growth per pupil for the budget year, which may be modified as follows:

a. By the school budget review committee under section 257.31.

b. By the department of management under section 257.36.

7. *Alternate allowable growth — definitions.* For budget years beginning July 1, 2000, and subsequent budget years, references to the terms "allowable growth", "regular program state cost per pupil", and "regular program district cost per pupil" shall mean those terms as calculated for those school districts that calculated regular program allowable growth for the school budget year beginning July 1, 1999, with the additional thirty-eight dollars.

89 Acts, ch 135, §8; 92 Acts, ch 1227, §15; 95 Acts, ch 11, §1; 96 Acts, ch 1001, §1; 98 Acts, ch 1005, §1, 2; 99 Acts, ch 1, §1, 2; 99 Acts, ch 178, §2, 10; 2000 Acts, ch 1001, §1, 2; 2001 Acts, ch 2, §1, 2; 2002 Acts, ch 1159, §1, 2; 2002 Acts, ch 1167, §1, 6; 2003 Acts, ch 1, §1, 2; 2004 Acts, ch 1175, §234, 287; 2005 Acts, ch 1, §1, 2; 2006 Acts, ch 1154, §1, 2; 2007 Acts, ch 3, §1, 2; 2008 Acts, ch 1002, §1, 2; 2008 Acts, ch 1181, §96; 2009 Acts, ch 5, §1, 2; 2009 Acts, ch 6, §1, 2; 2011 Acts, ch 131, §122 – 125, 158

Deadline for enactment and subject matter requirements for legislation establishing state percent of growth and categorical state percent of growth not applicable to legislation enacting state percent of growth and categorical state percent of growth for purposes of computing state aid under state school foundation program for school budget year beginning July 1, 2012; 2011 Acts, ch 131, §124, 125

Subsections 1 and 2 amended

### **257.31 Duties of the committee.**

1. The school budget review committee may recommend the revision of any rules,

regulations, directives, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating to any budgeting or accounting matters, and direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district.

2. The committee shall specify the number of hearings held annually, the reasons for the committee's recommendations, information about the amounts of property tax levied by school districts for a cash reserve, and other information the committee deems advisable on the department of education's internet website.

3. The committee shall review the proposed budget and certified budget of each school district, and may make recommendations. The committee may make decisions affecting budgets to the extent provided in this chapter. The costs and computations referred to in this section relate to the budget year unless otherwise expressly stated.

4. Not later than January 1, 1992, the committee shall adopt recommendations relating to the implementation by school districts and area education agencies of procedures pertaining to the preparation of financial reports in conformity with generally accepted accounting principles and submit those recommendations to the state board of education. The state board shall consider the recommendations and adopt rules under section 256.7 specifying procedures and requiring the school districts and area education agencies to conform to generally accepted accounting principles commencing with the school year beginning July 1, 1996.

5. If a district has unusual circumstances, creating an unusual need for additional funds, including but not limited to the circumstances enumerated in paragraphs "a" through "n", the committee may grant supplemental aid to the district from any funds appropriated to the department of education for the use of the school budget review committee for the purposes of this subsection. The school budget review committee shall review a school district's unexpended fund balance prior to any decision regarding unusual finance circumstances. Such aid shall be miscellaneous income and shall not be included in district cost. In addition to or as an alternative to granting supplemental aid the committee may establish a modified allowable growth for the district by increasing its allowable growth. The school budget review committee shall review a school district's unspent balance prior to any decision to increase modified allowable growth under this subsection.

- a. Any unusual increase or decrease in enrollment.
- b. Unusual natural disasters.
- c. Unusual initial staffing problems.
- d. The closing of a nonpublic school, wholly or in part, or the opening or closing of a pilot charter school.
- e. Substantial reduction in miscellaneous income due to circumstances beyond the control of the district.
- f. Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to pupils.
- g. Unusual need for a new course or program which will provide substantial benefit to pupils, if the district establishes the need and the amount of necessary increased cost.
- h. Unusual need for additional funds for special education or compensatory education programs.
- i. Year-round or substantially year-round attendance programs which apply toward graduation requirements, including but not limited to trimester or four-quarter programs. Enrollment in such programs shall be adjusted to reflect equivalency to normal school year attendance.
- j. Unusual need to continue providing a program or other special assistance to non-English speaking pupils after the expiration of the four-year period specified in section 280.4.
- k. Circumstances caused by unusual demographic characteristics.
- l. Any unique problems of school districts.
- m. The addition of one or more teacher librarians pursuant to section 256.11, subsection

9, one or more guidance counselors pursuant to section 256.11, subsection 9A, or one or more school nurses pursuant to section 256.11, subsection 9B.

*n.* Unusual need for additional funds for the costs associated with providing competent private instruction pursuant to chapter 299A.

6. *a.* The committee shall establish a modified allowable growth for a district by increasing its allowable growth when the district submits evidence that it requires additional funding for removal, management, or abatement of environmental hazards due to a state or federal requirement. Environmental hazards shall include but are not limited to the presence of asbestos, radon, or the presence of any other hazardous material dangerous to health and safety.

*b.* The district shall include a budget for the actual cost of the project that may include the costs of inspection, reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans, recordkeeping requirements, and encapsulation or removal of the hazardous material.

7. *a.* The committee may authorize a district to spend a reasonable and specified amount from its unexpended fund balance for the following purposes:

(1) Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a bond issue as provided by law or the tax levy provided in section 298.2.

(2) The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

(3) The costs associated with the demolition or repair of a building or structure in a school district if such costs are necessitated by, and incurred within two years of, a disaster as defined in section 29C.2, subsection 2.

*b.* Other expenditures, including but not limited to expenditures for salaries or recurring costs, are not authorized under this subsection. Expenditures authorized under this subsection shall not be included in allowable growth or district cost, and the portion of the unexpended fund balance which is authorized to be spent shall be regarded as if it were miscellaneous income. Any part of the amount not actually spent for the authorized purpose shall revert to its former status as part of the unexpended fund balance.

8. The committee may approve or modify the initial base year district cost of any district which changes accounting procedures.

9. When the committee makes a decision under subsections 3 through 8, it shall make all necessary changes in the district cost, budget, and tax levy. It shall give written notice of its decision, including all such changes, to the school board through the department of education.

10. All decisions by the committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter. All such policies of general application shall be stated in rules adopted in accordance with chapter 17A. The committee shall take into account the intent of this chapter to equalize educational opportunity, to provide a good education for all the children of Iowa, to provide property tax relief, to decrease the percentage of school costs paid from property taxes, and to provide reasonable control of school costs. The committee shall also take into account the amount of funds available.

11. Failure by any school district to provide information or appear before the committee as requested for the accomplishment of review or hearing is justification for the committee to instruct the director of the department of management to withhold any state aid to that district until the committee's inquiries are satisfied completely.

12. The committee shall review the recommendations of the director of the department of education relating to the special education weighting plan, and shall establish a weighting plan for each school year pursuant to section 256B.9, and report the plan to the director of the department of education.

13. The committee may recommend that two or more school districts jointly employ

and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment, and facilities as specified in section 280.15.

14. As soon as possible following June 30 of the base year, the school budget review committee shall determine for each school district the balance of funds, whether positive or negative, raised for special education instruction programs under the special education weighting plan established in section 256B.9. The committee shall certify the balance of funds for each school district to the director of the department of management.

a. If the amount certified for a school district to the director of the department of management under this subsection for the base year is positive, the director of the department of management shall subtract the amount of the positive balance exceeding ten percent of the additional funds generated for special education, not to include any previous carryover, from the amount of state aid remaining to be paid to the district during the budget year. If the positive amount exceeding the ten percent amount exceeds the amount of state aid that remains to be paid to the district, not including any previous carryover, the school district shall pay the excess on a quarterly basis prior to June 30 of the budget year to the director of the department of management from other funds received by the district. The director of the department of management shall determine the amount of the positive balance that exceeds the ten percent amount that came from local property tax revenues and shall increase the district's total state school aids available under this chapter for the next following budget year by the amount so determined and shall reduce the district's tax levy computed under section 257.4 for the next following budget year by the amount necessary to compensate for the increased state aid.

b. (1) If the amount certified for a school district to the director of the department of management under this subsection for the base year is negative, the director of the department of management shall determine the amount of the deficit that would have been state aid and the amount that would have been property taxes for each eligible school district.

(2) There is appropriated from the general fund of the state to the school budget review committee for each fiscal year an amount equal to the state aid portion of five percent of the receipts for special education instruction programs in all districts that has a positive balance determined under paragraph "a" for the base year, or the state aid portion of all of the positive balances determined under paragraph "a" for the base year, whichever is less, to be used for supplemental aid payments to school districts. Except as otherwise provided in this lettered paragraph, supplemental aid paid to a district is equal to the state aid portion of the district's negative balance. The school budget review committee shall direct the director of the department of management to make the payments to school districts under this lettered paragraph.

(3) A school district is only eligible to receive supplemental aid payments during the budget year if the school district certifies to the school budget review committee that for the year following the budget year it will notify the school budget review committee to instruct the director of the department of management to increase the district's allowable growth and will fund the allowable growth increase either by using moneys from its unexpended fund balance to reduce the district's property tax levy or by using cash reserve moneys to equal the amount of the deficit that would have been property taxes and any part of the state aid portion of the deficit not received as supplemental aid under this subsection. The director of the department of management shall make the necessary adjustments to the school district's budget to provide the modified allowable growth and shall make the supplemental aid payments.

(4) If the amount appropriated under this lettered paragraph is insufficient to make the supplemental aid payments under this subsection, the director of the department of management shall prorate the payments on the basis of the amount appropriated.

15. Annually the school budget review committee shall review the amount of property tax levied by each school district for the cash reserve authorized in section 298.10. If in the committee's judgment, the amount of a district's cash reserve levy is unreasonably high, the committee shall instruct the director of the department of management to reduce that district's tax levy computed under section 257.4 for the following budget year by the amount

the cash reserve levy is deemed excessive. A reduction in a district's property tax levy for a budget year under this subsection does not affect the district's authorized budget.

16. The committee shall perform the duties assigned to it under sections 257.32 and 260C.18B.

17. *a.* If a district's average transportation costs per pupil exceed the state average transportation costs per pupil determined under paragraph "c" by one hundred fifty percent, the committee may grant transportation assistance aid to the district. Such aid shall be miscellaneous income and shall not be included in district cost.

*b.* To be eligible for transportation assistance aid, a school district shall annually certify its actual cost for all children transported in all school buses not later than July 31 after each school year on forms prescribed by the committee.

*c.* A district's average transportation costs per pupil shall be determined by dividing the district's actual cost for all children transported in all school buses for a school year pursuant to section 285.1, subsection 12, less the amount received for transporting nonpublic school pupils under section 285.1, by the district's actual enrollment for the school year excluding the shared-time enrollment for the school year as defined in section 257.6. The state average transportation costs per pupil shall be determined by dividing the total actual costs for all children transported in all districts for a school year, by the total of all districts' actual enrollments for the school year.

*d.* Funds transferred to the committee in accordance with section 321.34, subsection 22, are appropriated to and may be expended for the purposes of the committee, as described in this section. However, highest priority shall be given to districts that meet the conditions described in this subsection. Notwithstanding any other provision of the Code, unencumbered or unobligated funds transferred to the committee pursuant to section 321.34, subsection 22, remaining on June 30 of the fiscal year for which the funds were transferred, shall not revert but shall be available for expenditure for the purposes of this subsection in subsequent fiscal years.

18. If a school district exceeds its authorized budget or carries a negative unspent balance for two or more consecutive years, the committee may recommend that the department implement a phase II on-site visit to conduct a fiscal review pursuant to section 256.11, subsection 10, paragraph "b", subparagraph (1), subparagraph division (e).

89 Acts, ch 135, §31; 91 Acts, ch 267, §520; 93 Acts, ch 101, §202; 94 Acts, ch 1175, §3; 96 Acts, ch 1088, §1; 96 Acts, ch 1215, §22; 97 Acts, ch 23, §26; 2003 Acts, ch 79, §4, 7, 8; 2006 Acts, ch 1152, §25; 2006 Acts, ch 1182, §41, 54; 2007 Acts, ch 42, §2; 2007 Acts, ch 108, §8; 2008 Acts, ch 1191, §109; 2009 Acts, ch 41, §263; 2009 Acts, ch 54, §6; 2009 Acts, ch 65, §4; 2009 Acts, ch 133, §190, 250; 2010 Acts, ch 1004, §3 - 6, 10

Section not amended; internal reference change applied

### **257.35 Area education agency payments.**

1. The department of management shall deduct the amounts calculated for special education support services, media services, area education agency teacher salary supplement district cost, area education agency professional development supplement district cost, and educational services for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the respective area education agencies on a monthly basis from September 15 through June 15 during each school year. The department of management shall notify each school district of the amount of state aid deducted for these purposes and the balance of state aid shall be paid to the district. If a district does not qualify for state aid under this chapter in an amount sufficient to cover its amount due to the area education agency as calculated by the department of management, the school district shall pay the deficiency to the area education agency from other moneys received by the district, on a quarterly basis during each school year.

2. Notwithstanding subsection 1, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2002, and each succeeding fiscal year, shall be reduced by the department of management by seven million five hundred thousand dollars. The reduction for each area education agency

shall be equal to the reduction that the agency received in the fiscal year beginning July 1, 2001.

3. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2003, and ending June 30, 2004, shall be reduced by the department of management by ten million dollars. The department shall calculate a reduction such that each area education agency shall receive a reduction proportionate to the amount that it would otherwise have received under this section if the reduction imposed pursuant to this subsection did not apply.

4. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2007, shall be reduced by the department of management by five million two hundred fifty thousand dollars. The reduction for each area education agency shall be prorated based on the reduction that the agency received in the fiscal year beginning July 1, 2003.

5. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for each fiscal year of the fiscal period beginning July 1, 2008, and ending June 30, 2011, shall be reduced by the department of management by two million five hundred thousand dollars. The reduction for each area education agency for each fiscal year of the fiscal period beginning July 1, 2008, and ending June 30, 2011, shall be prorated based on the reduction that the agency received in the fiscal year beginning July 1, 2003.

6. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2011, and ending June 30, 2012, shall be reduced by the department of management by twenty million dollars. The reduction for each area education agency shall be prorated based on the reduction that the agency received in the fiscal year beginning July 1, 2003.

7. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2012, and ending June 30, 2013, shall be reduced by the department of management by ten million dollars. The reduction for each area education agency shall be prorated based on the reduction that the agency received in the fiscal year beginning July 1, 2003.

8. Notwithstanding section 257.37, an area education agency may use the funds determined to be available under this section in a manner which the area education agency determines is appropriate to best maintain the level of required area education agency special education services. An area education agency may also use unreserved fund balances for media services or education services in a manner which the area education agency determines is appropriate to best maintain the level of required area education agency special education services.

89 Acts, ch 135, §35; 2002 Acts, ch 1167, §2, 6; 2003 Acts, ch 178, §40, 41, 43; 2004 Acts, ch 1175, §236, 287; 2005 Acts, ch 179, §6; 2006 Acts, ch 1185, §6; 2007 Acts, ch 215, §9; 2008 Acts, ch 1181, §100; 2008 Acts, ch 1191, §8; 2009 Acts, ch 183, §69, 74; 2010 Acts, ch 1193, §13; 2011 Acts, ch 131, §5, 44, 158

2009 amendment to subsection 5 applies retroactively to July 1, 2008; 2009 Acts, ch 183, §74  
NEW subsections 6 and 7 and former subsection 6 renumbered as 8

## CHAPTER 257B

### SCHOOL FUNDS

#### **257B.10 Uniform interest date.**

If money is due to the permanent school fund, either for loans or deferred payments of the purchase price of land sold, the interest shall be made payable on the first day of January each year, and if the debtor fails to pay the interest within six months of the date it is due, the entire amount of both principal and interest shall become due, and the county auditor shall report the nonpayment to the school board, which may immediately commence action for the collection of the amount reported as due. This section is a part of a contract made by virtue of this chapter, whether expressed in the contract or not.

[R60, §1975, 1979; C73, §1854, 1855; C97, §2846; C24, 27, 31, 35, 39, §4478; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.10]

83 Acts, ch 185, §13, 62

C93, §257B.10

2011 Acts, ch 43, §1

Section amended

#### **257B.33 Suit — attorney fee.**

If the debtor does not comply with the notice, the auditor shall report the noncompliance to the school board, which may bring an action to recover the debt, and an injunction may issue for cause, without bond when so petitioned, and there shall be allowed in the judgment, entered and taxed as a part of the costs in the case, a reasonable sum as compensation to plaintiff's attorney, not exceeding the amount provided by law for attorney fees.

[C73, §1873; C97, §2854; C24, 27, 31, 35, 39, §4500; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.33]

90 Acts, ch 1168, §42

C93, §257B.33

2011 Acts, ch 43, §2

Attorney fees, §625.22

Section amended

## CHAPTER 259A

### HIGH SCHOOL EQUIVALENCY DIPLOMAS

#### **259A.3 Notice and fee.**

Any applicant who has achieved the minimum passing standards as established by the department, and approved by the state board, shall be issued a high school equivalency diploma by the department upon payment of an additional amount determined in rules adopted by the state board of education to cover the actual costs of the production and distribution of the diploma. The state board of education may also by rule establish a fee for the issuance or verification of a transcript which shall be based on the actual costs of the production or verification of a transcript.

[C66, 71, 73, 75, 77, 79, 81, §259A.3]

2011 Acts, ch 20, §7

Section amended

## CHAPTER 260C

### COMMUNITY COLLEGES

Appropriations, property taxes certified, contracts, agreements, and other obligations of area school deemed those of successor community college effective July 1, 1990; 90 Acts, ch 1253, §125

**260C.3 State board for community colleges.** Repealed by 2011 Acts, ch 20, § 19.

#### **260C.4 Duties of state board.**

The state board shall:

1. Adopt and establish policies for programs and services of the department which relate to community colleges.
2. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs under section 256.7, subsection 3.
3. Review and make recommendations that relate to community colleges in the five-year plan for the achievement of educational goals.

90 Acts, ch 1253, §34

C91, §280A.22B

C93, §260C.22B

93 Acts, ch 82, §2

C95, §260C.4

96 Acts, ch 1215, §25; 2011 Acts, ch 20, §8

Unnumbered paragraph 1 amended

#### **260C.18A Workforce training and economic development funds.**

1. *a.* A workforce training and economic development fund is created for each community college. Moneys shall be deposited and expended from a fund as provided under this section.

*b.* Moneys in the funds shall consist of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the economic development authority from federal sources or private sources for placement in the funds. Notwithstanding section 8.33, moneys in the funds at the end of each fiscal year shall not revert to any other fund but shall remain in the funds for expenditure in subsequent fiscal years.

2. Moneys deposited in the funds and disbursed to community colleges for a fiscal year shall be expended for the following purposes, provided seventy percent of the moneys shall be used on projects in the areas of advanced manufacturing, information technology and insurance, alternative and renewable energy including the alternative and renewable energy sectors listed in section 476.42, subsection 1, paragraph “a”, subparagraph (1), and life sciences which include the areas of biotechnology, health care technology, and nursing care technology:

*a.* Projects in which an agreement between a community college and an employer located within the community college’s merged area meet all of the requirements of the accelerated career education program under chapter 260G.

*b.* Projects in which an agreement between a community college and a business meet all the requirements of the Iowa jobs training Act under chapter 260F. However, projects funded by moneys provided by a local workforce training and economic development fund of a community college are not subject to the maximum advance or award limitations contained in section 260F.6, subsection 2, or the allocation limitations contained in section 260F.8, subsection 1.

*c.* For the development and implementation of career academies designed to provide new career preparation opportunities for high school students that are formally linked with postsecondary career and technical education programs. For purposes of this section, “*career academy*” means a program of study that combines a minimum of two years of secondary education with an associate degree, or the equivalent, career preparatory program in a nonduplicative, sequential course of study that is standards based, integrates academic and technical instruction, utilizes work-based and worksite learning where appropriate

and available, utilizes an individual career planning process with parent involvement, and leads to an associate degree or postsecondary diploma or certificate in a career field that prepares an individual for entry and advancement in a high-skill and reward career field and further education. The economic development authority, in conjunction with the state board of education and the division of community colleges and workforce preparation of the department of education, shall adopt administrative rules for the development and implementation of such career academies pursuant to section 256.11, subsection 5, paragraph “h”, section 260C.1, and Tit. II of Pub. L. No. 105-332, Carl D. Perkins Vocational and Technical Education Act of 1998.

d. Programs and courses that provide vocational and technical training, and programs for in-service training and retraining under section 260C.1, subsections 2 and 3.

e. Job retention projects under section 260F.9.\*

f. Training and retraining programs for targeted industries as authorized in section 15.343, subsection 2, paragraph “a”.

g. Development and implementation of pathways for academic career and employment programs under chapter 260H.

h. Development and implementation of programs for the gap tuition assistance program under chapter 260I.

i. Entrepreneurial education, small business assistance, and business incubators.

3. The economic development authority shall allocate the moneys appropriated pursuant to this section to the community college workforce training and economic development funds utilizing the same distribution formula used for the allocation of state general aid to the community colleges.

4. Each community college shall do all of the following:

a. Adopt a two-year workforce training and economic development fund plan outlining the community college’s proposed use of moneys appropriated under subsection 2.

b. Update the two-year plan annually.

c. Prepare an annual progress report on the two-year plan’s implementation.

d. Annually submit the two-year plan and progress report to the economic development authority in a manner prescribed by rules adopted by the department pursuant to chapter 17A.

2003 Acts, 1st Ex, ch 2, §76, 209; 2004 Acts, ch 1175, §330, 331, 345, 370, 400; 2004 Acts, 1st Ex, ch 1002, §8 – 13; 2005 Acts, ch 150, §35 – 37; 2006 Acts, ch 1142, §20; 2010 Acts, ch 1061, §180; 2011 Acts, ch 25, §130; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 132, §70, 106

\*Section 260F.9, Code 2009, repealed effective June 30, 2010; 2003 Acts, 1st Ex, ch 2, §93; corrective legislation is pending

Code editor directive applied

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, NEW paragraphs g – i

#### **260C.19B Purchase of biobased hydraulic fluids, greases, and other industrial lubricants.**

Hydraulic fluids, greases, and other industrial lubricants purchased by or used under the direction of the board of directors to provide services to a merged area shall be purchased in compliance with the preference requirements for purchasing biobased hydraulic fluids, greases, and other industrial lubricants as provided pursuant to section 8A.316.

98 Acts, ch 1082, §4; 2000 Acts, ch 1109, §4; 2003 Acts, ch 145, §227; 2011 Acts, ch 25, §21  
Section amended

#### **260C.48 Standards for accrediting community college programs.**

1. The state board shall develop standards and rules for the accreditation of community college programs. Except as provided in this subsection and subsection 4, standards developed shall be general in nature so as to apply to more than one specific program of instruction. With regard to community college-employed instructors, the standards adopted shall at a minimum require that community college instructors who are under contract for at least half-time or more, and by July 1, 2011, all instructors, meet the following requirements:

a. Instructors in the subject area of career and technical education shall be registered, certified, or licensed in the occupational area in which the state requires registration,

certification, or licensure, and shall hold the appropriate registration, certificate, or license for the occupational area in which the instructor is teaching, and shall meet either of the following qualifications:

(1) A baccalaureate or graduate degree in the area or a related area of study or occupational area in which the instructor is teaching classes.

(2) Special training and at least six thousand hours of recent and relevant work experience in the occupational area or related occupational area in which the instructor teaches classes if the instructor possesses less than a baccalaureate degree.

b. Instructors in the subject area of arts and sciences shall meet either of the following qualifications:

(1) Possess a master's degree from a regionally accredited graduate school, and has successfully completed a minimum of twelve credit hours of graduate level courses in each field of instruction in which the instructor is teaching classes.

(2) Have two or more years of successful experience in a professional field or area in which the instructor is teaching classes and in which postbaccalaureate recognition or professional licensure is necessary for practice, including but not limited to the fields or areas of accounting, engineering, law, law enforcement, and medicine.

2. Standards developed shall include a provision that the full-time teaching load for an instructor in arts and sciences courses shall be fifteen credit hours per semester, or the equivalent, and the maximum academic workload shall be sixteen credit hours per semester, or the equivalent. An instructor may also have an additional teaching assignment if the instructor and the community college administration mutually consent to the additional assignment and the total teaching load does not exceed twenty-two hours of credit per semester, or the equivalent.

3. Standards developed shall include provisions requiring equal access in recruitment, enrollment, and placement activities for students with special education needs. The provisions shall include a requirement that students with special education needs shall receive instruction in the least restrictive environment with access to the full range of program offerings at a college, through, but not limited to, adaptation of curriculum, instruction, equipment, facilities, career guidance, and counseling services.

4. Commencing July 1, 2006, standards relating to quality assurance of faculty and ongoing quality professional development shall be the accreditation standards of the north central association of colleges and schools and the faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies.

90 Acts, ch 1253, §50; 90 Acts, ch 1254, §3

C91, §280A.48

C93, §260C.48

93 Acts, ch 82, §7, 8; 2002 Acts, ch 1047, §8, 9, 20; 2007 Acts, ch 214, §23; 2008 Acts, ch 1181, §29, 30; 2011 Acts, ch 20, §9

Subsection 2 amended

### **260C.69 Dormitory space priority.**

1. Each community college which completes a project, as defined under section 260C.56, subsection 4, shall set aside a percentage of available dormitory space for the purposes of meeting the needs of the following:

- a. Students, with families, who are participating in specialized or intensive programs.
- b. Students who are participating in specialized or intensive programs.
- c. Child care arrangements for students, faculty, or staff.
- d. Students whose residence is located too far from the community college to permit commuting to and from school, as determined by the board of directors of the merged area.
- e. Students whose disabilities require special housing adaptations.

2. Once all priorities have been met, students shall be allotted rooms on a first come, first served basis.

90 Acts, ch 1253, §71

C91, §280A.69

C93, §260C.69

99 Acts, ch 192, §33; 2010 Acts, ch 1061, §180; 2011 Acts, ch 34, §67

Subsection 1 amended

**260C.71 Community college bond program — definitions — funding — bonds and notes.**

1. As used in this section and section 260C.72, unless the context otherwise requires:
  - a. “*Authority*” means the Iowa finance authority.
  - b. “*Bonds*” means revenue bonds which are payable solely as provided in this section and section 260C.72.
2. The authority shall cooperate with the state board, individual community colleges, and private developers, acting in conjunction with a community college to build housing facilities in connection with the community college, in the creation, administration, and funding of a community college dormitory bond program to finance housing facilities, such as dormitories, in connection with a community college.
3. The authority may issue its bonds and notes for the purpose of funding the nonrecurring cost of acquiring, constructing, and equipping a community college related facility, such as a dormitory.
4. The authority may issue its bonds and notes for the purposes of this chapter and may enter into one or more lending agreements or purchase agreements with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders or a trustee agent designated by the authority may enter into agreements to provide for any of the following:
  - a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the authority or by a trustee or agent designated by the authority.
  - b. That the bondholders or noteholders or a trustee or agent designated by the authority may collect, invest, and apply the amount payable under the loan agreements or any other instruments securing the debt obligations under the loan agreements.
  - c. That the bondholders or noteholders may enforce the remedies provided in the loan agreements or other instruments on their own behalf without the appointment or designation of a trustee. If there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained in the loan agreements or other instruments, the payment or performance may be enforced in accordance with the loan agreement or other instrument.
  - d. Other terms and conditions as deemed necessary or appropriate by the authority.
5. The powers granted the authority under this section are in addition to other powers contained in chapter 16. All other provisions of chapter 16, except section 16.28, subsection 4, apply to bonds or notes issued and powers granted to the authority under this section, except to the extent they are inconsistent with this section.
6. All bonds or notes issued by the authority in connection with the program are exempt from taxation by this state and the interest on the bonds or notes is exempt from state income tax, both personal and corporate.

90 Acts, ch 1253, §76; 90 Acts, ch 1254, §6

C91, §280A.71

C93, §260C.71

2011 Acts, ch 20, §10

Subsection 2 amended

**260C.72 Security — reserve funds — pledges — nonliability.**

1. a. The authority may provide in the resolution, trust agreement, or other instrument authorizing the issuance of its bonds or notes pursuant to section 260C.71 that the principal of, premium, and interest on the bonds or notes are payable from any of the following and may pledge the same to its bonds and notes:
  - (1) From the net rents, profits, and income arising from the project or property pledged or mortgaged.

(2) From the net rents, profits, and income which has not been pledged for other purposes arising from any similar housing facility under the control and management of the community college or state board.

(3) From the fees or charges established by the community college or state board for students attending the institution who are living in the housing facility for which the obligation was incurred.

(4) From the income derived from gifts and bequests made to the institutions under the control of the community college or state board for such purposes.

(5) From the amounts on deposit in the name of a community college or a private developer or operator of a community college facility, including but not limited to revenues from a purchase, rental, or lease agreement, loan agreement, or dormitory charges.

(6) From the amounts payable to the authority, the community college board of directors, the state board, or a private developer or operator, pursuant to a loan agreement, lease agreement, or sale agreement.

(7) From the other funds or accounts established by the authority in connection with the program or the sale and issuance of its bonds or notes.

b. No obligation created hereunder shall ever be or become a charge against the state of Iowa but all such obligations, including principal and interest, shall be payable solely as provided in this section and section 260C.71.

2. The authority may establish reserve funds to secure one or more issues of its bonds or notes. The authority may deposit in a reserve fund established under this subsection, the proceeds of the sale of its bonds or notes and other money which is made available from any other source.

3. A pledge made in respect of bonds or notes is valid and binding from the time the pledge is made. The money or property so pledged and received after the pledge by the authority is immediately subject to the lien of the pledge without physical delivery or further act. The lien of the pledge is valid and binding as against all persons having claims of any kind in tort, contract, or otherwise against the authority whether or not the parties have notice of the lien. Neither the resolution, trust agreement, or any other instrument by which a pledge is created needs to be recorded, filed, or perfected under chapter 554, to be valid, binding, or effective against all persons.

4. The members of the authority or persons executing the bonds or notes are not personally liable on the bonds or notes and are not subject to personal liability or accountability by reason of the issuance of the bonds or notes.

5. The bonds or notes issued by the authority are not an indebtedness or other liability of the state or of a political subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority and are payable solely from the income and receipts or other funds or property of the community college or private developer, and the amounts on deposit in a community college bond fund, and the amounts payable to the authority under its loan agreements with a community college or private developer to the extent that the amounts are designated in the resolution, trust agreement, or other instrument of the authority authorizing the issuance of the bonds or notes as being available as security for the bonds or notes. The authority shall not pledge the faith or credit of the state or of a political subdivision of the state to the payment of any bonds or notes. The issuance of any bonds or notes by the authority does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply money from, or levy, or pledge any form of taxation whatever to the payment of the bonds or notes.

90 Acts, ch 1253, §77; 90 Acts, ch 1254, §7, 8

C91, §280A.72

C93, §260C.72

2010 Acts, ch 1061, §180; 2011 Acts, ch 20, §11

Subsection 1, paragraph a, subparagraphs (2) – (4) and (6) amended

## CHAPTER 260E

### INDUSTRIAL NEW JOBS TRAINING

Legislative intent that chapter 260F complement  
this chapter; 85 Acts, ch 235, §9  
New jobs tax credit; §422.11A, 422.33  
Supplemental new jobs credit from withholding; see §15A.7

#### 260E.7 Program review by economic development authority.

1. The economic development authority, in consultation with the department of education, the department of revenue, and the department of workforce development, shall coordinate and review the new jobs training program. The economic development authority shall adopt, amend, and repeal rules under chapter 17A that the community college will use in developing projects with new and expanding industrial new jobs training proposals and that the economic development authority shall use to review and report on the new jobs training program as required in this section.

2. *a.* The authority, in consultation with the community colleges participating in the new jobs training program pursuant to this chapter, shall identify the information necessary to effectively coordinate and review the program, and the community colleges shall provide such information to the authority. Using the information provided, the authority, in consultation with the community colleges, shall issue a report on the effectiveness of the program.

*b.* In coordinating and reviewing the program, due regard shall be given to the confidentiality of certain information provided by the community colleges, and the authority shall comply with the provisions of section 15.118 to the extent that such provisions are applicable to the new jobs training program.

3. The authority is authorized to make any rule that is adopted, amended, or repealed effective immediately upon filing with the administrative rules coordinator or at a subsequent stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing, and publication.

83 Acts, ch 171, §7, 8

CS83, §280B.7

90 Acts, ch 1253, §82

C93, §260E.7

2006 Acts, ch 1100, §5; 2011 Acts, ch 118, §88, 89

Section amended

## CHAPTER 260F

### JOBS TRAINING

Legislative intent that chapter complement chapter 260E;  
85 Acts, ch 235, §9

#### 260F.2 Definitions.

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

1. “*Agreement*” is the agreement between a business and a community college concerning a project.

2. “*Authority*” means the economic development authority created in section 15.105.

3. “*Community college*” means a community college established under chapter 260C.

4. “*Date of commencement of the project*” means the date of the preliminary agreement or the date an application for assistance is received by the authority.

5. “*Eligible business*” or “*business*” means a business training employees which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, or professional services and which meets the other criteria established by the authority. “*Eligible business*” does not include a business

whose training costs can be economically funded under chapter 260E, a business which closes or substantially reduces its employment base in order to relocate substantially the same operation to another area of the state, or a business which is involved in a strike, lockout, or other labor dispute in Iowa.

6. “*Employee*” means a person currently employed by a business who is to be trained. However, “*employee*” does not include replacement workers who are hired as a result of a strike, lockout, or other labor dispute in Iowa.

7. “*Jobs training program*” or “*program*” means the project or projects established by a community college for the training of employees.

8. “*Participating business*” means a business training employees which enters into an agreement with the community college.

9. “*Program costs*” means all necessary and incidental costs of providing program services.

10. “*Program services*” includes but is not limited to the following:

- a. Training of employees.
- b. Adult basic education and job-related instruction.
- c. Vocational and skill-assessment services and testing.
- d. Training facilities, equipment, materials, and supplies.
- e. Administrative expenses for the jobs training program.
- f. Subcontracted services with institutions governed by the state board of regents, private colleges or universities, or other federal, state, or local agencies.
- g. Contracted or professional services.

11. “*Project*” means a training arrangement which is the subject of an agreement entered into between the community college and a business to provide program services. “*Project*” also means an authority-sponsored training arrangement which is sponsored by the authority and administered under sections 260F.6A and 260F.6B.

85 Acts, ch 235, §2

CS85, §280C.2

90 Acts, ch 1253, §83; 92 Acts, ch 1042, §1, 2

C93, §260F.2

96 Acts, ch 1180, §10; 97 Acts, ch 201, §20; 2011 Acts, ch 118, §77, 78, 87, 89

Code editor directive applied

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4

Former subsection 4 stricken

### **260F.6 Job training fund.**

1. There is established for the community colleges a job training fund in the economic development authority in the workforce development fund. The job training fund consists of moneys appropriated for the purposes of this chapter plus the interest and principal from repayment of advances made to businesses for program costs, plus the repayments, including interest, of loans made from that retraining fund, and interest earned from moneys in the job training fund.

2. To provide funds for the present payment of the costs of a training program by the business, the community college may provide to the business an advance of the moneys to be used to pay for the program costs as provided in the agreement. To receive the funds for this advance from the job training fund established in subsection 1, the community college shall submit an application to the economic development authority. The amount of the advance shall not exceed twenty-five thousand dollars for any business site, or fifty thousand dollars within a three-fiscal-year period for any business site. If the project involves a consortium of businesses, the maximum award per project shall not exceed fifty thousand dollars. Participation in a consortium does not affect a business site’s eligibility for individual project assistance. Prior to approval a business shall agree to match program amounts in accordance with criteria established by the authority.

3. Notwithstanding the requirements of this section, moneys in the job training fund may be used by a community college to conduct entrepreneur development and support activities.

85 Acts, ch 235, §6

CS85, §280C.6

88 Acts, ch 1131, §1; 90 Acts, ch 1253, §86; 90 Acts, ch 1255, §16; 91 Acts, ch 2, §1, 2; 92 Acts, ch 1042, §7

C93, §260F.6

93 Acts, ch 180, §44; 95 Acts, ch 184, §8; 96 Acts, ch 1180, §12; 2001 Acts, ch 188, §24; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **260F.6A Business network training.**

The community colleges and the authority are authorized to fund business network training projects which include five or more businesses and are located in two or more community college districts. A business network training project must have a designated organization or lead business to serve as the administrative entity that will coordinate the training program. The businesses must have common training needs and develop a plan to meet those needs. The authority shall adopt rules governing this section's operation and participant eligibility.

96 Acts, ch 1180, §13; 2011 Acts, ch 118, §87, 89

Code editor directive applied

#### **260F.6B High technology apprenticeship program.**

The community colleges and the economic development authority are authorized to fund high technology apprenticeship programs which comply with the requirements specified in section 260C.44 and which may include both new and statewide apprenticeship programs. Notwithstanding the provisions of section 260F.6, subsection 2, relating to maximum award amounts, moneys allocated to the community colleges with high technology apprenticeship programs shall be distributed to the community colleges based upon contact hours under the programs administered during the prior fiscal year as determined by the department of education. The economic development authority shall adopt rules governing this section's operation and participant eligibility.

97 Acts, ch 201, §21; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **260F.7 Economic development authority to coordinate.**

The economic development authority, in consultation with the department of education and the department of workforce development, shall coordinate the jobs training program. A project shall not be funded under this chapter unless the economic development authority approves the project. The authority shall adopt rules pursuant to chapter 17A governing the program's operation and eligibility for participation in the program. The authority shall establish by rule criteria for determining what constitutes an eligible business.

85 Acts, ch 235, §7

CS85, §280C.7

88 Acts, ch 1131, §2; 90 Acts, ch 1253, §87; 92 Acts, ch 1042, §8

C93, §260F.7

96 Acts, ch 1180, §14; 96 Acts, ch 1186, §23; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **260F.8 Allocation.**

1. For each fiscal year, the authority shall make funds available to the community colleges. The authority shall allocate by formula from the moneys in the fund an amount for each community college to be used to provide the financial assistance for proposals of businesses whose applications have been approved by the authority. The financial assistance shall be provided by the authority from the amount set aside for that community college. If any portion of the moneys set aside for a community college have not been used or committed by May 1 of the fiscal year, that portion is available for use by the authority to provide financial assistance to businesses applying to other community colleges. The authority shall adopt by rule a formula for this set-aside.

2. Moneys available to the community colleges for this program may be used to provide forgivable loans to train employees.

92 Acts, ch 1042, §9; 93 Acts, ch 180, §45; 96 Acts, ch 1180, §15; 97 Acts, ch 23, §30; 2011 Acts, ch 118, §87, 89

Code editor directive applied

## CHAPTER 260G

### ACCELERATED CAREER EDUCATION PROGRAM

#### **260G.3 Program agreements.**

1. A community college may enter into an agreement with an employer in the community college's merged area to establish an accelerated career education program. The program shall be developed by an employer, a community college, and any employee of an employer who represents a program job. If a bargaining agreement is in place, a representative of the employee bargaining unit shall also take part in the development of the program.

2. An agreement may include reasonable and necessary provisions to implement the accelerated career education program. If an agreement is entered into, the community college and the employer shall notify the department of revenue as soon as possible. The community college shall also file a copy of the agreement with the economic development authority as required in section 260G.4B. The agreement shall provide for program costs, including deferred costs, which may be paid from any of the following sources:

a. Program job credits which the employer receives based on the number of program job positions agreed to by the employer to be available under the agreement.

b. Cash or in-kind contributions by the employer toward the program cost. At a minimum, the employer contribution shall be twenty percent of the program costs.

c. Tuition, student fees, or special charges fixed by the board of directors to defray program costs.

d. Guarantee by the employer of payments to be received under paragraphs "a" and "b".

3. An agreement shall include a provision which specifies the type and amount of funding sources which shall be used to pay for program costs.

4. An agreement shall describe program services and schedules for implementation.

5. The term of an agreement shall not exceed five years from the date of the agreement. However, the agreement may be renewed.

6. As part of the agreement, the employer shall agree to interview graduating participants for full-time positions with the employer and to provide future hiring preferences to graduates of the accelerated career education program provided for in the agreement.

7. As part of an agreement, if an employer has more than four sponsored participants in the program, the employer shall agree to offer a program job position of full-time employment to at least twenty-five percent of those participants who successfully complete the program.

8. An agreement shall provide for a wage level of no less than two hundred percent of the federal poverty level for a family of two as defined by the most recently revised poverty income guidelines as published by the United States department of health and human services at the time the agreement is entered into. The wage level shall be recertified for each year provided in the agreement on the anniversary of the effective date of the agreement.

9. An agreement shall allow an employer to decline to satisfy any provisions in the agreement relating to subsections 6 and 7 if an employer experiences an economic downturn. For purposes of this subsection, "economic downturn" may include a layoff of existing employees, reduced employment levels, increased inventories, or reduced sales, if specified in the agreement.

10. Participants shall agree to interview with the employer following completion of the accelerated career education program.

11. An agreement shall provide for employer default procedures.

99 Acts, ch 179, §3, 12; 2000 Acts, ch 1196, §3, 10; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §79, 93, 209; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **260G.4B Maximum statewide program job credit.**

1. The total amount of program job credits from all employers which shall be allocated for all accelerated career education programs in the state in any one fiscal year shall not exceed five million four hundred thousand dollars. A community college shall file a copy of each agreement with the economic development authority. The authority shall maintain an annual record of the proposed program job credits under each agreement for each fiscal year. Upon receiving a copy of an agreement, the authority shall allocate any available amount of program job credits to the community college according to the agreement sufficient for the fiscal year and for the term of the agreement. When the total available program job credits are allocated for a fiscal year, the authority shall notify all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. Once program job credits have been allocated to a community college, the full allocation shall be received by the community college throughout the fiscal year and for the term of the agreement even if the statewide program job credit maximum amount is subsequently allocated and used.

2. For the fiscal years beginning July 1, 2000, and July 1, 2001, the department of economic development shall allocate eighty thousand dollars of the first one million two hundred thousand dollars of program job credits authorized and available for that fiscal year to each community college. This allocation shall be used by each community college to provide funding for approved programs. For the fiscal year beginning July 1, 2002, and for every fiscal year thereafter, the economic development authority shall divide equally among the community colleges thirty percent of the program job credits available for that fiscal year for allocation to each community college to be used to provide funding for approved programs. If any portion of the allocation to a community college under this subsection has not been committed by April 1 of the fiscal year for which the allocation is made, the uncommitted portion is available for use by other community colleges. Once a community college has committed its allocation for any fiscal year under this subsection, the community college may receive additional program job credit allocations from those program job credits authorized and still available for that fiscal year.

2000 Acts, ch 1196, §5, 10; 2001 Acts, ch 176, §35; 2002 Acts, ch 1175, §30; 2003 Acts, ch 179, §35; 2004 Acts, ch 1101, §31; 2010 Acts, ch 1138, §9; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **260G.4C Facilitator.**

The economic development authority shall administer the statewide allocations of program job credits to accelerated career education programs. The authority shall provide information about the accelerated career education programs in accordance with its annual reporting requirements in section 15.107B.

2000 Acts, ch 1196, §6, 10; 2008 Acts, ch 1122, §14; 2011 Acts, ch 118, §79, 85, 89

See Code editor's note on simple harmonization  
Section amended

#### **260G.6 Fund established — allocation of moneys.**

1. An accelerated career education fund is established in the state treasury under the control of the economic development authority consisting of moneys appropriated to the authority for purposes of funding the cost of accelerated career education program capital projects.

2. Projects funded pursuant to this section shall be for vertical infrastructure as defined in section 8.57, subsection 6, paragraph "c".

3. If moneys are appropriated by the general assembly to support program capital costs, the moneys shall be allocated according to rules adopted by the economic development authority pursuant to chapter 17A.

4. In order to receive moneys pursuant to this section, a program agreement approved by the community college board of directors shall be in place, program capital cost requests shall be approved by the economic development authority created in section 15.105, and employer contributions toward program capital costs shall be certified and agreed to in the agreement. Program capital cost requests shall be approved or denied not later than sixty days following receipt of the request by the economic development authority.

99 Acts, ch 179, §9, 12; 2000 Acts, ch 1154, §19; 2009 Acts, ch 123, §7; 2011 Acts, ch 34, §68; 2011 Acts, ch 118, §80, 85, 89

See Code editor's note  
Code editor directive applied  
Subsection 4 amended

## CHAPTER 260H

### PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT ACT

#### **260H.1 Title.**

This chapter shall be known and may be cited as the “*Pathways for Academic Career and Employment Act*”.

2011 Acts, ch 132, §71, 106

NEW section

#### **260H.2 Pathways for academic career and employment program.**

A pathways for academic career and employment program is established to provide funding to community colleges for the development of projects in coordination with the economic development authority, the department of education, Iowa workforce development, regional advisory boards established pursuant to section 84A.4, and community partners to implement a simplified, streamlined, and comprehensive process, along with customized support services, to enable eligible participants to acquire effective academic and employment training to secure gainful, quality, in-state employment.

2011 Acts, ch 118, §87, 89; 2011 Acts, ch 132, §72, 106

Code editor directive applied  
NEW section

#### **260H.3 Eligibility criteria.**

1. Projects eligible for funding for the pathways for academic career and employment program shall be projects that further the ability of members of target populations to secure gainful, quality employment. For the purposes of this chapter, “*target population*” includes:

a. Persons deemed low skilled for the purposes of attaining gainful, quality, in-state employment.

b. Persons earning incomes at or below two hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

c. Unemployed persons.

d. Underemployed persons.

e. Dislocated workers, including workers eligible for services and benefits under the federal Trade Adjustment Act of 2002, Pub. L. No. 107-210, as determined by the department of workforce development and the federal internal revenue service.

2. Projects eligible for funding for the pathways for academic career and employment program shall be projects that further partnerships that link the community colleges to industry and nonprofit organizations and projects that further program outcomes as provided in section 260H.4.

2011 Acts, ch 132, §73, 106

NEW section

**260H.4 Program outcomes.**

Projects eligible for funding for the pathways for academic career and employment program shall be programs which further the following program outcomes:

1. Enabling the target populations to:
  - a. Acquire and demonstrate competency in basic skills.
  - b. Acquire and demonstrate competency in a specified technical field.
  - c. Complete a specified level of postsecondary education.
  - d. Earn a national career readiness certificate.
  - e. Obtain employer-validated credentials.
  - f. Secure gainful employment in high-quality, local jobs.
2. Satisfaction of economic and employment goals including but not limited to:
  - a. Economic and workforce development requirements in each region served by the community colleges as defined by regional advisory boards established pursuant to section 84A.4.
  - b. Needs of industry partners in areas including but not limited to:
    - (1) Information technology.
    - (2) Health care.
    - (3) Advanced manufacturing.
    - (4) Transportation and logistics.
  - c. Any other industry designated as in-demand by a regional advisory board established pursuant to section 84A.4.

2011 Acts, ch 132, §74, 106

NEW section

**260H.5 Program component requirements.**

Program components of a pathways for academic career and employment project implemented at a community college shall:

1. Include measurable and effective recruitment, assessment, and referral activities designed for the target populations.
2. Integrate basics skills and work-readiness training with occupational skills training.
3. Combine customized supportive and case management services with training services to help participants overcome barriers to employment.
4. Provide training services at times, locations, and through multiple, flexible modalities that are easily understood and readily accessible to the target populations. Such modalities shall support timeless entry, individualized learning, and flexible scheduling, and may include online remediation, learning lab and cohort learning communities, tutoring, and modularization.

2011 Acts, ch 132, §75, 106

NEW section

**260H.6 Pipeline program.**

Each community college receiving funding for the pathways for academic career and employment program shall develop a pipeline program in order to better serve the academic, training, and employment needs of the target populations. A pipeline program shall have the following goals:

1. To strengthen partnerships with community-based organizations and industry representatives.
2. To improve and simplify the identification, recruitment, and assessment of qualified participants.
3. To conduct and manage an outreach, recruitment, and intake process, along with accompanying support services, reflecting sensitivity to the time and financial constraints and remediation needs of the target populations.
4. To conduct orientations for qualified participants to describe regional labor market opportunities, employer partners, and program requirements and expectations.
5. To describe the concepts of the project implemented with funds from the pathways

for academic career and employment program and the embedded educational and support resources available through such project.

6. To outline the basic skills participants will learn and describe the credentials participants will earn.

7. To describe success milestones and ways in which temporal and instructional barriers have been minimized or eliminated.

8. To review how individualized and customized service strategies for participants will be developed and provided.

2011 Acts, ch 132, §76, 106

NEW section

### **260H.7 Career pathways and bridge curriculum development program.**

Each community college receiving funding for the pathways for academic career and employment program shall develop a career pathways and bridge curriculum development program in order to better serve the academic, training, and employment needs of the target populations. A career pathways and bridge curriculum development program shall have the following goals:

1. The articulation of courses and modules, the mapping of programs within career pathways, and establishment of bridges between credit and noncredit programs.

2. The integration and contextualization of basic skills education and skills training. This process shall provide for seamless progressions between adult basic education and general education development programs and continuing education and credit certificate, diploma, and degree programs.

3. The development of career pathways that support the attainment of industry-recognized credentials, diplomas, and degrees through stackable, modularized program delivery.

2011 Acts, ch 132, §77, 106

NEW section

### **260H.8 Rules.**

The department of education, in consultation with the community colleges, the economic development authority, and Iowa workforce development, shall adopt rules pursuant to chapter 17A and this chapter to implement the provisions of this chapter. Regional advisory boards established pursuant to section 84A.4 shall be consulted in the development and implementation of rules to be adopted pursuant to this chapter.

2011 Acts, ch 118, §87, 89; 2011 Acts, ch 132, §78, 106

Code editor directive applied

NEW section

## CHAPTER 260I

### GAP TUITION ASSISTANCE ACT

#### **260I.1 Title.**

This chapter shall be known and may be cited as the “*Gap Tuition Assistance Act*”.

2011 Acts, ch 132, §79, 106

NEW section

#### **260I.2 Gap tuition assistance program.**

A gap tuition assistance program is established to provide funding to community colleges for need-based tuition assistance to applicants to enable completion of continuing education certificate training programs for in-demand occupations.

2011 Acts, ch 132, §80, 106

NEW section

**260I.3 Applicants for tuition assistance — eligibility criteria.**

1. The department of education, in consultation with the economic development authority, shall adopt rules pursuant to this chapter defining eligibility criteria for persons applying to receive tuition assistance under this chapter.

2. Eligibility for tuition assistance under this chapter shall be based on financial need. Criteria to be assessed in determining financial need shall include but is not limited to:

- a. The applicant's family income for the twelve months prior to the date of application.
- b. The applicant's family size.
- c. The applicant's county of residence.

3. a. An applicant for tuition assistance under this chapter must have a demonstrated capacity to achieve the following outcomes:

- (1) The ability to complete an eligible certificate program.
- (2) The ability to enter a postsecondary certificate, diploma, or degree program for credit.
- (3) The ability to gain full-time employment.
- (4) The ability to maintain full-time employment over time.

b. The community college receiving the application shall only approve an applicant for tuition assistance under this chapter if the community college determines the applicant has a strong likelihood of achieving the outcomes described in paragraph "a" after considering factors including but not limited to:

- (1) Barriers that may prevent an applicant from completing the certificate program.
- (2) Barriers that may prevent an applicant from gaining employment in an in-demand occupation.

4. Applicants may be found eligible for partial or total tuition assistance.

5. Tuition assistance shall not be approved when the community college receiving the application determines that funding for an applicant's participation in an eligible certificate program is available from any other public or private funding source.

2011 Acts, ch 118, §87, 89; 2011 Acts, ch 132, §81, 106

Code editor directive applied

NEW section

**260I.4 Applicants for tuition assistance — additional provisions.**

1. An applicant for tuition assistance under this chapter shall provide to the community college receiving the application documentation of all sources of income.

2. Only an applicant eligible to work in the United States shall be approved for tuition assistance under this chapter.

3. An application shall be valid for six months from the date of signature on the application.

4. A person shall not be approved for tuition assistance under this chapter for more than one eligible certificate program.

5. Eligibility for tuition assistance under this chapter shall not be construed to guarantee enrollment in any community college certificate program.

6. Eligibility for tuition assistance under this chapter shall be limited to persons earning incomes at or below two hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

2011 Acts, ch 132, §82, 106

NEW section

**260I.5 Eligible costs.**

Costs of a certificate program eligible for coverage by tuition assistance shall include but are not limited to:

1. Tuition.
2. Direct training costs.
3. Required books and equipment.

4. Fees including but not limited to fees for industry testing services and background check testing services.

2011 Acts, ch 132, §83, 106

NEW section

#### **2601.6 Eligible certificate programs.**

For the purposes of this chapter, “*eligible certificate program*” means a program meeting all of the following criteria:

1. The program is not offered for credit, but is aligned with a certificate, diploma, or degree for credit, and does any of the following:

- a. Offers a state, national, or locally recognized certificate.
- b. Offers preparation for a professional examination or licensure.
- c. Provides endorsement for an existing credential or license.
- d. Represents recognized skill standards defined by an industrial sector.
- e. Offers a similar credential or training.

2. The program offers training or a credential in an in-demand occupation. For the purposes of this chapter, “*in-demand occupation*” includes occupations in the following industries:

- a. Information technology.
- b. Health care.
- c. Advanced manufacturing.
- d. Transportation and logistics.
- e. Any other industry designated as in-demand by a regional advisory board established pursuant to section 84A.4.

2011 Acts, ch 132, §84, 106

NEW section

#### **2601.7 Initial assessment.**

An applicant for tuition assistance under this chapter shall complete an initial assessment administered by the community college receiving the application to determine the applicant’s readiness to complete an eligible certificate program. The assessment shall include assessments for completion of a national career readiness certificate, including the areas of reading for information, applied mathematics, and locating information. An applicant must achieve a bronze-level certificate or the minimum score required for an eligible certificate program, whichever is higher, in order to be approved for tuition assistance. An applicant shall complete any additional assessments and occupational research required by an eligible certificate program.

2011 Acts, ch 132, §85, 106

NEW section

#### **2601.8 Program interview.**

An applicant for tuition assistance under this chapter shall meet with a member of the staff for an eligible certificate program offered by the community college receiving the application. The staff member shall discuss the relevant industry, any applicable occupational research, and any applicable training relating to the eligible certificate program. The discussion shall include an evaluation of the applicant’s capabilities, needs, family situation, work history, educational background, attitude and motivation, employment skills, vocational potential, and employment barriers. The discussion shall also include potential start dates, support needs, and other requirements for an eligible certificate program.

2011 Acts, ch 132, §86, 106

NEW section

#### **2601.9 Participation requirements.**

1. A participant in an eligible certificate program who receives tuition assistance pursuant to this chapter shall do all of the following:

- a. Maintain regular contact with staff members for the certificate program to document the applicant’s progress in the program.

b. Sign a release form to provide relevant information to community college faculty or case managers.

c. Discuss with staff members for the certificate program any issues that may impact the participant's ability to complete the certificate program, obtain employment, and maintain employment over time.

d. Attend all required courses regularly.

e. Meet with staff members for the certificate program to develop a job search plan.

2. A community college may terminate tuition assistance for a participant who fails to meet the requirements of this section.

2011 Acts, ch 132, §87, 106

NEW section

#### **260I.10 Oversight.**

1. The department of education, in coordination with the community colleges, shall establish a steering committee. The steering committee shall determine if the performance measures of the gap tuition assistance program are being met and shall take necessary steps to correct any deficiencies. The steering committee shall meet at least quarterly to evaluate and monitor the performance of the gap tuition assistance program.

2. The department of education, in coordination with the community colleges, shall develop a common intake tracking system that shall be implemented consistently by each participating community college.

3. The department of education shall coordinate statewide oversight, evaluation, and reporting efforts for the gap tuition assistance program.

2011 Acts, ch 132, §88, 106

NEW section

#### **260I.11 Rules.**

The department of education, in consultation with the economic development authority and the community colleges, shall adopt rules pursuant to chapter 17A and this chapter to implement the provisions of this chapter.

2011 Acts, ch 118, §87, 89; 2011 Acts, ch 132, §89, 106

Code editor directive applied

NEW section

## CHAPTER 261

### COLLEGE STUDENT AID COMMISSION

Iowa higher education loan authority  
is attached to the commission; §7E.7, chapter 261A

#### DIVISION I

#### GENERAL PROVISIONS

#### **261.2 Duties of commission.**

The commission shall:

1. Prepare and administer a state plan for a state supported and administered scholarship program. The state plan shall provide for scholarships to deserving students of Iowa, matriculating in Iowa universities, colleges, community colleges, or schools of professional nursing. Eligibility of a student for receipt of a scholarship shall be based upon academic achievement and completion of advanced level courses prescribed by the commission.

2. Administer the tuition grant program under this chapter.

3. Develop and implement, in cooperation with the state board of regents, an educational program and marketing strategies designed to inform parents about the options available for

financing a college education and the need to accumulate the financial resources necessary to pay for a college education. The educational program shall include but not be limited to distribution of informational material to public and nonpublic elementary schools for distribution to parents and guardians of five-year and six-year old children.

4. Approve transfers from the scholarship and tuition grant reserve fund under section 261.20.

5. Develop and implement, in cooperation with the judicial district departments of correctional services and the department of corrections, a program to assist criminal offenders in applying for federal and state aid available for higher education.

6. Develop and implement, in cooperation with the department of human services and the judicial branch, a program to assist juveniles who are sixteen years of age or older and who have a case permanency plan under chapter 232 or 237 or are otherwise under the jurisdiction of chapter 232 in applying for federal and state aid available for higher education. The commission shall also develop and implement the all Iowa opportunity foster care grant program in accordance with section 261.6.

7. *a.* Adopt rules to establish reasonable registration standards for the approval, pursuant to section 261B.3A, of postsecondary schools that are required to register with the commission in order to operate in this state. The registration standards established by the commission shall ensure that all of the following conditions are satisfied:

(1) The courses, curriculum, and instruction offered by the postsecondary school are of such quality and content as may reasonably and adequately ensure achievement of the stated objective for which the courses, curriculum, or instruction are offered.

(2) The postsecondary school has adequate space, equipment, instructional material, and personnel to provide education and training of good quality.

(3) The educational and experience qualifications of the postsecondary school's directors, administrators, and instructors are such as may reasonably ensure that students will receive instruction consistent with the objectives of the postsecondary school's programs of study.

(4) Upon completion of training or instruction, students are given certificates, diplomas, or degrees as appropriate by the postsecondary school indicating satisfactory completion of the program.

(5) The postsecondary school is financially responsible and capable of fulfilling commitments for instruction.

*b.* The commission shall post an application on the commission's internet site and shall render a decision on an application for registration within one hundred eighty days of the filing of the application.

8. Submit by January 15 annually a report to the general assembly which provides, by program, the number of individuals who received loan forgiveness in the previous fiscal year, the amount paid to individuals under sections 261.23, 261.73, and 261.112, and the institutions from which individuals graduated, and that includes any proposed statutory changes and the commission's findings and recommendations.

9. Require any postsecondary institution whose students are eligible for or who receive assistance under programs administered by the commission and who were enrolled in a school district in Iowa to include in its student management information system the unique student identifiers assigned to the institution's students while the students were in the state's kindergarten through grade twelve system.

10. Administer the health care professional incentive payment program established in section 261.128 and the Iowa needs nurses now initiative created in section 261.129. This subsection is repealed June 30, 2014.

11. Ensure that students receiving state-funded scholarships and grants are attending institutions of higher education that meet all of the following conditions:

*a.* The institutions are not required to register under chapter 261B.

*b.* The institutions are eligible to participate in a federal student aid program authorized under Tit. IV of the federal Higher Education Act of 1965, as amended.

12. Require any postsecondary institution whose students are eligible for or who receive financial assistance under programs administered by the commission to transmit annually to the commission information about the numbers of minority students enrolled in and

minority faculty members employed at the institution. The commission shall compile and report the information collected to the general assembly, the governor, and the legislative services agency by March 1 annually.

[C66, 71, 73, 75, 77, 79, 81, §261.2]

83 Acts, ch 101, §60; 83 Acts, ch 184, §5, 11, 15; 88 Acts, ch 1003, §1; 88 Acts, ch 1261, §2; 88 Acts, ch 1284, §20, 21; 89 Acts, ch 300, §2; 90 Acts, ch 1253, §122; 90 Acts, ch 1272, §45; 92 Acts, ch 1231, §42; 92 Acts, ch 1240, §17; 93 Acts, ch 179, §20; 95 Acts, ch 70, § 1; 98 Acts, ch 1047, §27; 2000 Acts, ch 1095, §3; 2004 Acts, ch 1145, §2; 2005 Acts, ch 59, §1; 2007 Acts, ch 214, §24; 2008 Acts, ch 1181, §31; 2009 Acts, ch 12, §1, 2; 2009 Acts, ch 118, §48, 54; 2009 Acts, ch 177, §24; 2010 Acts, ch 1031, §314; 2010 Acts, ch 1147, §8, 13; 2011 Acts, ch 36, §1

Implementation of subsection 10 and amendments thereto by 2010 Acts, ch 1147, §8, conditioned upon availability of funding; 2009 Acts, ch 118, §54; 2010 Acts, ch 1147, §13

NEW subsections 11 and 12

### **261.6 All Iowa opportunity foster care grant program.**

1. The commission shall develop and implement, in cooperation with the department of human services and the judicial branch, the all Iowa opportunity foster care grant program in accordance with this section.

2. The program shall provide financial assistance for postsecondary education or training to a person who has a high school diploma or a high school equivalency diploma under chapter 259A and is described by any of the following:

a. Is age seventeen and is in a court-ordered placement under chapter 232 under the care and custody of the department of human services or juvenile court services.

b. Is age seventeen and has been placed in the state training school or the Iowa juvenile home pursuant to a court order entered under chapter 232 under the care and custody of the department of human services.

c. Is age eighteen through twenty-three and is described by any of the following:

(1) On the date the person reached age eighteen or during the thirty calendar days preceding or succeeding that date, the person was in a licensed foster care placement pursuant to a court order entered under chapter 232 under the care and custody of the department of human services or juvenile court services.

(2) On the date the person reached age eighteen or during the thirty calendar days preceding or succeeding that date, the person was under a court order under chapter 232 to live with a relative or other suitable person.

(3) The person was in a licensed foster care placement pursuant to an order entered under chapter 232 prior to being legally adopted after reaching age sixteen.

(4) On the date the person reached age eighteen or during the thirty calendar days preceding or succeeding that date, the person was placed in the state training school or the Iowa juvenile home pursuant to a court order entered under chapter 232 under the care and custody of the department of human services.

3. The program requirements shall include but are not limited to all of the following:

a. Program assistance shall cover a program participant's expenses associated with attending an approved postsecondary education or training program in this state. The expenses shall include tuition and fees, books and supplies, child care, transportation, housing, and other expenses approved by the commission. If a participant is attending on less than a full-time basis, assistance provisions shall be designed to cover tuition and fees and books and supplies, and assistance for other expenses shall be prorated to reflect the hours enrolled.

b. If the approved education or training program is more than one year in length, the program assistance may be renewed. To renew the assistance, the participant must annually reapply for the program and meet the academic progress standards of the postsecondary educational institution or make satisfactory progress toward completion of the training program.

c. A person shall be less than age twenty-three upon both the date of the person's initial application for the program and the start date of the education or training program for which the assistance is provided. Eligibility for program assistance shall end upon the participant reaching age twenty-four.

d. Assistance under the program shall not be provided for expenses that are paid for by other programs for which funding is available to assist the participant.

e. The commission shall implement assistance provisions in a manner to ensure that the total amount of assistance provided under the program remains within the funding available for the program.

2007 Acts, ch 214, §25; 2009 Acts, ch 177, §25; 2011 Acts, ch 36, §2  
Subsection 4 stricken

## DIVISION II

### TUITION GRANTS TO STUDENTS

#### 261.9 Definitions.

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

1. “Accredited private institution” means an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state and which meets the criteria in paragraphs “a” and “b” and all of the criteria in paragraphs “d” through “g”, except that institutions defined in paragraph “c” of this subsection are exempt from the requirements of paragraphs “a” and “b”:

a. Is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements.

b. Is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements, is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, and annually provides a matching aggregate amount of institutional financial aid equal to at least seventy-five percent of the amount received in a fiscal year by the institution’s students for Iowa tuition grant assistance under this chapter. Commencing with the fiscal year beginning July 1, 2006, the matching aggregate amount of institutional financial aid shall increase by the percentage of increase each fiscal year of funds appropriated for Iowa tuition grants under section 261.25, subsection 1, to a maximum match of one hundred percent. The institution shall file annual reports with the commission prior to receipt of tuition grant moneys under this chapter. An institution whose income is not exempt from taxation under section 501(c) of the Internal Revenue Code and whose students were eligible to receive Iowa tuition grant money in the fiscal year beginning July 1, 2003, shall meet the match requirements of this paragraph no later than June 30, 2005.

c. Is a specialized college that is accredited by the north central association of colleges and secondary schools accrediting agency, and which offers health professional programs that are affiliated with health care systems located in Iowa.

d. Promotes equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel at the institution and provides information regarding such efforts to the commission upon request.

e. Adopts a policy that prohibits unlawful possession, use, or distribution of controlled substances by students and employees on property owned or leased by the institution or in conjunction with activities sponsored by the institution. Each institution shall provide information about the policy to all students and employees. The policy shall include a clear statement of sanctions for violation of the policy and information about available drug or alcohol counseling and rehabilitation programs. In carrying out this policy, an institution shall provide substance abuse prevention programs for students and employees.

f. Develops and implements a written policy, which is disseminated during student registration or orientation, addressing the following four areas relating to sexual abuse:

(1) Counseling.

(2) Campus security.

(3) Education, including prevention, protection, and the rights and duties of students and employees of the institution.

(4) Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

g. (1) Adopts a policy to offer not less than the following options to a student who is a member, or the spouse of a member if the member has a dependent child, of the Iowa national guard or reserve forces of the United States and who is ordered to state military service or federal service or duty:

(a) Withdraw from the student's entire registration and receive a full refund of tuition and mandatory fees.

(b) Make arrangements with the student's instructors for course grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the student's registration shall remain intact and tuition and mandatory fees shall be assessed for the courses in full.

(c) Make arrangements with only some of the student's instructors for grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the registration for those courses shall remain intact and tuition and mandatory fees shall be assessed for those courses. Any course for which arrangements cannot be made for grades or incompletes shall be considered dropped and the tuition and mandatory fees for the course refunded.

(2) As used in this lettered paragraph, "*dependent child*" means the same as defined in section 260C.14, subsection 14, paragraph "b", subparagraph (2), subparagraph division (a).

2. "*Commission*" means the college student aid commission.

3. "*Financial need*" means the difference between the student's financial resources available, including those available from the student's parents as determined by a completed parents' confidential statement, and the student's anticipated expenses while attending the accredited private institution. Financial need shall be redetermined at least annually.

4. "*Full-time resident student*" means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least twelve semester hours or the trimester equivalent of twelve semester hours. "*Course of study*" does not include correspondence courses.

5. "*Part-time resident student*" means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least three semester hours or the trimester or quarter equivalent of three semester hours. "*Course of study*" does not include correspondence courses.

6. "*Qualified student*" means a resident student who has established financial need and who is making satisfactory progress toward graduation.

7. "*Tuition grant*" means an award by the state of Iowa to a qualified student under this division.

[C71, 73, 75, 77, 79, 81, §261.9]

87 Acts, ch 233, §455; 88 Acts, ch 1284, §22 – 24; 89 Acts, ch 319, §42; 90 Acts, ch 1253, §122; 90 Acts, ch 1272, §48; 91 Acts, ch 180, §1; 92 Acts, ch 1106, §1, 4; 2000 Acts, ch 1095, §4 – 11; 2001 Acts, ch 24, §42; 2001 Acts, ch 39, §2; 2003 Acts, ch 179, §113, 114; 2004 Acts, ch 1086, §56; 2004 Acts, ch 1175, §237, 238; 2005 Acts, ch 169, §25; 2010 Acts, ch 1169, §4; 2011 Acts, ch 36, §3

Subsection 1, paragraph d amended

### **261.19 Health care professional recruitment program.**

1. A health care professional recruitment program is established to be administered by the college student aid commission for Des Moines university. The program shall consist of a loan repayment program for health care professionals. The commission shall regularly adjust the service requirement under each aspect of the program to provide, to the extent possible, an equal financial benefit for each period of service required.

2. A health care professional shall be eligible for the loan repayment program if the health care professional agrees to practice in an eligible rural community in this state. Des Moines university shall recruit and place health care professionals in rural communities which have agreed to provide additional funds for the recipient's loan repayment. The contract for the loan repayment shall stipulate the time period the recipient shall practice in an eligible rural community in this state. In addition, the contract shall stipulate that the recipient repay any

funds paid on the recipient's loan by the commission if the recipient fails to practice in an eligible rural community in this state for the required period of time.

3. A health care professional recruitment revolving fund is created in the state treasury as a separate fund under the control of the commission. The commission shall deposit payments made by health care professional recruitment program recipients and the proceeds from the sale of osteopathic loans awarded pursuant to section 261.19, subsection 2, paragraph "b", Code 2011, into the health care professional recruitment revolving fund. Moneys credited to the fund shall be used to supplement moneys appropriated for the health care professional recruitment program, for loan repayment in accordance with this section, and to pay for loan or interest repayment defaults by program recipients. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

4. For purposes of this section:

a. "*Eligible rural community*" means a medically underserved rural community which agrees to match state funds provided on at least a dollar-for-dollar basis for the loan repayment of a health care professional who practices in the community.

b. "*Health care professional*" means a physician, physician assistant, podiatrist, or physical therapist.

5. The commission shall adopt rules pursuant to chapter 17A to administer this section.

[C77, 79, 81, §261.19]

87 Acts, ch 115, §38; 89 Acts, ch 319, §46; 90 Acts, ch 1253, §122; 90 Acts, ch 1272, §51; 97 Acts, ch 134, §1; 2000 Acts, ch 1058, §30; 2000 Acts, ch 1095, §12; 2000 Acts, ch 1223, §27; 2004 Acts, ch 1175, §91; 2009 Acts, ch 177, §26; 2011 Acts, ch 132, §12, 106

Section amended

**261.19B Osteopathic physician recruitment revolving fund.** Repealed by 2011 Acts, ch 132, § 27, 106.

**261.25 Appropriations — standing limited — minority student and faculty information.**

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of forty-three million five hundred thirteen thousand four hundred forty-eight dollars for tuition grants.

2. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of four million dollars for tuition grants for students attending for-profit accredited private institutions located in Iowa. A for-profit institution which, effective March 9, 2005, or effective January 8, 2010, purchased an accredited private institution that was exempt from taxation under section 501(c) of the Internal Revenue Code, shall be an eligible institution under the tuition grant program. For purposes of the tuition grant program, "*for-profit accredited private institution*" means an accredited private institution which is not exempt from taxation under section 501(c)(3) of the Internal Revenue Code but which otherwise meets the requirements of section 261.9, subsection 1, paragraph "b", and whose students were eligible to receive tuition grants in the fiscal year beginning July 1, 2003.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million two hundred fifty thousand one hundred eighty-five dollars for vocational-technical tuition grants.

4. This section shall not be construed to be a limitation on any of the amounts which may be appropriated by the general assembly for any program enumerated in this section.

5. In the case of a qualified student who was enrolled in an accredited private institution that was exempt from taxation under section 501(c) of the Internal Revenue Code and that was purchased by a for-profit institution effective January 8, 2010, and such qualified student continues to be enrolled in the eligible institution in succeeding years, the student shall continue to be eligible to receive funds under subsection 1 without a change in the student's qualification status.

[C77, 79, 81, §261.25]

83 Acts, ch 197, §15; 85 Acts, ch 263, §17; 87 Acts, ch 233, §458; 88 Acts, ch 1003, §2; 88 Acts, ch 1284, §13, 28; 89 Acts, ch 319, §47, 48; 90 Acts, ch 1253, §122; 90 Acts, ch 1272, §54;

91 Acts, ch 180, §3; 91 Acts, ch 260, §908; 91 Acts, ch 267, §218; 92 Acts, ch 1246, §30; 93 Acts, ch 179, §21; 94 Acts, ch 1193, §19, 20; 95 Acts, ch 218, §22; 96 Acts, ch 1215, §38; 97 Acts, ch 212, §27; 98 Acts, ch 1215, §37, 38; 99 Acts, ch 205, §31, 32; 2000 Acts, ch 1095, §14; 2000 Acts, ch 1223, §28; 2002 Acts, ch 1171, §85; 2002 Acts, 2nd Ex, ch 1003, §93, 95; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 182, §13; 2004 Acts, ch 1175, §93; 2005 Acts, ch 169, §26, 27; 2006 Acts, ch 1180, §18, 19; 2006 Acts, ch 1182, §43; 2007 Acts, ch 214, §27; 2008 Acts, ch 1181, §33; 2009 Acts, ch 177, §27; 2010 Acts, ch 1183, §23, 24, 43; 2011 Acts, ch 36, §4; 2011 Acts, ch 132, §13, 106

Subsections 1 – 3 amended

Subsection 5 stricken and former subsection 6 renumbered as 5

## DIVISION VII

### CHIROPRACTIC GRADUATE STUDENT FORGIVABLE LOAN PROGRAM

#### **261.72 Chiropractic loan revolving fund.**

A chiropractic loan revolving fund is created in the state treasury as a separate fund under the control of the commission. The commission shall deposit payments made by chiropractic loan recipients and the proceeds from the sale of chiropractic loans, less costs of collection of delinquent chiropractic loans, into the chiropractic loan revolving fund. Moneys credited to the fund shall be used to supplement moneys appropriated for the chiropractic graduate student forgivable loan program, for loan forgiveness to eligible chiropractic physicians, and to pay for loan or interest repayment defaults by eligible chiropractic physicians. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

96 Acts, ch 1158, §4

Allocation to chiropractic loan forgiveness program; 2010 Acts, ch 1183, §4; 2011 Acts, ch 132, §3, 100, 106

Section not amended; footnote revised

## DIVISION VIII

### WORK-STUDY PROGRAM

#### **261.85 Appropriation.**

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million seven hundred fifty thousand dollars for the work-study program.

2. From moneys appropriated in this section, one million five hundred thousand dollars shall be allocated to institutions of higher education under the state board of regents and community colleges and the remaining dollars appropriated in this section shall be allocated by the commission on the basis of need as determined by the portion of the federal formula for distribution of work-study funds that relates to the current need of institutions.

87 Acts, ch 233, §463; 88 Acts, ch 1284, §32; 89 Acts, ch 319, §58; 90 Acts, ch 1272, §58; 91 Acts, ch 260, §909; 91 Acts, ch 267, §219; 92 Acts, ch 1246, §33; 93 Acts, ch 179, §22; 95 Acts, ch 218, §24; 2000 Acts, ch 1223, §29

State funding for 2011-2012 and 2012-2013 fiscal years eliminated; 2011 Acts, ch 132, §4, 101, 106

Section not amended; footnote revised

DIVISION IX  
NATIONAL GUARD EDUCATIONAL  
ASSISTANCE

**261.86 National guard educational assistance program.**

1. A national guard educational assistance program is established to be administered by the college student aid commission for members of the Iowa national guard who are enrolled as undergraduate students in a community college, an institution of higher learning under the state board of regents, or an accredited private institution. The college student aid commission shall adopt rules pursuant to chapter 17A to administer this section. An individual is eligible for the national guard educational assistance program if the individual meets all of the following conditions:

a. Is a resident of the state and a member of an Iowa army or air national guard unit while receiving educational assistance pursuant to this section.

b. Satisfactorily completed required initial active duty training.

c. Maintains satisfactory performance of duty upon return from initial active duty training, including attending a minimum ninety percent of scheduled drill dates and attending annual training.

d. Is enrolled as an undergraduate student in a community college as defined in section 260C.2, an institution of higher learning under the control of the board of regents, or an accredited private institution as defined in section 261.9, and is maintaining satisfactory academic progress.

e. Provides proper notice of national guard status to the community college or institution at the time of registration for the term in which tuition benefits are sought.

f. Submits an application to the adjutant general of Iowa, on forms prescribed by the adjutant general, who shall determine eligibility and whose decision is final.

2. Educational assistance paid pursuant to this section shall not exceed the resident tuition rate established for institutions of higher learning under the control of the state board of regents. If the amount appropriated in a fiscal year for purposes of this section is insufficient to provide educational assistance to all national guard members who apply for the program and who are determined by the adjutant general to be eligible for the program, the adjutant general shall, in coordination with the commission, determine the distribution of educational assistance. However, educational assistance paid pursuant to this section shall not be less than fifty percent of the resident tuition rate established for institutions of higher learning under the control of the state board of regents or fifty percent of the tuition rate at the institution attended by the national guard member, whichever is lower. Neither eligibility nor educational assistance determinations shall be based upon a national guard member's unit, the location at which drills are attended, or whether the eligible individual is a member of the Iowa army or air national guard.

3. An eligible member of the national guard, attending an institution as provided in subsection 1, paragraph "d", as a full-time student, shall not receive educational assistance under this section for more than eight semesters, or if attending as a part-time student for not more than sixteen semesters, of undergraduate study, or the trimester or quarter equivalent. A national guard member who has met the educational requirements for a baccalaureate degree is ineligible for educational assistance under this section.

4. The eligibility of applicants and amounts of educational assistance to be paid shall be certified by the adjutant general of Iowa to the college student aid commission, and all amounts that are or become due to a community college, accredited private institution, or institution of higher learning under the control of the state board of regents under this section shall be paid to the college or institution by the college student aid commission upon receipt of certification by the president or governing board of the educational institution as to accuracy of charges made, and as to the attendance and academic progress of the individual at the educational institution. The college student aid commission shall maintain an annual record of the number of participants and the dollar value of the educational assistance provided.

5. For purposes of this section, unless otherwise required, “*educational assistance*” means the same as “*cost of attendance*” as defined in Tit. IV, pt. B, of the federal Higher Education Act of 1965 as amended.

6. Notwithstanding section 8.33, until one year after the date the president of the United States or the Congress of the United States declares a cessation of hostilities ending operation Iraqi freedom, operation new dawn, and operation enduring freedom, funds appropriated for purposes of this section which remain unencumbered or unobligated at the close of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for purposes of this section.

99 Acts, ch 205, §40; 2000 Acts, ch 1095, §15; 2003 Acts, ch 182, §14, 22; 2010 Acts, ch 1061, §180; 2011 Acts, ch 48, §1, 2

2011 amendment to subsection 6 takes effect April 13, 2011, and applies retroactively to September 1, 2010; 2011 Acts, ch 48, §2  
Subsection 6 amended

## DIVISION X

### ALL IOWA OPPORTUNITY SCHOLARSHIPS

#### **261.87 All Iowa opportunity scholarship program and fund.**

1. *Definitions.* As used in this division, unless the context otherwise requires:

a. “*Commission*” means the college student aid commission.

b. “*Eligible institution*” means a community college established under chapter 260C or an institution of higher learning governed by the state board of regents.

c. “*Financial need*” means the difference between the student’s financial resources available, including those available from the student’s parents as determined by a completed parents’ confidential statement, and the student’s anticipated expenses while attending an eligible institution.

d. “*Full-time resident student*” means an individual resident of Iowa who is enrolled at an eligible institution in a program of study including at least twelve semester hours or the trimester or quarter equivalent.

e. “*Part-time resident student*” means an individual resident of Iowa who is enrolled at an eligible institution in a program of study including at least three semester hours or the trimester or quarter equivalent.

f. “*Qualified student*” means a resident student who has established financial need and who is meeting all program requirements.

2. *Program — eligibility.* An all Iowa opportunity scholarship program is established to be administered by the commission. The awarding of scholarships under the program is subject to appropriations made by the general assembly. A person who meets all of the following requirements is eligible for the program:

a. Is a resident of Iowa and a citizen of the United States or a lawful permanent resident.

b. Achieves a cumulative high school grade point average of at least two point five on a four-point grade scale, or its equivalent if another grade scale is used.

c. Applies in a timely manner for admission to an eligible institution and is accepted for admission.

d. Applies in a timely manner for any federal or state student financial assistance available to the student to attend an eligible institution.

e. Files a new application and parents’ confidential statement, as applicable, annually on the basis of which the applicant’s eligibility for a renewed scholarship will be evaluated and determined.

f. Maintains satisfactory academic progress during each term for which a scholarship is awarded.

g. Begins enrollment at an eligible institution within two academic years of graduation from high school and continuously receives awards as a full-time or part-time student to maintain eligibility. However, the student may defer participation in the program for up to

two years in order to pursue obligations that meet conditions established by the commission by rule or to fulfill military obligations.

3. *Extent of scholarship.*

a. A qualified student at a two-year eligible institution may receive scholarships for not more than the equivalent of four full-time semesters of undergraduate study, or the trimester or quarter equivalent.

b. A qualified student at a four-year eligible institution may receive scholarships for not more than the equivalent of two full-time semesters of undergraduate study, or the trimester or quarter equivalent.

c. Scholarships awarded pursuant to this section shall not exceed the student's financial need, as determined by the commission, the average resident tuition rate and mandatory fees established for institutions of higher learning governed by the state board of regents, or the resident tuition and mandatory fees charged for the program of enrollment by the eligible institution at which the student is enrolled, whichever is least.

4. *Discontinuance of attendance — remittance.* If a student receiving a scholarship pursuant to this section discontinues attendance before the end of any academic term, the entire amount of any refund due to the student, up to the amount of any payments made by the state, shall be remitted by the eligible institution to the commission. The commission shall deposit refunds paid to the commission in accordance with this subsection into the fund established pursuant to subsection 5.

5. *Fund established.* An all Iowa opportunity scholarship fund is created in the state treasury as a separate fund under the control of the commission. All moneys deposited or paid into the fund are appropriated and made available to the commission to be used for scholarships for students meeting the requirements of this section. Notwithstanding section 8.33, any balance in the fund on June 30 of each fiscal year shall not revert to the general fund of the state, but shall be available for purposes of this section in subsequent fiscal years.

2007 Acts, ch 214, §28; 2009 Acts, ch 177, §28

Program to be expanded for FY 2011-2012 and FY 2012-2013 to include accredited private institutions if funds appropriated exceed \$500,000; 2011 Acts, ch 132, §2, 98, 106

Section not amended; footnote revised

## DIVISION XI

### IOWA GRANT PROGRAM

#### **261.92 Definitions.**

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

1. *“Accredited higher education institution”* means a public institution of higher learning located in Iowa which is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements as of April 1, 1969, or an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state, and which meets the following requirements:

a. Is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements as of April 1, 1969, and,

b. Promotes equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel at the institution and provides information regarding such efforts to the commission upon request.

2. *“Commission”* means the college student aid commission.

3. *“Financial need”* means the difference between the student's financial resources available, including those available from the student's parents as determined by a completed parents' confidential statement, and the student's anticipated expenses while attending the accredited higher education institution. Financial need shall be redetermined at least annually.

4. *“Full-time resident student”* means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least twelve semester

hours or the trimester equivalent of twelve semester hours or the quarter equivalent of twelve semester hours. “*Course of study*” does not include correspondence courses.

5. “*Grant*” means an award by the state of Iowa to an accredited higher education institution for a qualified resident student under the Iowa grant program.

6. “*Part-time resident student*” means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least three semester hours or the trimester or the four quarter equivalent of three semester hours. “*Course of study*” does not include correspondence courses.

7. “*Qualified student*” means a resident student who has established financial need and who is making satisfactory progress toward graduation.

90 Acts, ch 1272, §59; 2000 Acts, ch 1095, §16; 2011 Acts, ch 36, §5  
Subsection 1, paragraph b amended

### DIVISION XIII

#### TEACHER SHORTAGE FORGIVABLE LOAN AND LOAN FORGIVENESS PROGRAMS

##### **261.112 Teacher shortage loan forgiveness program.**

1. A teacher shortage loan forgiveness program is established to be administered by the commission. A teacher is eligible for the program if the teacher is practicing in a teacher shortage area as designated by the department of education pursuant to subsection 2. For purposes of this section, “*teacher*” means an individual holding a practitioner’s license issued under chapter 272, who is employed in a nonadministrative position in a designated shortage area by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.13.

2. The director of the department of education shall annually designate the geographic or subject areas experiencing teacher shortages. The director shall periodically conduct a survey of school districts, accredited nonpublic schools, and approved practitioner preparation programs to determine current shortage areas.

3. Each applicant for loan forgiveness shall, in accordance with the rules of the commission, do the following:

a. Complete and file an application for teacher shortage loan forgiveness. The individual shall be responsible for the prompt submission of any information required by the commission.

b. File a new application and submit information as required by the commission annually on the basis of which the applicant’s eligibility for the renewed loan forgiveness will be evaluated and determined.

c. Complete and return on a form approved by the commission an affidavit of practice verifying that the applicant is a teacher in an eligible teacher shortage area.

4. The annual amount of teacher shortage loan forgiveness shall not exceed the resident tuition rate established for institutions of higher learning governed by the state board of regents for the first year following the teacher’s graduation from an approved practitioner preparation program, or twenty percent of the teacher’s total federally guaranteed Stafford loan amount under the federal family education loan program or the federal direct loan program, including principal and interest, whichever amount is less. A teacher shall be eligible for the loan forgiveness program for not more than five years. However, practice by an eligible teacher in a teacher shortage area pursuant to subsection 1 must be completed within ten years following graduation from the approved practitioner preparation program.

5. A teacher shortage loan forgiveness repayment fund is created for deposit of moneys appropriated to or received by the commission for use under the program. Notwithstanding section 8.33, moneys deposited in the fund shall not revert to any fund of the state at the end of any fiscal year but shall remain in the loan forgiveness repayment fund and be continuously

available for loan forgiveness under the program. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

6. The commission shall submit in a report to the general assembly by January 1, annually, the number of individuals who received loan forgiveness pursuant to this section, which shortage areas the teachers taught in, the amount paid to each program participant, and other information identified by the commission as indicators of outcomes from the program.

7. The commission shall adopt rules pursuant to chapter 17A to administer this section.

2007 Acts, ch 214, §31; 2011 Acts, ch 36, §6

Subsection 4 amended

## CHAPTER 261A

### HIGHER EDUCATION LOAN AUTHORITY (PRIVATE INSTITUTIONS)

Authority is attached to the college student  
aid commission; §7E.7, chapter 261

#### DIVISION II

#### HIGHER EDUCATION FACILITIES PROGRAM

##### **261A.42 Obligations.**

1. The authority may provide by resolution for the issuance of obligations for the purpose of paying, refinancing, or reimbursing all or part of the cost of a project. Except to the extent payable from payments to be made on federally guaranteed securities as provided in section 261A.45, the principal of and the interest on the obligations shall be payable solely out of the revenue of the authority derived from the project to which they relate and from other facilities pledged or made available for this purpose by the institution for whose benefit the obligations were issued. The obligations of each issue shall be dated, shall bear interest at rate or rates, without regard to any limit contained in any other statute or law of the state, and shall mature at times not exceeding forty years from the date of issuance, all as determined by the authority; and may be made redeemable before maturity at the prices and under terms fixed by the authority in the authorizing resolution.

2. Except as otherwise provided by this division, the obligations are to be paid solely out of the revenue of the project to which they relate and, in certain instances, out of the revenue of certain other facilities, and subject to section 261A.45 with respect to a pledge of government securities, the obligations may be unsecured or secured in the manner and to the extent determined by the authority. The authority shall determine the form of the obligations, including interest coupons, if any, to be attached, and shall fix the denominations of the obligations and the places of payment of principal and interest which may be at any bank or trust company within or without the state. The obligations and coupons attached, if any, shall be executed by the manual or facsimile signatures of officers of the authority designated by the authority. If an official of the authority whose signature or a facsimile of whose signature appears on any obligations or coupons ceases to be an official before the delivery of the obligations, the signature or facsimile, nevertheless, is valid and sufficient for all purposes the same as if the individual had remained an official of the authority until delivery. Obligations issued under this division have all the qualities and incidents of negotiable instruments, notwithstanding this payment from limited sources and without regard to any other law. The obligations may be issued in coupon or in registered form, or both, and one form may be exchangeable for the other in the manner as the authority may determine. Provision may be made for the registration of any coupon obligations as to principal alone and also as to both principal and interest, and for the reconversion into

coupon obligations of any obligations registered as to both principal and interest. The obligations may be sold in the manner, either at public or private sale, as the authority determines.

3. The proceeds of the obligations of each issue shall be used solely for the payment of the cost of the project for which the obligations have been issued, and shall be disbursed in the manner and under the restrictions, if any, as the authority provides in the resolution authorizing the issuance of the obligations or in the trust agreement provided for in section 261A.44 securing the obligations. If the proceeds of the obligations of an issue, by error of estimates or otherwise, are less than the costs, additional obligations may in like manner be issued to provide the amount of the deficit, and, unless otherwise provided in the resolution authorizing the issuance of the obligations or in the trust agreement securing them, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the obligations first issued. If the proceeds of the obligations of an issue shall exceed the cost of the project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for the obligations. Prior to the preparation of definitive obligations, the authority may, under like restrictions, issue interim receipts or temporary obligations, with or without coupons, exchangeable for definitive obligations when the obligations have been executed and are available for delivery.

4. The authority may also provide for the replacement of obligations which become mutilated or are destroyed or lost. Obligations may be issued under this division without obtaining the consent of an officer, department, division, commission, board, bureau, or agency of the state, and without other proceedings or conditions other than those which are specifically required by this division. The authority may purchase its bonds out of funds available for that purpose. The authority may hold, pledge, cancel, or resell the obligations, subject to and in accordance with any agreement with the obligation holders. Members of the authority and any person executing the obligations are not liable personally on the obligations or subject to personal liability or accountability by reason of the issuance of the obligations.

85 Acts, ch 210, §12; 97 Acts, ch 181, §5; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 261D

### MIDWESTERN HIGHER EDUCATION COMPACT

**261D.4 Payment of dues.** Repealed by 2011 Acts, ch 132, § 33, 34.

## CHAPTER 261E

### SENIOR YEAR PLUS PROGRAM

#### **261E.3 Eligibility.**

1. *Student eligibility.* In order to ensure student readiness for postsecondary coursework, the student shall meet the following criteria:

a. The student shall meet the enrollment requirements established by the eligible postsecondary institution providing the course credit.

b. The student shall meet or exceed the minimum performance measures on any academic assessments that may be required by the eligible postsecondary institution.

c. The student shall have taken the appropriate course prerequisites, if any, prior to enrollment in the eligible postsecondary course, as determined by the eligible postsecondary institution delivering the course.

d. The student shall have attained the approval of the school board or its designee and the eligible postsecondary institution to register for the postsecondary course.

e. The student shall have demonstrated proficiency in reading, mathematics, and science as evidenced by achievement scores on the latest administration of the state assessment for which scores are available and as defined by the department. However, a student receiving competent private instruction under chapter 299A may demonstrate proficiency by submitting the written recommendation of the licensed practitioner providing supervision to the student in accordance with section 299A.2; may demonstrate proficiency as evidenced by achievement scores on the annual achievement evaluation required under section 299A.4; or may demonstrate proficiency as evidenced by a selection index, which is the sum of the critical reading, mathematics, and writing skills assessments, of at least one hundred forty-one on the preliminary scholastic aptitude test administered by the college board; a composite score of at least twenty-one on the college readiness assessment administered by ACT, inc.; or a sum of the critical reading and mathematics scores of at least nine hundred ninety on the college readiness assessment administered by the college board. If a student is not proficient in one or more of the content areas listed in this paragraph, has not taken the college readiness assessments identified in this paragraph, or has not achieved the scores specified in this paragraph, the school board may establish alternative but equivalent qualifying performance measures including but not limited to additional administrations of the state assessment, portfolios of student work, student performance rubric, or end-of-course assessments.

f. The student shall meet the definition of eligible student under section 261E.6, subsection 6, in order to participate in the postsecondary enrollment options program.

2. *Teacher and instructor eligibility.*

a. A teacher or instructor employed to provide instruction under this chapter shall meet the following criteria:

(1) The teacher shall be appropriately licensed to teach the subject the institution is employing the teacher to teach and shall meet the standards and requirements set forth which other full-time instructors teaching within the academic department are required to meet and which are approved by the appropriate postsecondary administration.

(2) The teacher shall collaborate, as appropriate, with other secondary and postsecondary faculty in the subject area.

(3) The district, in collaboration with the teacher or instructor, shall provide ongoing communication about course expectations, including a syllabus that describes the content, teaching strategies, performance measures, and resource materials used in the course, and academic progress to the student and in the case of students of minor age, to the parent or legal guardian of the student.

(4) The teacher or instructor shall provide curriculum and instruction that is accepted as college-level work as determined by the institution.

(5) The teacher or instructor shall use valid and reliable student assessment measures, to the extent available.

(6) If the instruction for any program authorized by this chapter is provided at a school district facility or a neutral site, the teacher or instructor shall have successfully passed a background investigation conducted in accordance with section 272.2, subsection 17, prior to providing such instruction. For purposes of this section, “*neutral site*” means a facility that is not owned or operated by an institution.

b. The teacher or instructor shall be provided with appropriate orientation and training in secondary and postsecondary professional development related to curriculum, pedagogy, assessment, policy implementation, technology, and discipline issues.

c. The eligible postsecondary institution shall provide the teacher or instructor with ongoing communication and access to instructional resources and support, and shall encourage the teacher or instructor to participate in the postsecondary institution’s academic departmental activities.

d. The teacher or instructor shall receive adequate notification of an assignment to teach a course under this chapter and shall be provided adequate preparation time to ensure that the course is taught at the college level.

e. An individual under suspension or revocation of an educational license or statement of professional recognition issued by the board of educational examiners shall not be allowed to provide instruction for any program authorized by this chapter.

3. *Institutional eligibility.* An institution providing instruction pursuant to this chapter shall meet the following criteria:

a. The institution shall ensure that students or in the case of minor students, parents or legal guardians, receive appropriate course orientation and information, including but not limited to a summary of applicable policies and procedures, the establishment of a permanent transcript, policies on dropping courses, a student handbook, information describing student responsibilities, and institutional procedures for academic credit transfer.

b. The institution shall ensure that students have access to student support services, including but not limited to tutoring, counseling, advising, library, writing and math labs, and computer labs, and student activities, excluding postsecondary intercollegiate athletics.

c. The institution shall ensure that students are properly enrolled in courses that will carry college credit.

d. The institution shall ensure that teachers and students receive appropriate orientation and information about the institution's expectations.

e. The institution shall ensure that the courses provided achieve the same learning outcomes as similar courses offered in the subject area and are accepted as college-level work.

f. The institution shall review the course on a regular basis for continuous improvement, shall follow up with students in order to use information gained from the students to improve course delivery and content, and shall share data on course progress and outcomes with the collaborative partners involved with the delivery of the programming and with the department, as needed.

g. The school district shall certify annually to the department that the course provided to a high school student for postsecondary credit in accordance with this chapter does not supplant a course provided by the school district in which the student is enrolled.

h. The institution shall not require a minimum or a maximum number of postsecondary credits to be earned by a high school student under this chapter.

i. The institution shall not place restrictions on participation in senior year plus programming beyond that which is specified in statute or administrative rule.

j. All eligible postsecondary institutions providing programming under this chapter shall include the unique student identifier assigned to students while in the kindergarten through grade twelve system as a part of the institution's student data management system. Eligible postsecondary institutions providing programming under this chapter shall cooperate with the department on data requests related to the programming. All eligible postsecondary institutions providing programming under this chapter shall collect data and report to the department on the proportion of females and minorities enrolled in science, technology, engineering, and mathematics-oriented educational opportunities provided in accordance with this chapter. The department shall submit the programming data and the department's findings and recommendations in a report to the general assembly annually by January 15.

k. The school district shall ensure that the background investigation requirement of subsection 2, paragraph "a", subparagraph (6), is satisfied. The school district shall pay for the background investigation conducted in accordance with subsection 2, paragraph "a", subparagraph (6), but may charge the teacher or instructor a fee not to exceed the actual cost charged the school district for the background investigation conducted.

2008 Acts, ch 1181, §53; 2011 Acts, ch 132, §14, 106

Subsection 1, paragraph e amended

### **261E.8 District-to-community college sharing or concurrent enrollment program.**

1. A district-to-community college sharing or concurrent enrollment program is established to be administered by the department to promote rigorous academic or career and technical pursuits and to provide a wider variety of options to high school students to enroll part-time in eligible nonsectarian courses at or through community colleges established under chapter 260C. The program shall be made available to all resident students

in grades nine through twelve. Notice of the availability of the program shall be included in a school district's student registration handbook and the handbook shall identify which courses, if successfully completed, generate college credit under the program. A student and the student's parent or legal guardian shall also be made aware of this program as a part of the development of the student's core curriculum plan in accordance with section 279.61.

2. Students from accredited nonpublic schools and students receiving competent private instruction under chapter 299A may access the program through the school district in which the accredited nonpublic school or private institution is located.

3. A student may make application to a community college and the school district to allow the student to enroll for college credit in a nonsectarian course offered by the community college. A comparable course, as defined in rules adopted by the board of directors of the school district, must not be offered by the school district or accredited nonpublic school which the student attends. The school board shall annually approve courses to be made available for high school credit using locally developed criteria that establishes which courses will provide the student with academic rigor and will prepare the student adequately for transition to a postsecondary institution. If an eligible postsecondary institution accepts a student for enrollment under this section, the school district, in collaboration with the community college, shall send written notice to the student, the student's parent or legal guardian in the case of a minor child, and the student's school district. The notice shall list the course, the clock hours the student will be attending the course, and the number of hours of college credit that the student will receive from the community college upon successful completion of the course.

4. A school district shall grant high school credit to a student enrolled in a course under this chapter if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to subsection 3. The board of directors of the school district shall determine the number of high school credits that shall be granted to a student who successfully completes a course.

5. District-to-community college sharing agreements or concurrent enrollment programs that meet the requirements of section 257.11, subsection 3, are eligible for funding under that provision.

6. Community colleges shall comply with the data collection requirements of section 260C.14, subsection 21.

7. The state board, in collaboration with the board of directors of each community college, shall adopt rules that clearly define data and information elements to be collected related to the senior year plus programming, including concurrent enrollment courses. The data elements shall include but not be limited to the following:

a. The course title and whether the course supplements, rather than supplants, a school district course.

b. An unduplicated enrollment count of eligible students participating in the program.

c. The actual costs and revenues generated for concurrent enrollment. An aligned unique student identifier system shall be established by the department for students in kindergarten through grade twelve and community college.

d. Degree, certifications, and other qualifications to meet the minimum hiring standards.

e. Salary information including regular contracted salary and total salary.

f. Credit hours and laboratory contact hours and other data on instructional time.

g. Other information comparable to the data regarding teachers collected in the basic education data survey.

2008 Acts, ch 1181, §58; 2011 Acts, ch 20, §12

Subsection 5 stricken and former subsections 6 - 8 redesignated as subsections 5 - 7

### **261E.9 Regional academies.**

1. A regional academy is a program established by a school district to which multiple school districts send students in grades nine through twelve, and which may include internet-based coursework and courses delivered via the Iowa communications network. A regional academy shall include in its curriculum advanced level courses and may include in its curriculum career and technical courses.

2. A regional academy course shall not qualify as a concurrent enrollment course.
3. School districts participating in regional academies are eligible for supplementary weighting as provided in section 257.11, subsection 2.
4. Information regarding regional academies shall be provided to a student and the student's parent or guardian prior to the development of the student's core curriculum plan under section 279.61.

2008 Acts, ch 1181, §59

For future amendments to subsections 1 through 3, effective July 1, 2012, see 2011 Acts, ch 132, §15, 29  
Section not amended; footnote added

## CHAPTER 262

### BOARD OF REGENTS

#### **262.9 Powers and duties.**

The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until a successor is elected and qualified.
2. Elect a president of each of the institutions of higher learning; a superintendent of each of the other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation. Sections 279.12 through 279.19 and section 279.27 apply to employees of the Iowa braille and sight saving school and the state school for the deaf, who are licensed pursuant to chapter 272. In following those sections in chapter 279, the references to boards of directors of school districts shall be interpreted to apply to the board of regents.
3. Make rules for admission to and for the government of said institutions, not inconsistent with law.
4. Manage and control the property, both real and personal, belonging to the institutions.
5. Purchase or require the purchase of, when the price is reasonably competitive and the quality as intended, soybean-based inks. All inks purchased that are used internally or are contracted for by the board shall be soybean-based to the extent formulations for such inks are available.
  - a. The department of natural resources shall review the procurement specifications currently used by the board to eliminate, wherever possible, discrimination against the procurement of products manufactured with soybean-based inks.
  - b. The department of natural resources shall assist the board in locating suppliers of recycled content products and soybean-based inks and collecting data on recycled content and soybean-based ink purchases.
  - c. The board, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this subsection.
  - d. The department of natural resources shall cooperate with the board in all phases of implementing this subsection.
6. The board shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, "*packing material*" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.
7. Purchase and use recycled printing and writing paper, with the exception of specialized paper when no recyclable product is available, in accordance with the schedule established in section 8A.315; establish a wastepaper recycling program for all institutions governed by the board in accordance with recommendations made by the department of natural resources and the requirements of section 8A.329; shall, in accordance with the requirements of section 8A.311, require product content statements and compliance with requirements regarding

procurement specifications; and shall comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 8A.316.

8. Acquire real estate for the proper uses of institutions under its control, and dispose of real estate belonging to the institutions when not necessary for their purposes. The disposal of real estate shall be made upon such terms, conditions, and consideration as the board may recommend. If real estate subject to sale has been purchased or acquired from appropriated funds, the proceeds of such sale shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the state board of regents, which may be used to purchase other real estate and buildings and for the construction and alteration of buildings and other capital improvements. All transfers shall be by state patent in the manner provided by law. The board is also authorized to grant easements for rights-of-way over, across, and under the surface of public lands under its jurisdiction when in the board's judgment such easements are desirable and will benefit the state of Iowa.

9. Accept and administer trusts and may authorize nonprofit foundations acting solely for the support of institutions governed by the board to accept and administer trusts deemed by the board to be beneficial. Notwithstanding the provisions of section 633.63, the board and such nonprofit foundations may act as trustee in such instances.

10. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the Iowa state university of science and technology, nor the permanent funds of the university of Iowa derived under Acts of Congress, be diminished.

11. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

12. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors, and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. The letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

13. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

14. Grant leaves of absence with full or partial compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as the staff member shall have received during such leave.

15. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

16. In its discretion employ or retain attorneys or counselors when acting as a public employer for the purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20. This subsection shall supersede the provisions of section 13.7.

17. a. In its discretion, adopt rules relating to the classification of students enrolled in institutions of higher education under the board who are residents of Iowa's sister states as residents or nonresidents for fee purposes.

b. (1) Adopt rules to classify as residents for purposes of undergraduate tuition and mandatory fees, qualified veterans and qualified military persons and their spouses and dependent children who are domiciled in this state while enrolled in an institution of higher education under the board. A spouse or dependent child of a military person or veteran shall not be deemed a resident under this paragraph "b" unless the qualified military person or

qualified veteran meets the requirements of subparagraph (2), subparagraph division (b) or (c), as appropriate.

(2) For purposes of this paragraph “b”, unless the context otherwise requires:

(a) “*Dependent child*” means a student who was claimed by a qualified military person or qualified veteran as a dependent on the qualified military person’s or qualified veteran’s internal revenue service tax filing for the previous tax year.

(b) “*Qualified military person*” means a person on active duty in the military service of the United States who is stationed in this state or at the Rock Island arsenal. If the qualified military person is transferred, deployed, or restationed while the person’s spouse or dependent child is enrolled in an institution of higher education under the control of the board, the spouse or dependent child shall continue to be classified as a resident provided the spouse or dependent child maintains continuous enrollment.

(c) “*Qualified veteran*” means a person who meets the following requirements:

(i) Is eligible for benefits, or has exhausted the benefits, under the federal Post-9/11 Veterans Educational Assistance Act of 2008.

(ii) Is domiciled in this state, or has resided in this state for at least one year or sufficient time to have filed an Iowa tax return in the preceding twelve months.

18. In issuing bonds or notes under this chapter, chapter 262A, chapter 263A, or other provision of law, select and fix the compensation for, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the board’s judgment are necessary to carry out the board’s intention. Prior to the initial selection, the board shall establish a procedure which provides for a fair and open selection process including but not limited to the opportunity to present written proposals and personal interviews. The board shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of engagement. The board may waive the requirements for a competitive selection procedure for any specific employment upon adoption of a resolution of the board stating why the waiver is in the public interest and shall provide the executive council with written notice of the granting of any such waiver.

19. a. Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on an increase in tuition or mandatory fees charged to all students at an institution for a fiscal year shall be made at a regular meeting and shall be reflected in a final docket memorandum that states the estimated total cost of attending each of the institutions of higher education under the board’s control. The regular meeting shall be held in Ames, Cedar Falls, or Iowa City and shall not be held during a period in which classes have been suspended for university holiday or break.

b. Authorize, at its discretion, each institution of higher education to retain the student fees and charges it collects to further the institution’s purposes as authorized by the board. Notwithstanding any provision to the contrary, student fees and charges, as defined in section 262A.2, shall not be considered repayment receipts as defined in section 8.2.

20. Adopt policies and procedures for the use of telecommunications as an instructional tool at its institutions. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

21. Establish a hall of fame for distinguished graduates at the Iowa braille and sight saving school and at the Iowa school for the deaf.

22. Assist a nonprofit organization located in Sioux City in the creation of a tristate graduate center, comparable to the quad cities graduate center, located in the quad cities in Iowa. The purpose of the Sioux City graduate center shall be to create graduate education opportunities for students living in northwest Iowa.

23. Direct the administration of the Iowa minority academic grants for economic success program as established in section 261.101 for the institutions under its control.

24. Develop a policy and adopt rules relating to the establishment of tuition rates which provide a predictable basis for assessing and anticipating changes in tuition rates.

25. Develop a policy requiring oral communication competence of persons who provide instruction to students attending institutions under the control of the board. The policy shall include a student evaluation mechanism which requires student evaluation of persons providing instruction on at least an annual basis. However, the board shall establish criteria by which an institution may discontinue annual evaluations of a specific person providing instruction. The criteria shall include receipt by the institution of two consecutive positive annual evaluations from the majority of students evaluating the person.

26. Develop a policy relating to the teaching proficiency of teaching assistants which provides a teaching proficiency standard, instructional assistance to, and evaluation of persons who provide instruction to students at the higher education institutions under the control of the board.

27. Explore, in conjunction with the department of education, the need for coordination between school districts, area education agencies, state board of regents institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include but is not limited to coordination of calendars, programs, schedules, or telecommunications emissions. The state board shall develop recommendations as necessary, which shall be submitted in a report to the general assembly on a timely basis.

28. Develop and implement a written policy, which is disseminated during registration or orientation, addressing the following four areas relating to sexual abuse:

- a. Counseling.
- b. Campus security.
- c. Education, including prevention, protection, and the rights and duties of students and employees of the institution.
- d. Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

29. Authorize the institutions of higher learning under the board to charge an interest rate, not to exceed the prime rate plus six percent, on delinquent bills. However, the board shall prohibit the institutions from charging interest on late tuition payments and room and board payments if financial aid payments to students enrolled in the institutions are delayed by the lending institution.

30. Direct the institutions of higher education under its control to adopt a policy to offer not less than the following options to a student who is a member, or the spouse of a member if the member has a dependent child as defined in subsection 17, paragraph "b", subparagraph (2), subparagraph division (a), of the Iowa national guard or reserve forces of the United States and who is ordered to state military service or federal service or duty:

a. Withdraw from the student's entire registration and receive a full refund of tuition and mandatory fees.

b. Make arrangements with the student's instructors for course grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the student's registration shall remain intact and tuition and mandatory fees shall be assessed for the courses in full.

c. Make arrangements with only some of the student's instructors for grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the registration for those courses shall remain intact and tuition and mandatory fees shall be assessed for those courses. Any course for which arrangements cannot be made for grades or incompletes shall be considered dropped and the tuition and mandatory fees for the course refunded.

31. Develop a policy, not later than August 1, 2003, that each institution of higher education under the control of the board shall approve, institute, and enforce, which prohibits students, faculty, and staff from harassing or intimidating a student or any other person on institution property who is wearing the uniform of, or a distinctive part of the

uniform of, the armed forces of the United States. A policy developed in accordance with this subsection shall not prohibit an individual from wearing such a uniform on institution property if the individual is authorized to wear the uniform under the laws of a state or the United States. The policy shall provide for appropriate sanctions.

32. Establish a research triangle, defined by the three institutions of higher learning under the board's control, and clearinghouse for purposes of sharing the projects and results of kindergarten through grade twelve education technology initiatives occurring in Iowa's school districts, area education agencies, community colleges, and other higher education institutions, with the education community within and outside of the state. Dissemination of and access to information regarding planning, financing, curriculum, professional development, preservice training, project implementation strategies, and results shall be centralized to allow school districts from across the state to gain ideas from each other regarding the integration of technology in the classroom.

33. In consultation with the state board of education, establish and enter into a collective statewide articulation agreement with the community colleges established pursuant to chapter 260C, which shall provide for the seamless transfer of academic credits from a completed associate of arts or associate of science degree program offered by a community college to a baccalaureate degree program offered by an institution of higher education governed by the board. The board shall also do the following:

a. Require each of the institutions of higher education governed by the board to identify a transfer and articulation contact office or person, publicize transfer and articulation information and the contact office or person, and submit the contact information to the board for publication on its articulation website.

b. Develop, in collaboration with the boards of directors of the community colleges, a systematic process for expanding academic discipline and meetings between the community college faculty and faculty of the institutions of higher education governed by the board. The board shall conduct and jointly administer with the boards of directors of the community colleges four program and academic discipline meetings each academic year for the purpose of enhancing alignment between course content and expectations at the community colleges and institutions of higher education governed by the state board of regents.

c. Develop criteria to prioritize core curriculum areas and create or review transition guides for the core curriculum areas.

d. Include on its articulation website course equivalency and transition guides for each of the institutions of higher education governed by the board.

e. Jointly, with the boards of directors of the community colleges, select academic departments in which to articulate first-year and second-year courses through faculty-to-faculty meetings in accordance with paragraph "b". However, course-to-course equivalencies need not occur in an academic discipline when the board and the community colleges jointly determine that course content is incompatible.

f. Promote greater awareness of articulation-related activities, including the articulation website maintained by the board and articulation agreements in which the institutions participate.

g. Facilitate additional opportunities for individual institutions to pursue program articulation agreements for community college career and technical education programs and programs of study offered by the institutions of higher education governed by the board.

h. Develop and implement by January 1, 2012, a process to examine a minimum of eight new community college associate of applied science degree programs for which articulation agreements between the community colleges and the institutions of higher education governed by the board would serve students' continued academic success in those degree programs.

i. Prepare, jointly with the department of education and the liaison advisory committee on transfer students, and submit by January 15 annually to the general assembly, an update on the articulation efforts and activities implemented by the community colleges and the institutions of higher education governed by the board.

34. Submit its annual budget request broken down by budget unit.

35. Annually, by October 1, submit in a report to the general assembly the following information for the previous fiscal year:

a. Total revenue received from each local school district as a result of high school students enrolled in courses under the postsecondary enrollment options program at the institutions of higher learning under the board's control.

b. Unduplicated headcount of high school students enrolled in courses under the postsecondary enrollment options program at the institutions of higher learning under the board's control.

c. Total credits earned by high school students enrolled in courses under the postsecondary enrollment options program at the institutions of higher learning under the board's control, broken down by degree program.

d. The compensation and benefits paid to the members of the board pursuant to section 7E.6.

e. The contracted salary and benefits and any other expenses related to support for governmental affairs efforts, including expenditures for liaisons and lobbying activities for the board and its institutions.

f. The contracted salaries, including but not limited to bonus wages and benefits, including but not limited to annuity payments or any other benefit covered using state funds of any kind for administrators of the institutions governed by the board.

1. [S13, §2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

2. [R60, §1739, 2157, 2158, 2162; C73, §1614, 1685, 1686, 1690; C97, §2654, 2676, 2723; S13, §2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

3. [C97, §2676; S13, §2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

4. [S13, §2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

6. [S13, §2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

7. [S13, §2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

8. [C51, §1017, 1018; R60, §1938; C73, §1599, 1617; C97, §2638, 2666; S13, §2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

9. [C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

10. [S13, §2682-j; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

11. [C35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

12. [S13, §2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

13. [C66, 71, 73, 75, 77, 79, 81, §262.9]

14. [C66, 71, 73, 75, 77, 79, 81, §262.9]

15. [C79, 81, §262.9]

86 Acts, ch 1245, §844; 86 Acts, ch 1246, §125; 87 Acts, ch 191, §1; 87 Acts, ch 207, §6; 87 Acts, ch 233, §464, 465; 88 Acts, ch 1185, §2; 88 Acts, ch 1284, §64; 89 Acts, ch 265, §40; 89 Acts, ch 272, §23; 89 Acts, ch 319, §59; 90 Acts, ch 1237, §2, 3; 90 Acts, ch 1253, §24; 91 Acts, ch 29, §1; 91 Acts, ch 97, §36; 92 Acts, ch 1095, §2; 92 Acts, ch 1106, §2, 4; 92 Acts, ch 1246, §35; 93 Acts, ch 176, §39; 94 Acts, ch 1091, §16 – 20; 94 Acts, ch 1193, §21; 95 Acts, ch 44, §2; 95 Acts, ch 62, §3; 96 Acts, ch 1215, §41 – 43; 97 Acts, ch 212, §28; 99 Acts, ch 114, §16; 99 Acts, ch 121, §9; 2001 Acts, ch 39, §3; 2003 Acts, ch 145, §230; 2003 Acts, ch 179, §115; 2003 Acts, ch 180, §13; 2003 Acts, 1st Ex, ch 1, §94, 133

[2003 Acts, 1st Ex, ch 1, §94, 133 amendment adding subsection 31 stricken pursuant to , 684 N.W.2d 193]

2004 Acts, ch 1086, §57; 2004 Acts, ch 1129, §1; 2005 Acts, ch 144, §1; 2005 Acts, ch 179, §82, 149, 150; 2006 Acts, ch 1152, §54, 57; 2007 Acts, ch 214, §32, 44; 2009 Acts, ch 133, §102;

2009 Acts, ch 158, §2; 2009 Acts, ch 168, §3; 2009 Acts, ch 177, §30; 2010 Acts, ch 1169, §5 – 7; 2010 Acts, ch 1183, §25; 2011 Acts, ch 20, §13

Subsection 33, unnumbered paragraph 1 amended

### **262.13 Peace officers at institutions.**

The board may authorize any institution under its control to commission one or more of its employees as peace officers. Such officers shall have the same powers, duties, privileges, and immunities as conferred on regular peace officers. The board shall provide as rapidly as practicable for the adequate training and certification of such peace officers at the Iowa law enforcement academy or at a law enforcement training school approved by the academy, unless the peace officers are already certified by the Iowa law enforcement academy or by an approved law enforcement training school.

[C71, 73, 75, 77, 79, 81, §262.13]

2011 Acts, ch 132, §16, 106

Section amended

### **262.14 Loans — conditions — other investments.**

The board may invest funds belonging to the institutions, subject to chapters 12F and 12H and the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed sixty-five percent of the cash value of the land, exclusive of buildings.

2. Each such loan if for a sum more than one-fourth of the value of the farm shall be on the basis of stipulated annual principal reductions.

3. *a.* Any portion of the funds may be invested by the board. In the investment of the funds, the board shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in their own affairs as provided in chapter 633A, subchapter IV, part 3.

*b.* The board shall give appropriate consideration to those facts and circumstances that the board knows or should know are relevant to the particular investment involved, including the role the investment plays in the total value of the board's funds.

*c.* For the purposes of this subsection, appropriate consideration includes, but is not limited to, a determination by the board that the particular investment is reasonably designed to further the purposes prescribed by law to the board, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment and consideration of the following factors as they relate to the funds of the board:

(1) The composition of the funds of the board with regard to diversification.

(2) The liquidity and current return of the investments relative to the anticipated cash flow requirements.

(3) The projected return of the investments relative to the funding objectives of the board.

*d.* The board shall have a written investment policy, the goal of which is to provide for the financial health of the institutions governed by the board. The board shall establish investment practices that preserve principal, provide for liquidity sufficient for anticipated needs, and maintain purchasing power of investable assets of the board and its institutions. The policy shall also include a list of authorized investments, maturity guidelines, procedures for selecting and approving investment managers and other investment professionals as described in section 11.2, subsection 3, and provisions for regular and frequent oversight of investment decisions by the board, including audit. The board shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an institution governed by the board. The investment policy shall cover investments of endowment and nonendowment funds.

*e.* Consistent with this subsection, investments made under this subsection shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state.

4. Any gift accepted by the Iowa state board of regents for the use and benefit of any

institution under its control may be invested in securities designated by the donor, but whenever such gifts are accepted and the money invested according to the request of the said donor, neither the state, the Iowa state board of regents, nor any member thereof, shall be liable therefor or on account thereof.

5. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by the board and be at all times open to inspection.

6. All loans made under the provisions of this section shall have an interest rate of not less than three and one-half percent per annum.

1. [C51, §1018; R60, §1938; C73, §1599; C97, §2638; S13, §2682-s; C24, 27, 31, 35, 39, §3926; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

2. [S13, §2682-s; C24, 27, 31, 35, 39, §3926; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

3. [R60, §1938; C73, §1599, 1617; C97, §2638, 2666; C24, 27, 31, 35, 39, §3926; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

4. [C31, 35, 39, §3926; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

5. [S13, §2682-s; C24, 27, 31, 35, 39, §3926; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

6. [C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

85 Acts, ch 190, §4; 85 Acts, ch 227, §8; 92 Acts, ch 1156, §10; 94 Acts, ch 1001, §4; 99 Acts, ch 125, §103, 109; 2005 Acts, ch 38, §55; 2007 Acts, ch 39, §11; 2011 Acts, ch 82, §11

Unnumbered paragraph 1 amended

#### **262.25B Purchase of biobased hydraulic fluids, greases, and other industrial lubricants.**

The state board of regents and institutions under the control of the board purchasing hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing biobased hydraulic fluids, greases, and other industrial lubricants as provided in section 8A.316.

98 Acts, ch 1082, §5; 2000 Acts, ch 1109, §5; 2003 Acts, ch 145, §232; 2011 Acts, ch 25, §22  
Section amended

#### **262.30 Contracts for practitioner preparation.**

The board of directors of any school district in the state of Iowa may enter into contract with the state board of regents for furnishing instruction to pupils of such school district, and for practitioner preparation for the schools of the state in such particular lines of demonstration and instruction as are deemed necessary for the efficiency of the university of northern Iowa, state university of Iowa, and Iowa state university of science and technology as training schools for practitioners.

[C24, 27, 31, 35, 39, §3942; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.30]

2011 Acts, ch 34, §69

Section amended

#### **262.34A Bid requests and targeted small business procurement.**

1. The state board of regents shall request bids and proposals for materials, products, supplies, provisions, and other needed articles to be purchased at public expense, from Iowa state industries as defined in section 904.802, subsection 2, when the articles are available in the requested quantity and at comparable prices and quality.

2. Notwithstanding section 73.16, subsection 2, and due to the high volume of bids issued by the board and the need to coordinate bidding of three institutions of higher learning, the board shall issue electronic bid notices for distribution to the targeted small business internet site through internet links to each of the regents institutions.

3. Notwithstanding section 73.17, the board shall notify the director of the economic development authority of regents institutions' targeted small business purchases on an annual basis.

92 Acts, ch 1246, §38; 2006 Acts, ch 1051, §6; 2007 Acts, ch 207, §11, 18; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 262B

### COMMERCIALIZATION OF RESEARCH

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **262B.3 Duties and responsibilities.**

1. The state board of regents, as part of its mission and strategic plan, shall establish mechanisms for the purpose of carrying out the intent of this chapter. In addition to other board initiatives, the board shall work with the economic development authority, other state agencies, and the private sector to facilitate the commercialization of research.

2. The state board of regents, in cooperation with the economic development authority, shall implement this chapter through any of the following activities:

a. Developing strategies to market and disseminate information on university research for commercialization in Iowa.

b. Evaluating university research for commercialization potential, where relevant.

c. Developing a plan to improve private sector access to the university licenses and patent information and the transfer of technology from the university to the private sector.

d. Identifying research and technical assistance needs of existing Iowa businesses and start-up companies and recommending ways in which the universities can meet these needs.

e. Linking research and instruction activities to economic development.

f. Reviewing and monitoring activities related to technology transfer.

g. Coordinating activities to facilitate a focus on research in the state's targeted industry clusters.

h. Surveying similar activities in other states and at other universities.

i. Establishing a single point of contact to facilitate commercialization of research.

j. Sustaining faculty and staff resources needed to implement commercialization.

k. Implementing programs to provide public recognition of university faculty and staff who demonstrate success in technology transfer and commercialization.

l. Implementing rural entrepreneurial and regional development assistance programs.

m. Providing market research ranging from early stage feasibility to extensive market research.

n. Creating real or virtual research parks that may or may not be located near universities, but with the goal of providing economic stimulus to the entire state.

o. Capacity building in key biosciences platform areas.

p. Encouraging biosciences entrepreneurship by faculty.

q. Providing matching grants for joint biosciences projects involving public and private entities.

r. Encouraging biosciences entrepreneurship by faculty using faculty research and entrepreneurship grants.

s. Pursuing bioeconomy initiatives in key platform areas as recommended by a consultant report on bioeconomy issues contracted for by the economic development authority.

3. Each January 15, the state board of regents shall submit a written report to the general assembly detailing the patents and licenses held by each institution of higher learning under the control of the state board of regents and by nonprofit foundations acting solely for the support of institutions governed by the state board of regents.

88 Acts, ch 1268, §11; 2003 Acts, 1st Ex, ch 1, §97, 133

[2003 Acts, 1st Ex, ch 1, §97, 133 amendments to this section rescinded pursuant to *Rants*

v. *Vilsack*, 684 N.W.2d 193]

2005 Acts, ch 150, §32; 2011 Acts, ch 118, §85, 89

Technology commercialization specialist, committee, and officer; §15.115 - 15.117

Code editor directive applied

## CHAPTER 263

### UNIVERSITY OF IOWA

#### **263.1 Objects — departments.**

The university of Iowa shall never be under the control of any religious denomination. Its object shall be to provide the best and most efficient means of imparting to men and women, upon equal terms, a liberal education and thorough knowledge of the different branches of literature and the arts and sciences, with their varied applications. It shall include colleges of liberal arts, law, medicine, and such other colleges and departments, with such courses of instruction and elective studies as the state board of regents may determine from time to time. If a practitioner preparation program as defined in section 272.1 is established by the board, it shall include the subject of physical education. Instruction in the liberal arts college shall begin, so far as practicable, at the points where the same is completed in high schools.

[C51, §1020; R60, §1927, 1930, 1933; C73, §1585, 1586, 1589; C97, §2640; C24, 27, 31, 35, 39, §3946; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.1]

2011 Acts, ch 34, §70

Section amended

#### **263.8A International center for talented and gifted education — Iowa online advanced placement academy science, technology, engineering, and mathematics initiative.**

1. *a.* The state board of regents shall establish and maintain at Iowa City as an integral part of the state university of Iowa the international center for talented and gifted education. The international center shall provide programs to assist classroom teachers to teach gifted and talented students in regular classrooms, provide programs to enhance the learning experiences of gifted and talented students, serve as a center for national and international symposiums and policy forums for enhancing the teaching of gifted and talented students, and undertake other appropriate activities to enhance the programs of the center, including, but not limited to, coordinating and working with the world council for gifted and talented children, incorporated.

*b.* An international center endowment fund is established at the state university of Iowa and gifts and grants to the international center and investment earnings and returns on the endowment fund shall be deposited in the fund and may be expended by the state university of Iowa for the purposes for which the international center was established.

2. The Iowa online advanced placement academy science, technology, engineering, and mathematics initiative is established within the international center for talented and gifted education at the state university of Iowa to deliver, with an emphasis on science, technology, engineering, and mathematics coursework, preadvanced placement and advanced placement courses to high school students throughout the state, provide training opportunities for teachers to learn how to teach advanced placement courses in Iowa's high schools, and provide preparation for middle school students to ensure success in high school.

88 Acts, ch 1284, §44; 96 Acts, ch 1184, §3; 2011 Acts, ch 132, §17, 106

Section amended

## CHAPTER 266

### IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

#### DIVISION I

#### GENERAL PROVISIONS

##### **266.2 Courses of study.**

There shall be adopted and taught at said university of science and technology practical courses of study, embracing in their leading branches such as relate to agriculture and mechanic arts, mines and mining, and ceramics, and such other branches as are best calculated to educate thoroughly the agricultural and industrial classes in the several pursuits and professions of life, including military tactics. If a practitioner preparation program as defined in section 272.1 is established, it shall include the subject of physical education.

[R60, §1728; C73, §1621; C97, §2648; S13, §2674-d; C24, 27, 31, 35, 39, §4032; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.2]

2011 Acts, ch 34, §71

Section amended

##### **266.19 Renewable fuel — assistance.**

The university shall cooperate in assisting renewable fuel production facilities supporting livestock operations managed by persons receiving assistance pursuant to the value-added agriculture component of the economic development financial assistance program established in section 15G.112.

94 Acts, ch 1119, §27; 2009 Acts, ch 123, §30; 2011 Acts, ch 118, §86, 89

Code editor directive applied

#### DIVISION IV

#### RESEARCH AND EXTENSION SERVICES

##### **266.39C The Iowa energy center.**

1. *a.* The Iowa energy center is established at Iowa state university of science and technology. The center shall strive to increase energy efficiency in all areas of Iowa energy use. The center shall serve as a model for state efforts to decrease dependence on imported fuels and to decrease reliance on energy production from nonrenewable, resource-depleting fuels. The center shall conduct and sponsor research on energy efficiency and conservation that will improve the environmental, social, and economic well-being of Iowans, minimize the environmental impact of existing energy production and consumption, and reduce the need to add new power plants.

*b.* The center shall assist Iowans in assessing technology related to energy efficiency and alternative energy production systems and shall support educational and demonstration programs that encourage implementation of energy efficiency and alternative energy production systems.

*c.* The center shall also conduct and sponsor research to develop alternative energy systems that are based upon renewable sources and that will reduce the negative environmental and economic impact of energy production systems.

2. *a.* An advisory council is established consisting of the following members:

(1) One person from Iowa state university of science and technology, appointed by its president.

(2) One person from the university of Iowa, appointed by its president.

(3) One person from the university of northern Iowa, appointed by its president.

(4) One representative of private colleges and universities within the state, to be

nominated by the Iowa association of independent colleges and universities, and appointed by the Iowa coordinating council for post-high school education.

(5) One representative of community colleges, appointed by the state board of education.

(6) One representative of the economic development authority, appointed by the director.

(7) One representative of the state department of transportation, appointed by the director.

(8) One representative of the office of consumer advocate, appointed by the consumer advocate.

(9) One representative of the utilities board, appointed by the utilities board.

(10) One representative of the rural electric cooperatives, appointed by the governing body of the Iowa association of electric cooperatives.

(11) One representative of municipal utilities, appointed by the governing body of the Iowa association of municipal utilities.

(12) Two representatives from investor-owned utilities, one representing gas utilities, appointed by the Iowa utility association, and one representing electric utilities, appointed by the Iowa utility association.

*b.* The terms of the members shall begin and end as provided in section 69.19 and any vacancy shall be filled by the original appointing authority. The terms shall be for four years and shall be staggered as determined by the president of Iowa state university of science and technology.

3. *a.* Iowa state university of science and technology shall employ a director for the center, who shall be appointed by the president of Iowa state university of science and technology. The director of the center shall employ necessary research and support staff. The director and staff shall be employees of Iowa state university of science and technology. Funds appropriated to the center shall be used to sponsor research grants and projects submitted on a competitive basis by Iowa colleges and universities and private nonprofit agencies and foundations, and for the salaries and benefits of the employees of the center. The center may also solicit additional grants and funding from public and private nonprofit agencies and foundations.

*b.* The director shall prepare an annual report.

4. The advisory council shall provide the president of Iowa state university of science and technology with a list of three candidates from which the director shall be selected. The council shall provide an additional list of three candidates if requested by the president. The council shall advise the director in the development of a budget, on the policies and procedures of the center, in the funding of research grant proposals, and regarding program planning and review.

5. The Iowa energy center shall develop a program to provide assistance to rural residents for energy efficiency efforts.

6. The Iowa energy center shall cooperate with the state board of education in developing a curriculum which promotes energy efficiency and conservation.

90 Acts, ch 1252, §17; 91 Acts, ch 253, §13; 2000 Acts, ch 1223, §30; 2002 Acts, ch 1109, §1, 2; 2002 Acts, ch 1162, §38; 2008 Acts, ch 1126, §15, 33; 2009 Acts, ch 108, §12, 41; 2011 Acts, ch 20, §14; 2011 Acts, ch 118, §50, 89

See also §476.10A, 476.46

Code editor directive applied

Subsection 2, paragraph a, subparagraph (5) amended

## CHAPTER 267A

### LOCAL FOOD AND FARM PROGRAM

#### 267A.1 Purpose and goals.

1. The purpose of this chapter is to empower farmers and food entrepreneurs to

provide for strong local food economies that promote self-sufficiency and job growth in the agricultural sector and allied sectors of the economy.

2. The goals of this chapter are to accomplish all of the following:

a. Promote the expansion of the production of local foods, including all of the following:

(1) The production of Iowa-grown food, including but not limited to livestock, eggs, milk, fruit, vegetables, grains, herbs, honey, and nuts.

(2) The processing of Iowa-grown agricultural products into food products, including canning, freezing, dehydrating, bottling, or otherwise packaging and preserving such products.

(3) The distribution and marketing of fresh and processed Iowa-grown agricultural food products to markets in this state and neighboring states.

b. Increase consumer and institutional spending on Iowa-produced and marketed foods.

c. Increase the profitability of farmers and businesses engaged in enterprises related to producing, processing, distributing, and marketing local food.

d. Increase the number of jobs in this state's farm and business economies associated with producing, processing, distributing, and marketing local food.

2011 Acts, ch 128, §27, 60

NEW section

### **267A.2 Definitions.**

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

1. "Coordinator" means the local food and farm program coordinator created in section 267A.4.

2. "Council" means the local food and farm program council established in section 267A.3.

3. "Department" means the department of agriculture and land stewardship.

4. "Fund" means the local food and farm program fund created in section 267A.5.

2011 Acts, ch 128, §28, 60

NEW section

### **267A.3 Local food and farm program council.**

1. A local food and farm program council is established to advise the local food and farm program coordinator carrying out the purpose and goals of this chapter as provided in section 267A.1.

2. The council shall be composed of the following voting members:

a. The secretary of agriculture or the secretary's designee.

b. Members appointed by the designated organizations, at the discretion of the organization, to represent the private sector as follows:

(1) One person by the Iowa farmers union who is involved in local food production.

(2) One person by the Iowa farmers market association.

c. Members appointed by the governor to represent public or private entities involved in local food distribution, marketing, or processing as follows:

(1) One person who is associated with a resource conservation and development office in this state.

(2) One person actively engaged in the distribution of local food to processors, wholesalers, or retailers.

(3) One person from the regional food systems working group who is actively engaged or an expert in local food.

3. A member designated by the secretary of agriculture shall serve at the pleasure of the secretary. A member appointed by an organization shall serve at the pleasure of that organization. A member appointed by the governor shall serve at the pleasure of the governor.

4. The council shall be part of the department. The department shall perform administrative functions necessary for the operation of the council.

5. The council shall elect a chairperson from among its members each year on a rotating basis as provided by the council. The council shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of a majority of the members.

6. The members of the council shall not receive compensation for their services including

as provided in section 7E.6. However, the members may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the council if allowed by the council.

7. A majority of the members constitutes a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the council. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the council.

2011 Acts, ch 128, §29, 60

NEW section

#### **267A.4 Local food and farm program coordinator.**

The position of local food and farm program coordinator is created within Iowa state university as part of its cooperative extension service in agriculture and home economics. The coordinator shall be the primary state official charged with carrying out the purposes and goals of this chapter.

2011 Acts, ch 128, §30, 60

NEW section

#### **267A.5 Local food and farm program fund.**

A local food and farm program fund is created in the state treasury under the control of the department. The fund is separate from the general fund of the state. The fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the local food and farm program from the United States government or private sources for placement in the fund. Moneys in the fund shall be used to carry out the purpose and goals of this chapter as provided in section 267A.1, including but not limited to administering the local food and farm program as provided in section 267A.6. The fund shall be managed by the department in consultation with the local food and farm coordinator, under the supervision of the local food and farm program council.

2011 Acts, ch 128, §31, 60

NEW section

#### **267A.6 Local food and farm program.**

The local food and farm program coordinator, with advice from the local food and farm program council, shall develop and administer a local food and farm program necessary to carry out the purpose and goals of this chapter as provided in section 267A.1, including but not limited to by improving any of the following:

1. Communication and cooperation between and among farmers, food entrepreneurs, and consumers.

2. Coordination between and among government agencies, public universities and community colleges, organizations, and private-sector firms working on local food and farm-related issues.

2011 Acts, ch 128, §32, 60

NEW section

#### **267A.7 Local food and farm program report.**

The local food and farm program coordinator shall prepare an annual report dated June 30, which shall evaluate the state's progress in accomplishing the purpose and goals of this chapter. The report shall be delivered to the governor and general assembly not later than October 1 of each year.

2011 Acts, ch 128, §33, 60

NEW section

## CHAPTER 268

### UNIVERSITY OF NORTHERN IOWA

#### **268.4 Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.**

1. The Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances is established at the university of northern Iowa. The university of northern Iowa, in cooperation with the department of natural resources, shall develop and implement a program which provides the following:

a. Information regarding the safe use and economic management of solid waste and hazardous substances to small businesses which generate the substances.

b. Dissemination of information to public and private agencies regarding state and federal solid waste and hazardous substances regulations, and assistance in achieving compliance with the regulations.

c. Advice and consultation in the proper storage, handling, treatment, reuse, recycling, and disposal methods of solid waste and hazardous substances.

d. Identification of the advantages of proper substance management relative to liability and operational costs of a particular small business.

e. Assistance in the providing of capital formation in order to comply with state and federal regulations.

2. a. An advisory committee to the center is established, consisting of a representative of each of the following organizations:

(1) The economic development authority.

(2) The small business development commission.

(3) The university of northern Iowa.

(4) The state university of Iowa.

(5) Iowa state university of science and technology.

(6) The department of natural resources.

b. The active participation of representatives of small businesses in the state shall also be sought and encouraged.

3. Information obtained or compiled by the center shall be disseminated directly to the economic development authority, the small business development centers, and other public and private agencies with interest in the safe and economic management of solid waste and hazardous substances.

4. The center may solicit, accept, and administer moneys appropriated to the center by a public or private agency.

5. This section does not do any of the following:

a. Relieve a person receiving assistance under this section of any duties or liabilities otherwise created or imposed upon the person by law.

b. Transfer to the state, the university of northern Iowa, or an employee of the state or the university, a duty or liability otherwise imposed by law on a person receiving assistance under this section.

c. Create a liability to the state, the university of northern Iowa, or an employee of the state or the university for an act or omission arising from the providing of assistance or advice in cleaning up, handling, or disposal of hazardous waste. However, an individual may be liable if the act or omission results from intentional wrongdoing or gross negligence.

87 Acts, ch 225, §403; 89 Acts, ch 77, §1; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **268.6 Agriculture energy efficiency education program.**

The university of northern Iowa shall, to the extent required in this section, establish and administer an agriculture energy efficiency education program to assist agricultural producers to increase profitability and reduce the amount of energy used in the production of agricultural animals and crops.

1. If established, the university shall administer the program to promote strategies or

methods that the university determines best foster the most efficient use of fuel and electricity, and which may include but are not limited to any of the following:

- a. Minimizing the consumption of fuel due to the idling of farm equipment.
  - b. Increasing fuel savings, by promoting the use of efficient planting and harvest travel patterns.
  - c. Optimizing the performance of farm equipment, including by the proper ballasting of tractors.
  - d. Designing, constructing, or remodeling agricultural buildings to be more efficient, including by using systems that incorporate natural lighting and passive solar or passive cooling materials or principles such as exposure, ventilation, and shade.
2. The university is encouraged to cooperate with agricultural and energy efficiency advocates and governmental entities in administering the program.
  3. The university is not required to implement this section until moneys are made available for implementation by the federal government.

2009 Acts, ch 175, §21; 2011 Acts, ch 118, §41, 89

For future repeal of this section, effective July 1, 2012, if the university does not implement this section and notifies the Code editor in writing, see 2009 Acts, ch 175, §24

Subsection 2 amended

## CHAPTER 270

### SCHOOL FOR THE DEAF

#### 270.7 Payment by county.

1. The county auditor shall, upon receipt of the certificate, pass it to the credit of the state, and issue a notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which shall be filed by the treasurer as authority for making the transfer, and the county treasurer shall include the amount in the next remittance of state taxes to the treasurer of state, designating the fund to which it belongs.

2. If a county fails to pay these bills within sixty days from the date of certificate from the superintendent, the director of the department of administrative services shall charge the delinquent county a penalty of three-fourths of one percent per month on and after sixty days from the date of certificate until paid. The penalties shall be credited to the general fund of the state.

[C73, §1695; C97, §2726; S13, §2726; C24, 27, 31, 35, 39, §4074; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §270.7]

83 Acts, ch 123, §106, 209; 2003 Acts, ch 145, §286

Method for payment for prescription drug costs for FY 2011-2012 and FY 2012-2013; 2011 Acts, ch 132, §9, 105, 106  
Section not amended; footnote revised

## CHAPTER 272

### EDUCATIONAL EXAMINERS BOARD

#### 272.2 Board of examiners created.

The board of educational examiners is created to exercise the exclusive authority to:

1. a. License practitioners, which includes the authority to establish criteria for the licenses; establish issuance and renewal requirements; create application and renewal forms; create licenses that authorize different instructional functions or specialties; develop a code of professional rights and responsibilities, practices, and ethics, which shall, among other things, address the failure of a practitioner to fulfill contractual obligations under section 279.13; and develop any other classifications, distinctions, and procedures which

may be necessary to exercise licensing duties. In addressing the failure of a practitioner to fulfill contractual obligations, the board shall consider factors beyond the practitioner's control.

b. Provide annually to any person who holds a license, certificate, authorization, or statement of recognition issued by the board, training relating to the knowledge and understanding of the board's code of professional conduct and ethics. The board shall develop a curriculum that addresses the code of professional conduct and ethics and shall annually provide regional training opportunities throughout the state.

2. Establish, collect, and refund fees for a license.

3. Enter into reciprocity agreements with other equivalent state boards or a national certification board to provide for licensing of applicants from other states or nations.

4. Enforce rules adopted by the board through revocation or suspension of a license, or by other disciplinary action against a practitioner or professional development program licensed by the board of educational examiners. The board shall designate who may or shall initiate a licensee disciplinary investigation and a licensee disciplinary proceeding, and who shall prosecute a disciplinary proceeding and under what conditions, and shall state the procedures for review by the board of findings of fact if a majority of the board does not hear the disciplinary proceeding. However, in a case alleging failure of a practitioner to fulfill contractual obligations, the person who files a complaint with the board, or the complainant's designee, shall represent the complainant in a disciplinary hearing conducted in accordance with this chapter.

5. Apply for and receive federal or other funds on behalf of the state for purposes related to its duties.

6. Evaluate and conduct studies of board standards.

7. Hire an executive director, legal counsel, and other personnel and control the personnel administration of persons employed by the board.

8. Hear appeals regarding application, renewal, suspension, or revocation of a license. Board action is final agency action for purposes of chapter 17A.

9. Establish standards for the determination of whether an applicant is qualified to perform the duties required for a given license.

10. Issue statements of professional recognition to school service personnel who have attained a minimum of a baccalaureate degree and who are licensed by another professional licensing board, including but not limited to athletic trainers licensed under chapter 152D.

11. Make recommendations to the state board of education concerning standards for the approval of professional development programs.

12. Establish, under chapter 17A, rules necessary to carry out board duties, and establish a budget request.

13. Adopt rules to provide for nontraditional preparation options for licensing persons who hold a bachelor's degree from an accredited college or university, who do not meet other requirements for licensure.

14. Adopt rules to determine whether an applicant is qualified to perform the duties for which a license is sought. The rules shall include all of the following:

a. The board may deny a license to or revoke the license of a person upon the board's finding by a preponderance of evidence that either the person has been convicted of a crime or that there has been a founded report of child abuse against the person. Rules adopted in accordance with this paragraph shall provide that in determining whether a person should be denied a license or that a practitioner's license should be revoked, the board shall consider the nature and seriousness of the founded abuse or crime in relation to the position sought, the time elapsed since the crime was committed, the degree of rehabilitation which has taken place since the incidence of founded abuse or the commission of the crime, the likelihood that the person will commit the same abuse or crime again, and the number of founded abuses committed by or criminal convictions of the person involved.

b. Notwithstanding paragraph "a", the rules shall require the board to disqualify an applicant for a license or to revoke the license of a person for any of the following reasons:

(1) The person entered a plea of guilty to, or has been found guilty of, any of the following offenses, whether or not a sentence is imposed:

(a) Any of the following forcible felonies included in section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping.

(b) Any of the following sexual abuse offenses, as provided in chapter 709, involving a child:

(i) First, second, or third degree sexual abuse committed on or with a person who is under the age of eighteen years.

(ii) Lascivious acts with a child.

(iii) Assault with intent to commit sexual abuse.

(iv) Indecent contact with a child.

(v) Sexual exploitation by a counselor.

(vi) Lascivious conduct with a minor.

(vii) Sexual exploitation by a school employee.

(c) Enticing a minor under section 710.10.

(d) Human trafficking under section 710A.2.

(e) Incest involving a child under section 726.2.

(f) Dissemination and exhibition of obscene material to minors under section 728.2.

(g) Telephone dissemination of obscene material to minors under section 728.15.

(h) Any offense specified in the laws of another jurisdiction, or any offense that may be prosecuted in federal, military, or foreign court, that is comparable to an offense listed in this subparagraph (1).

(i) Any offense under prior laws of this state or another jurisdiction, or any offense under prior law that was prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in this subparagraph (1).

(2) The applicant is less than twenty-one years of age except as provided in section 272.31, subsection 1, paragraph "e". However, a student enrolled in a practitioner preparation program who meets board requirements for a temporary, limited-purpose license who is seeking to teach as part of a practicum or internship may be less than twenty-one years of age.

(3) The applicant's application is fraudulent.

(4) The applicant's license or certification from another state is suspended or revoked.

(5) The applicant fails to meet board standards for application for an initial or renewed license.

c. Qualifications or criteria for the granting or revocation of a license or the determination of an individual's professional standing shall not include membership or nonmembership in any teachers' organization.

d. An applicant for a license or certificate under this chapter shall demonstrate that the requirements of the license or certificate have been met and the burden of proof shall be on the applicant.

15. Adopt rules that require specificity in written complaints that are filed by individuals who have personal knowledge of an alleged violation and which are accepted by the board, provide that the jurisdictional requirements as set by the board in administrative rule are met on the face of the complaint before initiating an investigation of allegations, provide that any investigation be limited to the allegations contained on the face of the complaint, provide for an adequate interval between the receipt of a complaint and public notice of the complaint, permit parties to a complaint to mutually agree to a resolution of the complaint filed with the board, allow the respondent the right to review any investigative report upon a finding of probable cause for further action by the board, require that the conduct providing the basis for the complaint occurred within three years of discovery of the event by the complainant unless good cause can be shown for an extension of this limitation, and require complaints to be resolved within one hundred eighty days unless good cause can be shown for an extension of this limitation.

16. Adopt criteria for administrative endorsements that allow a person to achieve the endorsement authorizing the person to serve as an elementary or secondary principal without regard to the grade level at which the person accrued teaching experience.

17. Adopt rules to require that a background investigation be conducted by the division of criminal investigation of the department of public safety on all initial applicants for licensure.

The board shall also require all initial applicants to submit a completed fingerprint packet and shall use the packet to facilitate a national criminal history background check. The board shall have access to, and shall review the sex offender registry information under section 692A.121 available to the general public, the central registry for child abuse information established under chapter 235A, and the dependent adult abuse records maintained under chapter 235B for information regarding applicants for license renewal.

18. May adopt rules for practitioners who are not eligible for a statement of professional recognition under subsection 10, but have received a baccalaureate degree and provide a service to students at any or all levels from prekindergarten through grade twelve for a school district, accredited nonpublic school, area education agency, or preschool program established pursuant to chapter 256C.

[C97, §2629; S13, §2629; C24, 27, 31, §3863; C35, §3858-e1; C39, §3858.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §260.2]

86 Acts, ch 1245, §1442; 89 Acts, ch 265, §2; 90 Acts, ch 1249, §5, 6

C93, §272.2

96 Acts, ch 1189, §1; 96 Acts, ch 1215, §46; 2001 Acts, ch 103, §1; 2001 Acts, ch 161, §15, 16; 2001 Acts, ch 177, §13, 15; 2002 Acts, ch 1084, §1; 2002 Acts, ch 1128, §1; 2003 Acts, ch 108, §48; 2003 Acts, ch 180, §14, 15; 2006 Acts, ch 1152, §9; 2007 Acts, ch 108, §9; 2008 Acts, ch 1008, §2; 2009 Acts, ch 119, §39; 2009 Acts, ch 177, §32, 33; 2010 Acts, ch 1043, §1; 2011 Acts, ch 35, §1, 2; 2011 Acts, ch 132, §93, 106

Subsection 1, paragraph b stricken and rewritten

Subsection 14, paragraph b, subparagraph (1), unnumbered paragraph 1 amended

Subsection 14, paragraph b, subparagraph (1), NEW subparagraph divisions (c) and (d) and former subparagraph divisions (c) – (e) redesignated as (e) – (g)

Subsection 14, paragraph b, subparagraph (1), NEW subparagraph divisions (h) and (i)

### **272.6 Immunities.**

1. A person shall not be civilly liable as a result of the person's acts, omissions, or decisions that are reasonable and in good faith as a member of the board or as an employee or agent in connection with the person's duties.

2. A person shall not be civilly liable as a result of filing a report or complaint with the board or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony, or other forms of information in connection with proceedings of the board. However, such immunity from civil liability shall not apply if such an act is done with malice.

3. A person shall not be dismissed from employment or discriminated against by an employer for doing any of the following:

- a. Filing a complaint with the board.
- b. Participating as a member, agent, or employee of the board.
- c. Presenting testimony or other evidence to the board.

4. An employer who violates this section shall be liable to a person aggrieved by such violation for actual and punitive damages plus reasonable attorney fees.

2011 Acts, ch 37, §1

NEW section

### **272.8 License to applicants from other states or countries.**

1. The board may issue a license to an applicant from another state or country if the applicant files evidence of the possession of the required or equivalent requirements with the board. If the applicant is the spouse of a military person who is on duty or in active state duty as defined in section 29A.1, subsections 9 and 11, the board shall assign a consultant to be the single point of contact for the applicant regarding nontraditional licensure.

2. The executive director of the board may, subject to board approval, enter into reciprocity agreements with another state or country for the licensing of practitioners on an equitable basis of mutual exchange, when the action is in conformity with law.

3. Practitioner preparation and professional development programs offered in this state by out-of-state institutions must be approved by the board in order to fulfill requirements for licensure or renewal of a license by an applicant.

4. a. An applicant who, prior to May 1, 2009, enrolled in an administrator preparation

program offered by a regionally accredited out-of-state institution or an out-of-state institution approved by the board in accordance with subsection 3, and who completes the program prior to December 15, 2011, shall be eligible for licensure notwithstanding the out-of-state licensure and certification requirements of 282 IAC 18.6(1)(c).

b. The board shall notify all persons who meet the requirements of paragraph “a” and who apply for an administrator license between May 1, 2009, and December 31, 2011, of their limited eligibility for licensure and of the application deadline provided under this subsection, and shall post such notification on its website.

c. This subsection is repealed July 1, 2012.

85 Acts, ch 217, §1

CS85, §260.8

89 Acts, ch 265, §8

C93, §272.8

2010 Acts, ch 1169, §8; 2011 Acts, ch 14, §1

NEW subsection 4

### **272.15 Reporting requirements — complaints.**

1. a. The board of directors of a school district or area education agency, the superintendent of a school district or the chief administrator of an area education agency, and the authorities in charge of a nonpublic school shall report to the board the nonrenewal or termination, for reasons of alleged or actual misconduct, of a person’s contract executed under sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24, and the resignation of a person who holds a license, certificate, or authorization issued by the board as a result of or following an incident or allegation of misconduct that, if proven, would constitute a violation of the rules adopted by the board to implement section 272.2, subsection 14, paragraph “b”, subparagraph (1), when the board or reporting official has a good faith belief that the incident occurred or the allegation is true. The board may deny a license or revoke the license of an administrator if the board finds by a preponderance of the evidence that the administrator failed to report the termination or resignation of a school employee holding a license, certificate, statement of professional recognition, or coaching authorization, for reasons of alleged or actual misconduct, as defined by this section.

b. Information reported to the board in accordance with this section is privileged and confidential, and except as provided in section 272.13, is not subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and is not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. The board shall review the information reported to determine whether a complaint should be initiated. In making that determination, the board shall consider the factors enumerated in section 272.2, subsection 14, paragraph “a”.

c. For purposes of this section, unless the context otherwise requires, “*misconduct*” means an action disqualifying an applicant for a license or causing the license of a person to be revoked or suspended in accordance with the rules adopted by the board to implement section 272.2, subsection 14, paragraph “b”, subparagraph (1).

2. If, in the course of performing official duties, an employee of the department becomes aware of any alleged misconduct by an individual licensed under this chapter, the employee shall report the alleged misconduct to the board of educational examiners under rules adopted pursuant to subsection 1.

3. If the executive director of the board verifies through a review of official records that a teacher who holds a practitioner’s license under this chapter is assigned instructional duties for which the teacher does not hold the appropriate license or endorsement, either by grade level or subject area, by a school district or accredited nonpublic school, the executive director may initiate a complaint against the teacher and the administrator responsible for the inappropriate assignment of instructional duties.

2003 Acts, ch 180, §16; 2007 Acts, ch 214, §33; 2011 Acts, ch 132, §94, 106

Subsection 1 amended

## CHAPTER 272C

### REGULATION OF LICENSED PROFESSIONS AND OCCUPATIONS

Identifying and reporting of dependent adult abuse  
to be included in continuing education; see §235B.16

#### **272C.2 Continuing education required.**

1. Each licensing board shall require and issue rules for continuing education requirements as a condition to license renewal.

2. The rules shall create continuing education requirements at a minimum level prescribed by each licensing board. These boards may also establish continuing education programs to assist a licensee in meeting such continuing education requirements. Such rules shall also:

a. Give due attention to the effect of continuing education requirements on interstate and international practice.

b. Place the responsibility for arrangement of financing of continuing education on the licensee, while allowing the board to receive any other available funds or resources that aid in supporting a continuing education program.

c. Attempt to express continuing education requirements in terms of uniform and widely recognized measurement units.

d. Establish guidelines, including guidelines in regard to the monitoring of licensee participation, for the approval of continuing education programs that qualify under the continuing education requirements prescribed.

e. Not be implemented for the purpose of limiting the size of the profession or occupation.

f. Define the status of active and inactive licensure and establish appropriate guidelines for inactive licensee reentry.

g. Be promulgated solely for the purpose of assuring a continued maintenance of skills and knowledge by a professional or occupational licensee directly related and commensurate with the current level of competency of the licensee's profession or occupation.

3. The state board of engineering and land surveyors, the board of architectural examiners, the board of landscape architectural examiners, and the economic development authority shall cooperate with each other and with persons who typically offer continuing education courses for design professionals to make available energy efficiency related continuing education courses, and to encourage interdisciplinary cooperation and education concerning available energy efficiency strategies for employment in the state's construction industry.

4. A person licensed to practice an occupation or profession in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person is a resident of another state or district having a continuing education requirement for the occupation or profession and meets all requirements of that state or district for practice therein, or for periods that the person is a government employee working in the person's licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the appropriate licensing board.

5. A person licensed to sell real estate in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person is a resident of another state or district having a continuing education requirement for the occupation or profession and meets all requirements of that state or district for practice therein, if the state or district accords the same privilege to Iowa residents, or for periods that the person is a government employee working in the person's licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the appropriate licensing board.

[C79, 81, §258A.2]

89 Acts, ch 292, §5; 90 Acts, ch 1252, §16

C93, §272C.2

2007 Acts, ch 10, §172; 2009 Acts, ch 108, §13, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

## CHAPTER 273

### AREA EDUCATION AGENCIES

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **273.2 Area education agencies established — powers — services and programs.**

1. There are established throughout the state fifteen area education agencies, each of which is governed by an area education agency board of directors. The boundaries of an area education agency shall not divide a school district. The director of the department of education shall change boundaries of area education agencies to take into account mergers of local school districts and changes in boundaries of local school districts, when necessary to maintain the policy of this chapter that a local school district shall not be a part of more than one area education agency.

2. An area education agency established under this chapter is a body politic as a school corporation for the purpose of exercising powers granted under this chapter, and may sue and be sued. An area education agency may hold property and execute purchase agreements within two years of a disaster as defined in section 29C.2, subsection 2, and lease-purchase agreements pursuant to section 273.3, subsection 7, and if the lease-purchase agreement exceeds ten years or the purchase price of the property to be acquired pursuant to a purchase or lease-purchase agreement exceeds twenty-five thousand dollars, the area education agency shall conduct a public hearing on the proposed purchase or lease-purchase agreement and receive approval from the area education agency board of directors and the state board of education or its designee before entering into the agreement.

3. The area education agency board shall furnish educational services and programs as provided in sections 273.1 to 273.9 and chapter 256B to the pupils enrolled in public or nonpublic schools located within its boundaries which are on the list of accredited schools pursuant to section 256.11. The programs and services provided shall be at least commensurate with programs and services existing on July 1, 1974. The programs and services provided to pupils enrolled in nonpublic schools shall be comparable to programs and services provided to pupils enrolled in public schools within constitutional guidelines.

4. The area education agency board shall provide for special education services and media services for the local school districts in the area and shall encourage and assist school districts in the area to establish programs for gifted and talented children. The board shall assist in facilitating interlibrary loans of materials between school districts and other libraries.

5. The area education agency board may provide for the following programs and services to local school districts, and at the request of local school districts to providers of child development services who have received grants under chapter 256A from the child development coordinating council, within the limits of funds available:

a. In-service training programs for employees of school districts and area education agencies, provided at the time programs and services are established they do not duplicate programs and services available in that area from the universities under the state board of regents and from other universities and four-year institutions of higher education in Iowa. The in-service training programs shall include but are not limited to regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

b. Educational data processing pursuant to section 256.9, subsection 11.

c. Research, demonstration projects and models, and educational planning for children under five years of age through grade twelve and children requiring special education as defined in section 256B.2 as approved by the state board of education.

d. Auxiliary services for nonpublic school pupils as provided in section 256.12. However, if auxiliary services are provided their funding shall be based on the type of service provided.

e. Other educational programs and services for children under five years through grade twelve and children requiring special education as defined in section 256B.2 and for employees of school districts and area education agencies as approved by the state board of education.

6. The board of directors of an area education agency shall not establish programs and services which duplicate programs and services which are or may be provided by the community colleges under the provisions of chapter 260C. An area education agency shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

7. The board of an area education agency or a consortium of two or more area education agencies shall contract with one or more licensed dietitians for the support of nutritional provisions in individual education plans developed in accordance with chapter 256B and to provide information to support school nutrition coordinators.

8. The area education agency board shall collaborate with the department of education to provide a statewide infrastructure for educational data to create cost efficiencies, provide storage and disaster mitigation, and improve interconnectivity between schools and school districts. In addition, the area education agency boards shall work with the department to provide systemwide coordination in the implementation of the statewide longitudinal data system consistent with the federal American Recovery and Reinvestment Act of 2009. The area education agencies shall provide support to school districts' information technology infrastructure that is consistent with the statewide infrastructure for the educational data collaborative.

9. The area education agency boards shall jointly develop a three-year statewide strategic plan that supports goals adopted by the state board of education pursuant to section 256.7, subsection 4, and the accreditation standards established pursuant to section 256.11; establish performance goals; and clearly identify the statewide efforts to improve student learning and create efficiencies in management operations for area education agencies and school districts. The statewide strategic plan shall be approved by the state board of education. The area education agency boards shall jointly provide the state board with annual updates on the performance measures.

[C66, 71, 73, §280A.25(3); C75, 77, 79, 81, §273.2, 280A.25(3); 82 Acts, ch 1006, §1, 2, ch 1136, §1]

84 Acts, ch 1103, §1; 85 Acts, ch 195, §30; 86 Acts, ch 1245, §1457; 87 Acts, ch 115, §39; 89 Acts, ch 135, §57; 95 Acts, ch 182, §20; 2001 Acts, ch 158, §23; 2008 Acts, ch 1187, §143; 2009 Acts, ch 65, §5; 2010 Acts, ch 1031, §270; 2011 Acts, ch 132, §63, 106

Subsection 4 amended

### **273.3 Duties and powers of area education agency board.**

The board in carrying out the provisions of section 273.2 shall:

1. Determine the policies of the area education agency for providing programs and services.

2. Be authorized to receive and expend money for providing programs and services as provided in sections 273.1 to 273.9, and chapters 256B and 257. All costs incurred in providing the programs and services, including administrative costs, shall be paid from funds received pursuant to sections 273.1 to 273.9 and chapters 256B and 257.

3. Provide data and prepare reports as directed by the director of the department of education.

4. Provide for advisory committees as deemed necessary.

5. Be authorized, subject to rules of the state board of education, to provide directly or by contractual arrangement with public or private agencies for special education programs and services, media services, and educational programs and services requested by the local

boards of education as provided in this chapter, including but not limited to contracts for the area education agency to provide programs or services to the local school districts and contracts for local school districts, other educational agencies, and public and private agencies to provide programs and services to the local school districts in the area education agency in lieu of the area education agency providing the services. Contracts may be made with public or private agencies located outside the state if the programs and services comply with the rules of the state board. Rules adopted by the state board of education shall be consistent with rules, adopted by the board of educational examiners, relating to licensing of practitioners.

6. Area education agencies may cooperate and contract between themselves and with other public agencies to provide special education programs and services, media services, and educational services to schools and children residing within their respective areas. Area education agencies may provide print and nonprint materials to public and private colleges and universities that have teacher education programs approved by the state board of education.

7. Be authorized to lease, purchase, or lease-purchase, subject to the approval of the state board of education or its designee and to receive by gift and operate and maintain facilities and buildings necessary to provide authorized programs and services. However, a lease for less than ten years and with an annual cost of less than twenty-five thousand dollars does not require the approval of the state board. The state board shall not approve a lease, purchase, or lease-purchase until the state board is satisfied by investigation that public school corporations within the area do not have suitable facilities available. A purchase of property that is not a lease-purchase may be made only within two years of a disaster as defined in section 29C.2, subsection 2, and subject to the requirements of this subsection.

8. Be authorized, subject to the approval of the director of the department of education, to enter into agreements for the joint use of personnel, buildings, facilities, supplies, and equipment with school corporations as deemed necessary to provide authorized programs and services.

9. Be authorized to make application for, accept, and expend state and federal funds that are available for programs of educational benefit approved by the director of the department of education, and cooperate with the department in the manner provided in federal-state plans or department rules in the effectuation and administration of programs approved by the director, or approved by other educational agencies, which agencies have been approved as state educational authorities.

10. Be authorized to perform all other acts necessary to carry out the provisions and intent of this chapter.

11. Employ personnel to carry out the functions of the area education agency which shall include the employment of an administrator who shall possess a license issued under chapter 272. The administrator shall be employed pursuant to section 279.20 and sections 279.23, 279.24 and 279.25. The salary for an area education agency administrator shall be established by the board based upon the previous experience and education of the administrator. Section 279.13 applies to the area education agency board and to all teachers employed by the area education agency. Sections 279.23, 279.24 and 279.25 apply to the area education board and to all administrators employed by the area education agency.

12. Prepare an annual budget estimating income and expenditures for programs and services as provided in sections 273.1 to 273.9 and chapter 256B within the limits of funds provided under section 256B.9 and chapter 257. The board shall give notice of a public hearing on the proposed budget by publication in an official county newspaper in each county in the territory of the area education agency in which the principal place of business of a school district that is a part of the area education agency is located. The notice shall specify the date, which shall be not later than March 1 of each year, the time, and the location of the public hearing. The proposed budget as approved by the board shall then be submitted to the state board of education, on forms provided by the department, no later than March 15 preceding the next fiscal year for approval. The state board shall review the proposed budget of each area education agency and shall before April 1, either grant approval or return the budget without approval with comments of the state board included.

An unapproved budget shall be resubmitted to the state board for final approval not later than April 15. For the fiscal year beginning July 1, 1999, and each succeeding fiscal year, the state board shall give final approval only to budgets submitted by area education agencies accredited by the state board or that have been given conditional accreditation by the state board.

13. Be authorized to pay, out of funds available to the board reasonable annual dues to an Iowa association of school boards. Membership shall be limited to those duly elected members of the area education agency board.

14. a. The board may establish a plan, in accordance with section 403(b) of the Internal Revenue Code, as defined in section 422.3, for employees, which plan shall consist of one or more investment contracts, on a group or individual basis, acquired from a company, or a salesperson for that company, that is authorized to do business in this state.

b. The selection of investment contracts to be included within the plan established by the board shall be made either pursuant to a competitive bidding process conducted by the board, in coordination with employee organizations representing employees eligible to participate in the plan, or pursuant to an agreement with the department of administrative services to make available investment contracts included in a deferred compensation or similar plan established by the department pursuant to section 8A.438, which plan meets the requirements of this subsection. The determination of whether to select investment contracts for the plan pursuant to a competitive bidding process or by agreement with the department of administrative services shall be made by agreement between the board and the employee organizations representing employees eligible to participate in the plan.

c. The board may make elective deferrals in accordance with the plan as authorized by an eligible employee for the purpose of making contributions to the investment contract on behalf of the employee. The deferrals shall be made in the manner which will qualify contributions to the investment contract for the benefits under section 403(b) of the Internal Revenue Code, as defined in section 422.3. In addition, the board may make nonelective employer contributions to the plan.

d. As used in this subsection, unless the context otherwise requires, "*investment contract*" shall mean a custodial account utilizing mutual funds or an annuity contract which meets the requirements of section 403(b) of the Internal Revenue Code, as defined in section 422.3.

15. Be authorized to establish and pay all or any part of the cost of group health insurance plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the area education agency, from funds available to the board.

16. Meet at least annually with the members of the boards of directors of the merged areas in which the area education agency is located to discuss coordination of programs and services and other matters of mutual interest to the boards.

17. Be authorized to issue warrants and anticipatory warrants pursuant to chapter 74. The applicable rate of interest shall be determined pursuant to sections 74A.2, 74A.3, and 74A.7. This subsection shall not be construed to authorize a board to levy a tax.

18. Be authorized to issue school credit cards allowing area education agency employees to pay for the actual and necessary expenses incurred in the performance of work-related duties.

19. Pursuant to rules adopted by the state board of education, be authorized to charge user fees for certain materials and services that are not required by law or by rules of the state board of education and are specifically requested by a school district or accredited nonpublic school.

20. Be authorized to purchase equipment as provided in section 279.48.

21. Be authorized to sell, lease, or dispose of, in whole or in part, property belonging to the area education agency. Before the area education agency may sell property belonging to the agency, the board of directors shall comply with the requirements set forth in section 297.22. Before the board of directors of an area education agency may lease property belonging to the agency, the board shall obtain the approval of the director of the department of education.

22. Meet annually with the members of the boards of directors of the school districts located within its boundaries if requested by the school district boards.

23. By October 1 of each year, submit to the department of education the following information:

a. The contracted salary including bonus wages and benefits, annuity payments, or any other benefit for the administrators of the area education agency.

b. The contracted salary and benefits and any other expenses related to support for governmental affairs efforts, including expenditures for lobbyists and lobbying activities for the area education agency.

[C51, §417; R60, §648, 2074; C73, §771, 1776; C97, §2742, 2831, 2832; S13, §2742, 2831, 2832; SS15, §2734-b; C24, 27, 31, 35, 39, §4122, 4456 – 4458, 5232 – 5234; C46, §273.4, 301.12 – 301.14, 340.13 – 340.15; C50, 54, 58, 62, §273.12, 273.13; C66, §273.12, 273.13, 273.22; C71, 73, §273.12, 273.13, 273.22, 273.24; C75, 77, 79, 81, §273.3; 81 Acts, ch 87, §1; 82 Acts, ch 1080, §1, ch 1136, §2, 3]

83 Acts, ch 2, §1; 84 Acts, ch 1010, §2; 84 Acts, ch 1315, §34; 85 Acts, ch 138, §2, 3; 85 Acts, ch 212, §21; 86 Acts, ch 1213, §5; 86 Acts, ch 1245, §1458; 86 Acts, ch 1246, §133; 87 Acts, ch 115, §40; 87 Acts, ch 233, §474, 475; 89 Acts, ch 135, §58; 89 Acts, ch 265, §34; 92 Acts, ch 1050, §1; 92 Acts, ch 1227, §17; 94 Acts, ch 1089, §1; 94 Acts, ch 1175, §5; 94 Acts, ch 1183, §63; 96 Acts, ch 1215, §47, 48; 97 Acts, ch 184, §2; 2008 Acts, ch 1171, §64, 68; 2009 Acts, ch 65, §6; 2009 Acts, ch 179, §161

Section not amended; internal reference change applied

#### **273.11 Standards for accrediting area education programs.**

1. The state board of education shall develop standards and rules for the accreditation of area education agencies. Standards shall be general in nature, but at a minimum shall identify requirements addressing the services provided by each division, as well as identifying indicators of quality that will permit area education agencies, school districts, the department of education, and the general public to judge accurately the effectiveness of area education agency services.

2. Standards developed shall include, but are not limited to, the following:

a. Support for school-community planning, including a means of assessing needs, establishing shared direction and implementing program plans and reporting progress.

b. Professional development programs that respond to current needs.

c. Support for curriculum development, instruction, and assessment for reading, language arts, math and science, using research-based methodologies.

d. Special education compliance and support.

e. Management services, including financial reporting and purchasing as requested and funded by local districts.

f. Support for instructional media services that supplement and support local district media centers and services.

g. Support for school technology planning and staff development for implementing instructional technologies.

h. A program and services evaluation and reporting system.

i. Support for school district libraries in accordance with section 273.2, subsection 4.

j. Support for early childhood service coordination for families and children to meet health, safety, and learning needs.

96 Acts, ch 1215, §50; 2001 Acts, ch 158, §24; 2010 Acts, ch 1031, §272; 2011 Acts, ch 34, §72

Subsection 1 amended

#### **273.14 Emergency repairs.**

When emergency repairs costing more than the competitive bid threshold in section 26.3, or the adjusted competitive bid threshold established in section 314.1B, subsection 2, are necessary in order to ensure the use of an area education agency facility, the provisions of law with reference to advertising for bids shall not apply within two years of a disaster as defined in section 29C.2, subsection 2, and the area education agency board may contract for such emergency repairs without advertising for bids. However, before such emergency repairs can be made to an area education agency facility, the state board of education or its

designee must certify that such emergency repairs are necessary to ensure the use of the area education agency facility.

2009 Acts, ch 65, §7

Section not amended; internal reference change applied

## CHAPTER 279

### DIRECTORS — POWERS AND DUTIES

For student search restrictions, see chapter 808A  
Optional waiver of satisfaction and performance bonds; §12.44

#### **279.38 Membership in association of school boards — audit.**

1. Boards of directors of school corporations may pay, out of funds available to them, reasonable annual dues to the Iowa association of school boards. Each board that pays membership dues to the Iowa association of school boards shall annually report to the local community and to the department of education the amount the board pays in annual dues to the Iowa association of school boards, the amount of any fees paid and revenue or dividend payments received for services the board receives from the association or from any of the association's affiliated for-profit entities, and the products or services the school district received inclusive with membership in the association.

2. The financial condition and transactions of the Iowa association of school boards shall be audited as provided in section 11.6. In addition, annually the Iowa association of school boards shall publish a listing of the school districts and the annual dues paid by each, the total revenue the association receives from each school district resulting from the payment of membership fees and the sale of products and services to the school district by the association or its affiliated for-profit entities, and shall publish an accounting of all moneys expended for expenses incurred by and salaries paid to legislative representatives and lobbyists of the association. In addition, the association shall submit to the general assembly copies of all reports the association provides to the United States department of education relating to federal grants and grant amounts that the association or its affiliated for-profit entities administer or distribute to school districts. The Iowa association of school boards is subject to chapters 21 and 22 relating to open meetings and public records.

3. Membership in such an Iowa association of school boards shall be limited to those duly elected members of the boards of directors of local school corporations.

[C71, 73, 75, §279.37; C77, 79, 81, §279.38]

83 Acts, ch 185, §7, 62; 89 Acts, ch 264, §7; 2010 Acts, ch 1183, §30; 2011 Acts, ch 75, §38

Subsection 2 amended

#### **279.44 Energy audits.**

1. Between July 1, 1986, and June 30, 1991, and on a staggered annual basis each five years thereafter, the board of directors of each school district shall file with the economic development authority, on forms prescribed by the authority, the results of an energy audit of the buildings owned and leased by the school district. The energy audit shall be conducted under rules adopted by the authority pursuant to chapter 17A. The authority may waive the requirement for the initial and subsequent energy audits for school districts that submit evidence that energy audits were conducted prior to January 1, 1987, and energy consumption for the district is at an adjusted statewide average or below.

2. This section takes effect only if funds have been made available to a school district or community college to pay the costs of the energy audit.

86 Acts, ch 1167, §1; 90 Acts, ch 1253, §120; 2009 Acts, ch 108, §14, 41; 2011 Acts, ch 118, §50, 87, 89

Code editor directive applied

#### **279.51 Programs for at-risk children.**

1. There is appropriated from the general fund of the state to the department of education

for the fiscal year beginning July 1, 2007, and each succeeding fiscal year, the sum of twelve million six hundred six thousand one hundred ninety-six dollars. The moneys shall be allocated as follows:

a. Two hundred seventy-five thousand eight hundred sixty-four dollars of the funds appropriated shall be allocated to the area education agencies to assist school districts in developing program plans and budgets under this section and to assist school districts in meeting other responsibilities in early childhood education.

b. For the fiscal year beginning July 1, 2007, and for each succeeding fiscal year, eight million five hundred thirty-six thousand seven hundred forty dollars of the funds appropriated shall be allocated to the child development coordinating council established in chapter 256A for the purposes set out in subsection 2 of this section and section 256A.3.

c. For the fiscal year beginning July 1, 2007, and for each fiscal year thereafter, three million five hundred ten thousand nine hundred ninety-two dollars of the funds appropriated shall be allocated as grants to school districts that have elementary schools that demonstrate the greatest need for programs for at-risk students with preference given to innovative programs for the early elementary school years. School districts receiving grants under this paragraph shall at a minimum provide activities and materials designed to encourage children's self-esteem, provide role modeling and mentoring techniques in social competence and social skills, and discourage inappropriate drug use. The grant allocations made in this paragraph may be renewed for additional periods of time. Of the amount allocated under this paragraph for each fiscal year, seventy-five thousand dollars shall be allocated to school districts which have an actual student population of ten thousand or less and have an actual non-English speaking student population which represents greater than five percent of the total actual student population for grants to elementary schools in those districts.

d. Notwithstanding section 256A.3, subsection 6, of the amount appropriated in this subsection for the fiscal year beginning July 1, 2007, and for each succeeding fiscal year, up to two hundred eighty-two thousand six hundred dollars may be used for administrative costs.

2. a. Funds allocated under subsection 1, paragraph "b", shall be used by the child development coordinating council for the following:

(1) To continue funding for programs previously funded by grants awarded under section 256A.3 and to provide additional grants under section 256A.3. The council shall seek to provide grants on the basis of the location within the state of children meeting at-risk definitions.

(2) At the discretion of the child development coordinating council, award grants for the following:

(a) To school districts to establish programs for three-year-old, four-year-old, and five-year-old at-risk children which are a combination of preschool and full-day kindergarten.

(b) To provide grants to provide educational support services to parents of at-risk children age birth through three years.

b. A grantee under this subsection may direct the use of moneys received to serve any qualifying child ranging in age from three years old to five years old, regardless of the age of population indicated on the grant request in its initial year of application. A grantee is encouraged to consider the degree to which the program complements existing programs and services for three-year-old, four-year-old, and five-year-old at-risk children available in the area, including other child care and preschool services, services provided through a school district, and services available through an area education agency.

3. The department shall seek assistance from foundations and public and private agencies in the evaluation of the programs funded under this section, and in the provision of support to school districts in developing and implementing the programs funded under this section.

4. The state board of education shall adopt rules under chapter 17A for the administration of this section.

89 Acts, ch 135, §76; 90 Acts, ch 1272, §69, 70; 91 Acts, ch 267, §239, 240; 92 Acts, ch 1227, §21; 94 Acts, ch 1199, §47 – 49; 95 Acts, ch 209, §14; 96 Acts, ch 1186, §23; 96 Acts, ch 1219, §7 – 10; 97 Acts, ch 209, §17, 18; 98 Acts, ch 1133, §1; 98 Acts, ch 1215, §44; 98 Acts, ch 1223,

§24, 25; 99 Acts, ch 192, §33; 99 Acts, ch 195, §11, 12; 2000 Acts, ch 1058, §32; 2000 Acts, ch 1198, §2 – 4, 6; 2007 Acts, ch 215, §62; 2010 Acts, ch 1061, §100; 2011 Acts, ch 132, §18, 106  
 Subsection 2 amended

## CHAPTER 280

### UNIFORM SCHOOL REQUIREMENTS

For student search restrictions, see chapter 808A

#### **280.13C Brain injury policies.**

1. *a.* The Iowa high school athletic association and the Iowa girls high school athletic union shall work together to distribute the guidelines of the centers for disease control and prevention of the United States department of health and human services and other pertinent information to inform and educate coaches, students, and the parents and guardians of students of the risks, signs, symptoms, and behaviors consistent with a concussion or brain injury, including the danger of continuing to participate in extracurricular interscholastic activities after suffering a concussion or brain injury and their responsibility to report such signs, symptoms, and behaviors if they occur.

*b.* Annually, each school district and nonpublic school shall provide to the parent or guardian of each student a concussion and brain injury information sheet, as provided by the Iowa high school athletic association and the Iowa girls high school athletic union. The student and the student's parent or guardian shall sign and return the concussion and brain injury information sheet to the student's school prior to the student's participation in any extracurricular interscholastic activity for grades seven through twelve.

2. If a student's coach or contest official observes signs, symptoms, or behaviors consistent with a concussion or brain injury in an extracurricular interscholastic activity, the student shall be immediately removed from participation.

3. *a.* A student who has been removed from participation shall not recommence such participation until the student has been evaluated by a licensed health care provider trained in the evaluation and management of concussions and other brain injuries and the student has received written clearance to return to participation from the health care provider.

*b.* For the purposes of this section, a "licensed health care provider" means a physician, physician assistant, chiropractor, advanced registered nurse practitioner, nurse, physical therapist, or athletic trainer licensed by a board designated under section 147.13.

*c.* For the purposes of this section, an "extracurricular interscholastic activity" means any extracurricular interscholastic activity, contest, or practice, including sports, dance, or cheerleading.

2011 Acts, ch 32, §1

NEW section

#### **280.17 Procedures for handling child abuse reports.**

1. The board of directors of a school district and the authorities in charge of a nonpublic school shall prescribe procedures, in accordance with the guidelines contained in the model policy developed by the department of education in consultation with the department of human services, and adopted by the department of education pursuant to chapter 17A, for the handling of reports of child abuse, as defined in section 232.68, subsection 2, paragraph "a", subparagraph (1), (3), or (5), alleged to have been committed by an employee or agent of the public or nonpublic school.

2. *a.* The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall place on administrative leave a school employee who is the subject of an investigation of an alleged incident of abuse of a student conducted in accordance with 281 IAC 102.

*b.* If the results of an investigation of abuse of a student by a school employee who holds a license, certificate, authorization, or statement of recognition issued by the board of

educational examiners finds that the school employee's conduct constitutes a crime under any other statute, the board or the authorities, as appropriate, shall report the results of the investigation to the board of educational examiners.

85 Acts, ch 173, §27; 98 Acts, ch 1100, §36; 2011 Acts, ch 132, §95, 106  
Section amended

### **280.27 Reporting violence — immunity.**

An employee of a school district, an accredited nonpublic school, or an area education agency who participates in good faith and acts reasonably in the making of a report to, or investigation by, an appropriate person or agency regarding violence, threats of violence, physical or sexual abuse of a student, or other inappropriate activity against a school employee or student in a school building, on school grounds, or at a school-sponsored function shall be immune from civil or criminal liability relating to such action, as well as for participating in any administrative or judicial proceeding resulting from or relating to the report or investigation.

2000 Acts, ch 1162, §1; 2011 Acts, ch 132, §96, 106  
See §613.21  
Section amended

## CHAPTER 282

### SCHOOL ATTENDANCE AND TUITION

#### **282.6 Tuition.**

1. For purposes of this section, “*resident*” means a person who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions:

- a. Is in the district for the purpose of making a home and not solely for school purposes.
- b. Meets the definitional requirements of the term “*homeless individual*” under 42 U.S.C. § 11302(a) and (c).
- c. Lives in a residential correctional facility in the district.

2. Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years and to resident veterans as defined in section 35.1, as many months after becoming twenty-one years of age as they have spent in the armed forces of the United States before they became twenty-one, provided, however, fees may be charged covering instructional costs for a summer school or driver education program. The board of education may, in a hardship case, exempt a student from payment of the above fees. Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by the person.

3. This section shall not apply to tuition authorized by chapter 260C.

[C73, §1724, 1727; C97, §2773; S13, §2773; C24, 27, 31, 35, 39, §4273; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.6]

89 Acts, ch 210, §11; 92 Acts, ch 1135, §2; 99 Acts, ch 180, §14; 2010 Acts, ch 1069, §80; 2011 Acts, ch 25, §23

Subsection 2 amended

## CHAPTER 284

### TEACHER PERFORMANCE, COMPENSATION, AND CAREER DEVELOPMENT

Legislative intent; 2001 Acts, ch 161, §1

#### **284.1 Student achievement and teacher quality program.**

A student achievement and teacher quality program is established to promote high student achievement. The program shall consist of the following four major elements:

1. Mentoring and induction programs that provide support for beginning teachers in accordance with section 284.5.
2. Career paths with compensation levels that strengthen Iowa's ability to recruit and retain teachers.
3. Professional development designed to directly support best teaching practices.
4. Evaluation of teachers against the Iowa teaching standards.

2001 Acts, ch 161, §2; 2006 Acts, ch 1182, §5, 6; 2007 Acts, ch 108, §12; 2011 Acts, ch 34, §73

Unnumbered paragraph 1 amended

#### **284.6 Teacher professional development.**

1. The department shall coordinate a statewide network of professional development for Iowa teachers. A school district or professional development provider that offers a professional development program in accordance with section 256.9, subsection 46, shall demonstrate that the program contains the following:

- a. Support that meets the professional development needs of individual teachers and is aligned with the Iowa teaching standards.
- b. Research-based instructional strategies aligned with the school district's student achievement needs and the long-range improvement goals established by the district.
- c. Instructional improvement components including student achievement data, analysis, theory, classroom demonstration and practice, technology integration, observation, reflection, and peer coaching.
- d. An evaluation component that documents the improvement in instructional practice and the effect on student learning.

2. The department shall identify models of professional development practices that produce evidence of the link between teacher training and improved student learning.

3. A school district shall incorporate a district professional development plan into the district's comprehensive school improvement plan submitted to the department in accordance with section 256.7, subsection 21. The district professional development plan shall include a description of the means by which the school district will provide access to all teachers in the district to professional development programs or offerings that meet the requirements of subsection 1. The plan shall align all professional development with the school district's long-range student learning goals and the Iowa teaching standards. The plan shall indicate the school district's approved professional development provider or providers.

4. In cooperation with the teacher's evaluator, the career teacher employed by a school district shall develop an individual teacher professional development plan. The evaluator shall consult with the teacher's supervisor on the development of the individual teacher professional development plan. The purpose of the plan is to promote individual and group professional development. The individual plan shall be based, at minimum, on the needs of the teacher, the Iowa teaching standards, and the student achievement goals of the attendance center and the school district as outlined in the comprehensive school improvement plan. The individual plan shall include goals for the individual which are beyond those required under the attendance center professional development plan developed pursuant to subsection 7.

5. The teacher's evaluator shall annually meet with the teacher to review progress in meeting the goals in the teacher's individual plan. The teacher shall present to the evaluator

evidence of progress. The purpose of the meeting shall be to review the teacher's progress in meeting professional development goals in the plan and to review collaborative work with other staff on student achievement goals and to modify as necessary the teacher's individual plan to reflect the individual teacher's and the school district's needs and the individual's progress in meeting the goals in the plan. The teacher's supervisor and the evaluator shall review, modify, or accept modifications made to the teacher's individual plan.

6. School districts, a consortium of school districts, area education agencies, higher education institutions, and other public or private entities including professional associations may be approved by the state board to provide teacher professional development. The professional development program or offering shall, at minimum, meet the requirements of subsection 1. The state board shall adopt rules for the approval of professional development providers and standards for the district development plan.

7. Each attendance center shall develop an attendance center professional development plan. The purpose of the plan is to promote group professional development. The attendance center plan shall be based, at a minimum, on the needs of the teachers, the Iowa teaching standards, district professional development plans, and the student achievement goals of the attendance center and the school district as set forth in the comprehensive school improvement plan.

8. For each year in which a school district receives funds calculated and paid to school districts for professional development pursuant to section 257.10, subsection 10, or section 257.37A, subsection 2, the school district shall create quality professional development opportunities. The goal for the use of the funds is to provide one additional contract day or the equivalent thereof for professional development and use of the funds is limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; pay for substitute teachers, professional development materials, speakers, and professional development content; and costs associated with implementing the individual professional development plans. The use of the funds shall be balanced between school district, attendance center, and individual professional development plans, making every reasonable effort to provide equal access to all teachers.

9. Moneys received pursuant to section 257.10, subsection 10, or section 257.37A, subsection 2, shall be maintained as a separate listing within a school district's or area education agency's budget for funds received and expenditures made pursuant to this subsection. A school district shall certify to the department of education how the school district allocated the funds and that moneys received under this subsection were used to supplement, not supplant, the professional development opportunities the school district would otherwise make available.

10. If funds are allocated for purposes of professional development pursuant to section 284.13, subsection 1, paragraph "d", the department shall, in collaboration with the area education agencies, establish teacher development academies for school-based teams of teachers and instructional leaders. Each academy shall include an institute and shall provide follow-up training and coaching.

2001 Acts, ch 161, §7; 2002 Acts, ch 1152, §14; 2003 Acts, ch 180, §42; 2006 Acts, ch 1182, §13, 14; 2007 Acts, ch 108, §20 – 23; 2009 Acts, ch 177, §36; 2011 Acts, ch 34, §74

Subsection 9 amended

### **284.13 State program allocation.**

1. For each fiscal year in which moneys are appropriated by the general assembly for purposes of the student achievement and teacher quality program, the moneys shall be allocated as follows in the following priority order:

a. For the fiscal year beginning July 1, 2011, and ending June 30, 2012, to the department of education, the amount of six hundred eighty-five thousand dollars for the issuance of national board certification awards in accordance with section 256.44. Of the amount allocated under this paragraph, not less than eighty-five thousand dollars shall be used to administer the ambassador to education position in accordance with section 256.45.

b. For the fiscal year beginning July 1, 2011, and ending June 30, 2012, an amount

up to two million three hundred ninety-five thousand one hundred fifty-seven dollars for first-year and second-year beginning teachers, to the department of education for distribution to school districts and area education agencies for purposes of the beginning teacher mentoring and induction programs. A school district or area education agency shall receive one thousand three hundred dollars per beginning teacher participating in the program. If the funds appropriated for the program are insufficient to pay mentors, school districts, and area education agencies as provided in this paragraph, the department shall prorate the amount distributed to school districts and area education agencies based upon the amount appropriated. Moneys received by a school district or area education agency pursuant to this paragraph shall be expended to provide each mentor with an award of five hundred dollars per semester, at a minimum, for participation in the school district's or area education agency's beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district or area education agency.

c. For the fiscal year beginning July 1, 2011, and ending June 30, 2012, up to six hundred thousand dollars to the department for purposes of implementing the professional development program requirements of section 284.6, assistance in developing model evidence for teacher quality committees established pursuant to section 284.4, subsection 1, paragraph "c", and the evaluator training program in section 284.10. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes and for not more than four full-time equivalent positions.

d. For the fiscal year beginning July 1, 2011, and ending June 30, 2012, an amount up to one million one hundred four thousand eight hundred forty-three dollars to the department for the establishment of teacher development academies in accordance with section 284.6, subsection 10. A portion of the funds allocated to the department for purposes of this paragraph may be used for administrative purposes.

e. Notwithstanding section 8.33, any moneys remaining unencumbered or unobligated from the moneys allocated for purposes of paragraph "a", "b", or "c" shall not revert but shall remain available in the succeeding fiscal year for expenditure for the purposes designated. The provisions of section 8.39 shall not apply to the funds appropriated pursuant to this subsection.

2. Moneys received by a school district under this chapter are miscellaneous income for purposes of chapter 257 or are considered encumbered. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section.

2001 Acts, ch 177, §12, 15; 2002 Acts, ch 1152, §19, 20; 2003 Acts, ch 179, §116, 117; 2003 Acts, ch 182, §16, 17, 19, 20; 2004 Acts, ch 1175, §97, 98, 100; 2005 Acts, ch 169, §30 – 33; 2006 Acts, ch 1180, §26, 27; 2006 Acts, ch 1182, §25, 26; 2007 Acts, ch 108, §36 – 45, 64; 2007 Acts, ch 215, §103; 2008 Acts, ch 1181, §82 – 85; 2009 Acts, ch 177, §40 – 42, 45, 48; 2010 Acts, ch 1183, §34; 2011 Acts, ch 132, §19, 106

Subsection 1, paragraphs a through d amended

## CHAPTER 285

### STATE AID FOR TRANSPORTATION

#### 285.5 Contracts for transportation.

1. a. Contracts for school bus service with private parties shall be in writing and be for the transportation of children who attend public school and children who attend nonpublic school. Such contracts shall define the route, the length of time, service contracted for, the compensation, and the vehicle to be used. The contract shall prescribe the duties of the

contractor and driver of the vehicles and shall provide that every person in charge of a vehicle conveying children to and from school shall be at all times subject to any rules said board shall adopt for the protection of the children, or to govern the conduct of the persons in charge of said conveyance. Contracts may be made for a period not to exceed three years.

b. The contract shall provide that the contractor will sell the equipment to the board should the contractor desire to terminate the contract, provided the board should desire to purchase said equipment, the price of the equipment to be determined by an appraisal board composed of one person appointed by the school board, one appointed by the owner of the equipment, and a third selected by these two.

2. The contractor shall operate the vehicle or provide a driver who must be approved by the board. The contractor and driver shall be subject to all laws and prescribed standards for school bus drivers. Failure to comply shall constitute grounds for dismissal of the driver or cancellation of the contract if the board so desires.

3. All vehicles of transportation provided by contractor shall be inspected, approved and certified before being put into operation.

4. All contracts may be terminated by either party on a ninety-day notice.

5. The director of the department of education shall prepare a uniform contract containing provisions not in conflict with this chapter which shall be used by all schools in contracting for transportation service.

6. All contractors shall carry liability insurance in amounts and kind as provided in the official contract.

7. All contracts for transportation service and for drivers of school-owned and operated buses shall be made with someone outside the board except where no other transportation service is available, a board member may transport the member's own children.

8. Private buses other than common carriers not used exclusively in transportation of pupils while under contract to a school district shall meet all requirements for school-owned buses, as to construction and operation.

9. All bus drivers for school-owned equipment shall be under contract with the board. The director of the department of education shall prepare a uniform contract containing provision not in conflict with this chapter which shall be used by all school boards in contracting with drivers of school-owned vehicles.

[SS15, §2794-a; C24, 27, 31, 35, 39, §4182, 4183; C46, §276.30, 276.31; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.5]

85 Acts, ch 212, §21; 2010 Acts, ch 1061, §180; 2011 Acts, ch 25, §24

Subsection 1, paragraph a amended

## CHAPTER 298

### SCHOOL TAXES AND BONDS

#### 298.3 Revenues from the levies.

1. The revenue from the regular and voter-approved physical plant and equipment levies shall be placed in the physical plant and equipment levy fund and expended only for the following purposes:

a. The purchase and improvement of grounds. For the purpose of this paragraph:

(1) "*Purchase of grounds*" includes the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental to the property acquisition.

(2) "*Improvement of grounds*" includes grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts

of building service systems; demolition work; and special assessments against the school district for public improvements, as defined in section 384.37.

b. The construction of schoolhouses or buildings and opening roads to schoolhouses or buildings.

c. The purchase, lease, or lease-purchase of equipment or technology exceeding five hundred dollars in value per purchase, lease, or lease-purchase transaction. Each transaction may include multiple equipment or technology units.

d. The payment of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.

e. Procuring or acquisition of library facilities.

f. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and additions to existing schoolhouses. For the purpose of this paragraph:

(1) “*Repairing*” means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance.

(2) “*Reconstructing*” means rebuilding or restoring as an entity a thing which was lost or destroyed.

g. Expenditures for energy conservation, including payments made pursuant to a guarantee furnished by a school district entering into a financing agreement for energy management improvements, limited to agreements pursuant to section 473.19, 473.20, or 473.20A.

h. The rental of facilities under chapter 28E.

i. Purchase of transportation equipment for transporting students.

j. The purchase of buildings or lease-purchase option agreements for school buildings.

k. Equipment purchases for recreational purposes.

l. Payments to a municipality or other entity as required under section 403.19, subsection 2.

m. Demolition, clean up, and other costs if such costs are necessitated by, and incurred within two years of, a disaster as defined in section 29C.2, subsection 2.

2. Interest earned on money in the physical plant and equipment levy fund may be expended for a purpose listed in this section.

3. Unencumbered funds collected prior to July 1, 1991, from the levy previously authorized under section 297.5, Code 1991, may be expended for the purposes listed in this section.

4. Revenue from the regular and voter-approved physical plant and equipment levies shall not be expended for school district employee salaries or travel expenses, supplies, printing costs or media services, or for any other purpose not expressly authorized in this section.

89 Acts, ch 135, §108; 92 Acts, ch 1187, §8, 9; 94 Acts, ch 1029, §24, 25; 94 Acts, ch 1141, §1, 2; 94 Acts, ch 1175, §14; 97 Acts, ch 182, §3; 2000 Acts, ch 1054, §1, 3; 2002 Acts, ch 1118, §1; 2003 Acts, ch 13, §1, 2; 2008 Acts, ch 1041, §2; 2009 Acts, ch 65, §9; 2009 Acts, ch 133, §109; 2011 Acts, ch 132, §20, 30, 106

School district-to-community college program and facilities sharing pilot program; participating consortiums to report by January 1, 2014; 2011 Acts, ch 91, §1

2011 amendment to subsection 1, paragraph c, applies to school budget years beginning on or after July 1, 2011; 2011 Acts, ch 132, §30  
Subsection 1, paragraph c amended

## CHAPTER 299A

### PRIVATE INSTRUCTION

#### **299A.2 Competent private instruction by licensed practitioner.**

If a licensed practitioner provides competent instruction to a school-age child, the practitioner shall possess a valid license or certificate which has been issued by the state board of educational examiners under chapter 272 and which is appropriate to the ages and

grade levels of the children to be taught. Competent private instruction may include but is not limited to a home school assistance program which provides instruction or instructional supervision offered through an accredited nonpublic school or public school district by a teacher, who is employed by the accredited nonpublic school or public school district, who assists and supervises a parent, guardian, or legal custodian in providing instruction to a child. If competent private instruction is provided through a public school district, the child shall be enrolled and included in the basic enrollment of the school district as provided in section 257.6. Sections 299A.3 through 299A.7 do not apply to competent private instruction provided by a licensed practitioner under this section. However, the reporting requirement contained in section 299A.3, subsection 1, shall apply to competent private instruction provided by licensed practitioners that is not part of a home school assistance program offered through an accredited nonpublic school or public school district.

91 Acts, ch 200, §21; 92 Acts, ch 1135, §10; 92 Acts, ch 1247, §48; 2011 Acts, ch 132, §21, 31, 106

2011 amendment applies retroactively to the base year beginning July 1, 2009; 2011 Acts, ch 132, §31  
Section amended

#### **299A.8 Dual enrollment.**

If a parent, guardian, or legal custodian of a school-age child who is receiving competent private instruction under this chapter submits a request, the child shall also be registered in a public school for dual enrollment purposes. If the child is enrolled in a public school district for dual enrollment purposes, the child shall be permitted to participate in any academic activities in the district and shall also be permitted to participate on the same basis as public school children in any extracurricular activities available to children in the child's grade or group, and the parent, guardian, or legal custodian shall not be required to pay the costs of any annual evaluation under this chapter. If the child is enrolled for dual enrollment purposes, the child shall be included in the public school's basic enrollment under section 257.6. A pupil who is participating only in extracurricular activities shall be counted under section 257.6, subsection 1, paragraph "a", subparagraph (6). A pupil enrolled in grades nine through twelve under this section shall be counted in the same manner as a shared-time pupil under section 257.6, subsection 1, paragraph "a", subparagraph (3).

91 Acts, ch 200, §27; 92 Acts, ch 1163, §70; 92 Acts, ch 1247, §49; 2001 Acts, ch 159, §16; 2001 Acts, ch 176, §38; 2007 Acts, ch 22, §67; 2011 Acts, ch 132, §22, 31, 106

2011 amendment applies retroactively to the base year beginning July 1, 2009; 2011 Acts, ch 132, §31  
Section amended

#### **299A.12 Home school assistance program.**

1. The board of directors of a school district shall expend moneys received pursuant to section 257.6, subsection 1, paragraph "a", subparagraph (5), for purposes of providing a home school assistance program.

2. Purposes for which a school district may expend funds received pursuant to section 257.6, subsection 1, paragraph "a", subparagraph (5), shall include but not be limited to the following:

- a. Instruction for students and assisting parents with instruction.
- b. Support services for students and teaching parents and staff support services.
- c. Salary and benefits for the supervising teacher of the home school assistance program students. If the teacher is a part-time home school assistance program teacher and a part-time regular classroom teacher, funds received pursuant to section 257.6, subsection 1, paragraph "a", subparagraph (5), may be used only for the portion of time in which the teacher is a home school assistance program teacher.
- d. Salary and benefits for clerical and office staff of the home school assistance program. If the staff members are shared with other programs or functions within the district, funds received pursuant to section 257.6, subsection 1, paragraph "a", subparagraph (5), shall only be expended for the portion of time spent providing the home school assistance program services.
- e. Staff development for the home school assistance program teacher.
- f. Travel for the home school assistance program teacher.

g. Resources, materials, computer software and hardware, supplies, and purchased services that meet the following criteria:

(1) Are necessary to provide the services of home school assistance.

(2) Are retained as the possessions of the school district for its prekindergarten through grade twelve home school assistance program.

3. Purposes for which a school district shall not expend funds received pursuant to section 257.6, subsection 1, paragraph “a”, subparagraph (5), include but are not limited to the following:

a. Indirect costs or use charges.

b. Operational or maintenance costs other than those necessary to operate and maintain the program.

c. Capital expenditures other than equipment or facility acquisition, including the lease or rental of space to supplement existing schoolhouse facilities.

d. Student transportation except in cases of home school assistance program-approved field trips or other educational activities.

e. Administrative costs other than the costs necessary to administer the program.

f. Concurrent and dual enrollment costs and postsecondary enrollment options program costs.

g. Any other expenditures not directly related to providing the home school assistance program. A home school assistance program shall not provide moneys to parents or students utilizing the program.

2010 Acts, ch 1183, §40; 2011 Acts, ch 132, §23 – 26, 106

Subsection 1 amended

Subsection 2, paragraphs a and b amended

Subsection 2, paragraph g, unnumbered paragraph 1 amended

Subsection 3, paragraphs b, c, e, and f amended

## CHAPTER 301

### TEXTBOOKS

#### **301.1 Adoption — purchase and sale — accredited nonpublic school pupil textbook services.**

1. The board of directors of each and every school district is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, loan such textbooks to such pupils free, or rent them to such pupils at such reasonable fee as the board shall fix, and said money so received shall be returned to the general fund.

2. Textbooks adopted and purchased by a school district shall, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil’s parent under comparable terms as made available to pupils attending public schools. If the general assembly appropriates moneys for purposes of making textbooks available to accredited nonpublic school pupils, the department of education shall ascertain the amount available to a school district for the purchase of nonsectarian, nonreligious textbooks for pupils attending accredited nonpublic schools. The amount shall be in the proportion that the basic enrollment of a participating accredited nonpublic school bears to the sum of the basic enrollments of all participating accredited nonpublic schools in the state for the budget year. For purposes of this section, a “*participating accredited nonpublic school*” means an accredited nonpublic school that submits a written request on behalf of the school’s pupils in accordance with this subsection, and that certifies its actual enrollment to the department of education by October 1, annually. By November 1, annually, the department of education shall certify to the director of the

department of administrative services the annual amount to be paid to each school district, and the director of the department of administrative services shall draw warrants payable to school districts in accordance with this subsection. For purposes of this subsection, an accredited nonpublic school's enrollment count shall include only students who are residents of Iowa. The costs of providing textbooks to accredited nonpublic school pupils as provided in this subsection shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous income. Textbook expenditures made in accordance with this subsection shall be kept on file in the school district. In the event that a participating accredited nonpublic school physically relocates to another school district, textbooks purchased for the nonpublic school with funds appropriated for purposes of this chapter shall be transferred to the school district in which the nonpublic school has relocated and may be made available to the nonpublic school. Funds distributed to a school district for purposes of purchasing textbooks in accordance with this subsection which remain unexpended and available for the purchase of textbooks for the nonpublic school that relocated in the fiscal year in which the funds were distributed shall also be transferred to the school district in which the nonpublic school has relocated.

3. As used in subsection 2, "textbooks" means any of the following:

a. Books and loose-leaf or bound manuals, systems of reusable instructional materials or combinations of books and supplementary instructional materials which convey information to the student or otherwise contribute to the learning process.

b. Electronic textbooks, including but not limited to computer software, applications using computer-assisted instruction, interactive videodisc, and other computer courseware and magnetic media.

c. Laptop computers or other portable personal computing devices which are used for nonreligious instructional purposes only.

[C97, §2824; C24, 27, 31, 35, 39, §4446; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.1] 93 Acts, ch 63, §1; 96 Acts, ch 1113, §1; 2002 Acts, ch 1140, §31; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §33; 2005 Acts, ch 169, §34; 2006 Acts, ch 1152, §49; 2010 Acts, ch 1077, §1; 2011 Acts, ch 34, §75

Subsection 3, paragraph c amended

## CHAPTER 303

### DEPARTMENT OF CULTURAL AFFAIRS

#### SUBCHAPTER I

#### ADMINISTRATION OF DEPARTMENT

##### **303.2 Division responsibilities.**

1. The administrative services section shall provide administrative, accounting, public relations and clerical services for the department, report to the director and perform other duties assigned to it by the director.

2. The historical division shall:

a. Administer and care for historical sites under the authority of the division, and maintain collections within these buildings.

(1) Except for the state board of regents, a state agency which owns, manages, or administers a historical site must enter into an agreement with the department of cultural affairs under chapter 28E to insure the proper management, maintenance, and development of the site.

(2) For the purposes of this section, "historical site" is defined as any district, site, building, or structure listed on the national register of historic sites or identified as eligible for such status by the state historic preservation officer or that is identified according to established

criteria by the state historic preservation officer as significant in national, state, and local history, architecture, engineering, archaeology, or culture.

b. Encourage and assist local county and state organizations and museums devoted to historical purposes.

c. Develop standards and criteria for the acquisition of historic properties and for the preservation, restoration, maintenance, operation, and interpretation of properties under the jurisdiction of the division. The administrator of the division shall serve as the state historic preservation officer, certified by the governor, pursuant to federal requirements. The recommendations and decisions of the state historic preservation officer shall be subject to the review and approval of the director.

d. Administer the state archives and records program in accordance with chapter 305.

e. Identify and document historic properties.

f. Prepare and maintain a state register of historic places, including those listed on the national register of historic places.

g. Conduct historic preservation activities pursuant to federal and state requirements.

h. Publish matters of historical value to the public, and pursue historical, architectural, and archaeological research and development which may include but are not limited to continuing surveys, excavation, scientific recording, interpretation, and publication of the historical, architectural, archaeological, and cultural sites, buildings, and structures in the state.

i. Buy or receive by other means historical materials including, but not limited to, artifacts, art, books, manuscripts, and images. Such materials are not personal property under sections 8A.321 and 8A.324 and shall be received and cared for under the rules of the department. The historical division may sell or otherwise dispose of those materials according to the rules of the department and be credited for any revenues credited by the disposal less the costs incurred.

j. Administer the historical resource development program established in section 303.16.

k. Administer, preserve, and interpret the battle flag collection assembled by the state in consultation and coordination with the department of veterans affairs and the department of administrative services. A portion of the battle flag collection shall be on display at the state capitol and the state historical building at all times, unless on loan approved by the department of cultural affairs.

l. Establish, maintain, and administer a digital collection of historical manuscripts, documents, records, reports, images, and artifacts and make the collection available to the public through an online research center.

3. The arts division shall:

a. Make surveys as deemed advisable of existing artistic and cultural programs and activities within the state, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts.

b. Submit a report to the governor and to the general assembly not later than ten calendar days following the commencement of each first session of the general assembly concerning the studies undertaken during the biennium and recommending legislation and other action as necessary for the implementation and enforcement of this subsection and subchapter VI of this chapter.

86 Acts, ch 1238, §52; 86 Acts, ch 1245, §1303

C87, §303.2

87 Acts, ch 211, §5; 90 Acts, ch 1065, §2; 90 Acts, ch 1097, §1; 91 Acts, ch 157, §10; 92 Acts, ch 1246, §51; 93 Acts, ch 48, §50, 51; 98 Acts, ch 1017, §2; 2001 Acts, ch 86, §1; 2002 Acts, ch 1119, §39; 2003 Acts, ch 92, §3; 2003 Acts, ch 145, §236, 286; 2005 Acts, ch 115, §30, 40; 2008 Acts, ch 1005, §1; 2008 Acts, ch 1057, §1; 2011 Acts, ch 4, §1, 3

Subsection 2, paragraph c amended

### **303.3B Cultural and entertainment districts.**

1. The department of cultural affairs shall establish and administer a cultural and entertainment district certification program. The program shall encourage the growth of

communities through the development of areas within a city or county for public and private uses related to cultural and entertainment purposes.

2. A city or county may create and designate a cultural and entertainment district subject to certification by the department of cultural affairs, in consultation with the economic development authority. A cultural and entertainment district is encouraged to include a unique form of transportation within the district and for transportation between the district and recreational trails. A cultural and entertainment district certification shall remain in effect for ten years following the date of certification. Two or more cities or counties may apply jointly for certification of a district that extends across a common boundary. Through the adoption of administrative rules, the department of cultural affairs shall develop a certification application for use in the certification process. The provisions of this subsection relating to the adoption of administrative rules shall be construed narrowly.

3. The department of cultural affairs shall encourage development projects and activities located in certified cultural and entertainment districts through incentives under cultural grant programs pursuant to section 303.3, chapter 303A, and any other grant programs.

2005 Acts, ch 150, §19; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **303.3C Iowa great places program.**

1. *a.* The department of cultural affairs shall establish and administer an Iowa great places program for purposes of combining resources of state government in an effort to showcase the unique and authentic qualities of communities, regions, neighborhoods, and districts that make such places exceptional places to work and live. The department of cultural affairs shall provide administrative assistance to the Iowa great places board. The department of cultural affairs shall coordinate the efforts of the Iowa great places board with the efforts of state agencies participating in the program which shall include, but not be limited to, the economic development authority, the Iowa finance authority, the department of human rights, the department of natural resources, the state department of transportation, and the department of workforce development.

*b.* The program shall combine resources from state government to capitalize on all of the following aspects of the chosen Iowa great places:

- (1) Arts and culture.
- (2) Historic fabric.
- (3) Architecture.
- (4) Natural environment.
- (5) Housing options.
- (6) Amenities.
- (7) Entrepreneurial incentive for business development.
- (8) Diversity.

*c.* Initially, three Iowa great places projects shall be identified by the Iowa great places board. The board may identify additional Iowa great places for participation under the program when places develop dimensions and meet readiness criteria for participation under the program.

*d.* The department of cultural affairs shall work in cooperation with the vision Iowa and community attraction and tourism programs for purposes of maximizing and leveraging moneys appropriated to identified Iowa great places.

*e.* As a condition of receiving state funds, an identified Iowa great place shall present information to the board concerning the proposed activities and total financial needs of the project.

*f.* The department of cultural affairs shall account for any funds appropriated from the endowment for Iowa's health restricted capitals fund for an identified Iowa great place.

2. *a.* The Iowa great places board is established consisting of twelve members. The board shall be located for administrative purposes within the department of cultural affairs and the director shall provide office space, staff assistance, and necessary supplies and equipment for the board. The director shall budget moneys to pay the compensation and expenses of

the board. In performing its functions, the board is performing a public function on behalf of the state and is a public instrumentality of the state.

b. The members of the board shall be appointed by the governor, subject to confirmation by the senate. At least one member shall be less than thirty years old on the date the member is appointed by the governor. The board shall include representatives of cities and counties, local government officials, cultural leaders, housing developers, business owners, and parks officials.

c. The chairperson and vice chairperson shall be elected by the board members from the membership of the board. In the case of the absence or disability of the chairperson and vice chairperson, the members of the board shall elect a temporary chairperson by a majority vote of those members who are present and voting, provided a quorum is present.

d. Members of the board shall be appointed to three-year staggered terms and the terms shall commence and end as provided in section 69.19. If a vacancy occurs, a successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term.

e. A majority of the members of the board constitutes a quorum.

f. A member of the board shall abstain from voting on the provision of financial assistance to a project which is located in the county in which the member of the board resides.

g. The members of the board are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties. A board member may also be eligible to receive compensation as provided in section 7E.6.

3. The board shall do all of the following:

a. Organize.

b. Identify Iowa great places for purposes of receiving a package of resources under the program.

c. Identify a combination of state resources which can be provided to Iowa great places.

4. Notwithstanding any restriction, requirement, or duty to the contrary, in considering an application for a grant, loan, or other financial or technical assistance for a project identified in an Iowa great places agreement developed pursuant to this section, a state agency shall give additional consideration or additional points in the application of rating or evaluation criteria to such applications. This subsection applies to applications filed within three years of the Iowa great places board's identification of the project for participation in the program.

2005 Acts, ch 150, §87; 2006 Acts, ch 1179, §51 – 53; 2007 Acts, ch 43, §1, 2; 2011 Acts, ch 118, §85, 89

Confirmation, see §2.32

Endowment for Iowa's health account, §12E.12

Community attraction and tourism program, §15F.202

Vision Iowa program, §15F.302

Code editor directive applied

## SUBCHAPTER II

### HISTORICAL DIVISION

#### **303.18 Rural electric cooperatives and municipal utilities — historic properties — archeological site surveys.**

1. The state historic preservation officer shall only recommend that a rural electric cooperative or a municipal utility constructing electric distribution and transmission facilities for which it is receiving federal funding conduct an archeological site survey of its proposed route when, based upon a review of existing information on historic properties within the area of potential effects of the construction, the state historic preservation officer has determined that a historic property, as defined by the federal National Historic Preservation Act of 1966, as amended, is likely to exist within the proposed route.

2. The state historic preservation officer shall not require a level of archeological identification effort which is greater than the reasonable and good faith effort required by

the federal agency. Such effort shall reflect the public interest and shall take into account the likelihood and magnitude of potential impacts to historic properties and project costs.

2011 Acts, ch 4, §2, 3; 2011 Acts, ch 131, §92, 102

NEW section

## CHAPTER 306B

### OUTDOOR ADVERTISING ALONG INTERSTATE HIGHWAYS

#### 306B.1 Definitions.

As used in this chapter:

1. “*Advertising device*” includes any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other device designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from the traveled portion of any highway of the interstate system in this state.

2. “*Department*” means the state department of transportation.

3. “*Interstate system*” means the system of highways as described in 23 U.S.C. § 103(c) or amendments thereto.

4. “*National policy*” means the provisions relating to control of advertising devices adjacent to the interstate system contained in 23 U.S.C. § 131 or amendments thereto and the national standards promulgated pursuant to such provisions.

[C66, 71, 73, 75, 77, 79, 81, §306B.1]

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

Subsections 3 and 4 amended

## CHAPTER 306C

### JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL

#### DIVISION II

#### BILLBOARD CONTROL

#### 306C.10 Definitions.

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

1. “*Adjacent area*” means an area which is contiguous to and within six hundred sixty feet of the nearest edge of the right-of-way of any interstate, freeway primary, or primary highway.

2. “*Advertising device*” includes any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other device designed, intended, or used to advertise or give information in the nature of advertising, and having the capacity of being visible from the traveled portion of any interstate or primary highway.

3. “*Bonus interstate highways*” includes all interstate highways except those interstate highways adjacent to areas excepted from control under chapter 306B by authority of section 306B.2, subsection 4.

4. “*Commercial or industrial activities*” means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

a. Outdoor advertising structures.

b. Agricultural, forestry, grazing, farming, and related activities, including but not limited to wayside fresh produce.

c. Activities in operation less than three months per year.

- d. Activities conducted in a building principally used as a residence.
  - e. Railroad tracks and minor spurs.
  - f. Activities outside of adjacent areas, as defined by this division and section 306B.5.
  - g. Activities which have been used in defining and delineating an unzoned area but which have since been discontinued or abandoned.
  - h. Residential housing developments.
  - i. Manufactured home communities or mobile home parks.
  - j. Institutions of learning.
  - k. State, county, and charitable institutions.
  - l. State and county conservation and recreation areas, public parks, forests, playgrounds, or other areas of historic interest or areas designated as scenic beautification areas under section 313.67.
5. “*Commercial or industrial zone*” means those areas zoned commercial or industrial under authority of a law, regulation, or ordinance of this state, its subdivisions, or a municipality.
6. “*Department*” means the state department of transportation.
7. “*Erect*” means to construct, reconstruct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish; however, it shall not include any of the foregoing activities when performed incidental to the customary maintenance of an advertising device.
8. “*Freeway primary highway*” means those primary highways which have been constructed as a fully controlled access facility with no access to the facility except at established interchanges.
9. “*Information center*” means a site, either with or without structures or buildings, established and maintained at a rest area for the purpose of providing “specific information of interest to the traveling public”, as defined in subsection 18.
10. “*Interstate highway*” includes “*interstate road*” and “*interstate system*” and means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.
11. “*Maintain*” means to cause to remain in a state of good repair but does not include reconstruction.
12. “*Main-traveled way*” means the portion of the roadway for movement of vehicles on which through traffic is carried exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main-traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways, or parking areas.
13. “*Primary highways*” includes the entire primary system as officially designated, or as may hereafter be so designated, by the department.
14. “*Reconstruction*” means any repair to the extent of sixty percent or more of the replacement cost of the structure, excluding buildings.
15. “*Rest area*” means an area or site established and maintained under authority of section 313.67 within the right-of-way of an interstate, freeway primary, or primary highway under supervision and control of the department for the safety, recreation, and convenience of the traveling public.
16. “*Right-of-way*” means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.
17. “*Special event sign*” means a temporary advertising device, not larger than thirty-two square feet in area, erected for the purpose of notifying the public of noncommercial community events including but not limited to fairs, centennials, festivals, and celebrations open to the general public and sponsored or approved by a city, county, or school district.
18. “*Specific information of interest to the traveling public*” means only information about public places for camping, lodging, eating, and motor fuel and associated services, including trade names, which have telephone facilities available when the public place is open for

business and businesses engaged in selling motor fuel which have free air for tire inflation and restroom facilities available when the public place is open for business.

19. “*Structure*” means any sign supporting device including but not limited to buildings.

20. “*Unzoned commercial or industrial area*” means those areas not zoned by state or local law, regulation, or ordinance, which are occupied by one or more commercial or industrial activities, and the land along the interstate highways and primary highways for a distance of seven hundred fifty feet immediately adjacent to the activities. All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities and shall be parallel to the edge of pavement of the highway. Measurements shall not be from the property line of the activities unless that property line coincides with the limits of the activities. Unzoned commercial or industrial areas shall not include land on the opposite side of the highway from the commercial or industrial activities.

21. “*Visible*” means capable of being read or comprehended without visual aid by a person of normal visual acuity.

[C73, 75, 77, 79, 81, §306C.10]

2001 Acts, ch 153, §16; 2003 Acts, ch 8, §5; 2009 Acts, ch 133, §111, 235; 2011 Acts, ch 25, §26

Subsection 9 amended

## CHAPTER 306D

### SCENIC ROUTES

#### **306D.2 Statewide scenic highways program — objectives and agency duties.**

1. The state department of transportation shall prepare a statewide, long-range plan for the protection, enhancement, and identification of highways and secondary roads which pass through unusually scenic areas of the state as identified in section 306D.1. The department of natural resources, economic development authority, and department of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies having jurisdiction over land in the state shall be encouraged to assist in preparing the plan. The plan shall be coordinated with the state’s open space plan if a state open space plan has been approved by the general assembly. The plan shall include, but is not limited to, the following elements:

a. Preparation of a statewide inventory of scenic routes and ranking of relative uniqueness for each route. The degree to which these routes suffer from negative visual intrusions shall be documented.

b. Recommended techniques for preserving and enhancing the scenic qualities associated with each route.

c. Forecasts of significant changes in traffic volumes and environmental, social, and economic impacts if scenic routes are publicly identified and promoted as tourism attractions.

d. Recommended techniques for incorporating scenic highway routes in state and local tourism development and marketing programs.

e. Landscape management needs including maintenance, rehabilitation, and improvements to scenic areas.

f. Funding levels needed to accomplish the statewide scenic highway program.

g. Recommendations of how federal and state transportation programs can be modified or developed to assist the state’s scenic highway program.

2. The preparation of the plan is subject to an appropriation by the general assembly for that purpose. The plan shall be submitted to the general assembly by January 15, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state agencies, federal agencies, and private organizations with interests in scenic highways. The comments shall be submitted to the general assembly.

87 Acts, ch 175, §2; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 307

### DEPARTMENT OF TRANSPORTATION (DOT)

Department to report annually regarding registered flexible fuel vehicles; see §452A.33

#### **307.21 Administrative services.**

1. The department's administrator of administrative services shall:
  - a. Provide for the proper maintenance and protection of the grounds, buildings, and equipment of the department, in cooperation with the department of administrative services.
  - b. Establish, supervise, and maintain a system of centralized electronic data processing for the department, in cooperation with the department of administrative services.
  - c. Assist the director in preparing the departmental budget.
  - d. Provide centralized purchasing services for the department, if authorized by the department of administrative services. The administrator shall, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners, and shall purchase these items in accordance with the schedule established in section 8A.315. However, the administrator need not purchase garbage can liners in accordance with the schedule if the liners are utilized by a facility approved by the environmental protection commission created under section 455A.6, for purposes of recycling. For purposes of this section, "recycled content" means that the content of the product contains a minimum of thirty percent postconsumer material.
  - e. Assist the director in employing the professional, technical, clerical, and secretarial staff for the department and maintain employee records, in cooperation with the department of administrative services and provide personnel services, including but not limited to training, safety education, and employee counseling.
  - f. Assist the director in coordinating the responsibilities and duties of the various divisions within the department.
  - g. Carry out all other general administrative duties for the department.
  - h. Perform such other duties and responsibilities as may be assigned by the director.
2. When performing the duty of providing centralized purchasing services under subsection 1, the administrator shall do all of the following:
  - a. Purchase and use recycled printing and writing paper in accordance with the schedule established in section 8A.315.
  - b. Establish a wastepaper recycling program in accordance with recommendations made by the department of natural resources and the requirements of section 8A.329.
  - c. Require in accordance with section 8A.311 product content statements and compliance with requirements regarding procurement specifications.
  - d. Comply with the requirements for the purchase of lubricating oils, industrial oils, greases, and hydraulic fluids as established pursuant to section 8A.316.
  - e. Give preference to purchasing designated biobased products in the same manner as provided in section 8A.317.
3. The department shall report to the general assembly by February 1 of each year, the following:
  - a. A listing of plastic products which are regularly purchased by the board for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.
  - b. Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the department, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.
4. A gasoline-powered vehicle purchased by the administrator shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1. A diesel-powered motor vehicle purchased by the administrator shall not operate on diesel fuel other than

biodiesel fuel as defined in section 214A.1, if commercially available. A state-issued credit card shall not be valid to purchase gasoline other than ethanol blended gasoline or to purchase diesel fuel other than biodiesel fuel, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline or biodiesel fuel, as applicable. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

5. a. Of all new passenger vehicles and light pickup trucks purchased by the administrator, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

(1) A flexible fuel which is any of the following:

(a) E-85 gasoline as provided in section 214A.2.

(b) B-20 biodiesel blended fuel as provided in section 214A.2.

(c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

(2) Compressed or liquefied natural gas.

(3) Propane gas.

(4) Solar energy.

(5) Electricity.

b. The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

6. The administrator shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, “*packing material*” means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

7. The administrator of administrative services may purchase items from the department of administrative services and may cooperate with the director of the department of administrative services by providing purchasing services for the department of administrative services.

[C75, 77, 79, 81, §307.21]

86 Acts, ch 1245, §1910, 1911; 88 Acts, ch 1185, §3; 89 Acts, ch 272, §24; 90 Acts, ch 1237, §4; 91 Acts, ch 97, §42; 91 Acts, ch 254, §18; 92 Acts, ch 1095, §3; 93 Acts, ch 26, §6; 93 Acts, ch 176, §40; 94 Acts, ch 1119, §28; 95 Acts, ch 44, §3; 95 Acts, ch 62, §4; 98 Acts, ch 1082, §6; 99 Acts, ch 114, §17; 99 Acts, ch 121, §10; 2000 Acts, ch 1109, §6; 2003 Acts, ch 145, §241, 242, 286; 2006 Acts, ch 1142, §66, 67; 2007 Acts, ch 22, §68; 2008 Acts, ch 1104, §6; 2008 Acts, ch 1169, §39, 42; 2009 Acts, ch 133, §113; 2010 Acts, ch 1031, §75

Requirements for state government purchasing efforts to be administered by the department of administrative services; 2010 Acts, ch 1031, §76; 2011 Acts, ch 131, §109

Section not amended; footnote revised

### **307.27 Motor vehicles.**

The department’s administrator of motor vehicles shall:

1. Administer and supervise the registration of motor vehicles pursuant to chapter 321.
2. Administer and supervise the licensing of motor vehicle manufacturers, distributors and dealers pursuant to chapter 322.
3. Administer the inspection of motor vehicles pursuant to chapter 321.
4. Administer motor vehicle registration reciprocity pursuant to chapter 326.
5. Administer the provisions of chapters 321A, 321E, 321F, and 321J relating to motor vehicle financial responsibility, the implied consent law, the movement of vehicles of excessive size and weight and the leasing and renting of vehicles.
6. Administer the regulation of motor vehicle franchisers pursuant to chapter 322A.
7. Administer the regulation of motor carriers pursuant to chapter 325A.
8. Administer the registration of interstate authority of motor carriers pursuant to chapter

327B as provided in 49 U.S.C. § 14504a and United States department of transportation regulations.

[C75, 77, 79, 81, §307.27]

86 Acts, ch 1220, §27; 86 Acts, ch 1245, §1922; 90 Acts, ch 1233, §14; 98 Acts, ch 1100, §39, 40; 2003 Acts, ch 108, §53; 2011 Acts, ch 38, §1

Subsection 8 amended

#### **307.45 State-owned lands — assessment.**

1. Cities and counties may assess the cost of a public improvement against the state when the improvement benefits property owned by the state and under the jurisdiction and control of the department's administrator of highways. The director shall pay from the primary road fund the portion of the cost of the improvement which would be legally assessable against the land if privately owned.

2. Assessments against property under the jurisdiction of the department's administrator of highways shall be made in the same manner as those made against private property, except that the city or county making the assessment shall cause a copy of the public notice of hearing to be mailed to the director by certified mail.

3. Assessments against property owned by the state and not under the jurisdiction and control of the department's administrator of highways shall be made in the same manner as those made against private property and payment shall be subject to authorization by the executive council. There is appropriated from moneys in the general fund not otherwise appropriated an amount necessary to pay the expense authorized by the executive council.

86 Acts, ch 1244, §40; 91 Acts, ch 268, §511; 2009 Acts, ch 179, §77; 2011 Acts, ch 131, §33, 158

Subsection 3 amended

#### **307.49 Contract bids.**

1. A bidder awarded a contract with the department shall disclose the names of all subcontractors, who will work on the project being bid or who the bidder anticipates will work on the project being bid, within forty-eight hours after the award of the contract. If a subcontractor named by a bidder awarded a contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost. If a subcontractor is added by a bidder awarded a contract, the bidder shall disclose the name of the new subcontractor.

2. The department shall issue electronic project bid notices for distribution to the targeted small business web page located at the economic development authority. The notices shall be provided to the targeted small business marketing manager forty-eight hours prior to the issuance of all project bid notices. The notices shall contain a description of the project, a point of contact for each project, and any subcontract goals included in the bid.

90 Acts, ch 1161, §3; 98 Acts, ch 1212, §5; 2011 Acts, ch 118, §85, 89

Code editor directive applied

Unnumbered paragraphs 1 and 2 editorially renumbered as subsections 1 and 2

## CHAPTER 307C

### MISSOURI RIVER BARGE COMPACT

#### **307C.3 Duties of the state department of transportation.**

The state department of transportation shall, with the cooperation of the economic development authority, the department of natural resources, and the member states' officials or agencies, take the necessary steps to achieve the purposes set forth in this chapter.

84 Acts, ch 1257, §3; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 308

### MISSISSIPPI RIVER PARKWAY

#### 308.1 Planning commission.

The Mississippi parkway planning commission shall be composed of ten members appointed by the governor, five members to be appointed for two-year terms beginning July 1, 1959, and five members to be appointed for four-year terms beginning July 1, 1959. In addition to the above members there shall be seven advisory ex officio members who shall be as follows: One member from the state transportation commission, one member from the natural resource commission, one member from the state soil conservation committee, one member from the state historical society of Iowa, one member from the faculty of the landscape architectural division of the Iowa state university of science and technology, one member from the economic development authority, and one member from the environmental protection commission. Members and ex officio members shall serve without pay, but the actual and necessary expenses of members and ex officio members may be paid if the commission so orders and if the commission has funds available for that purpose.

[C62, 66, 71, 73, 75, 77, 79, 81, §308.1; 82 Acts, ch 1199, §61, 96]

2003 Acts, ch 108, §54; 2011 Acts, ch 118, §84, 89

Code editor directive applied

## CHAPTER 309

### SECONDARY ROADS

Subject to reciprocal resident bidder preference in §73A.21

#### 309.37 Details of survey.

Said survey shall show:

1. A division into sections of all of the roads embraced in said provisional program, a designation of each section by some appropriate number, name, or letter, the starting point and terminus of each section, and the mileage of each section.
2. An accurate plan and profile of the roads surveyed, showing all of the following:
  - a. Cuts and fills.
  - b. Outline of grades.
  - c. All existing permanent bridges, culverts and grades.
  - d. Proper bench marks on each bridge and culvert.
3. The drainage, both surface and subdrainage, necessary to prepare said roads for complete construction.
4. The location of all lines of tile and size thereof.
5. All necessary bridges and culverts, their length, height, and width and foundation soundings.
6. An estimate of the watershed having relation to each bridge and culvert.
7. An estimate of the construction cost of said roads on the basis of permanent bridges, culverts, tile, and road work.

[C24, 27, §4644; C31, 35, §4644-c39; C39, §4644.37; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.37]

2011 Acts, ch 34, §76

Subsection 2 amended

## CHAPTER 312

### ROAD USE TAX FUND

#### **312.4 Treasurer's report to the department of transportation.**

The treasurer of state shall, each month, certify to the department:

1. The amount which the treasurer has received and credited to the road use tax fund from each source of revenue creditable to the said road use tax fund.
2. The amount of the road use tax fund which the treasurer has credited to the following:
  - a. The primary road fund.
  - b. The secondary road fund of the counties.
  - c. The farm-to-market road fund.
  - d. The street fund of the cities.
3. The amount of the federal aid primary and urban funds which the treasurer has received from the federal government and credited to the primary road fund.
4. The amount of federal aid secondary road funds which the treasurer has received from the federal government and credited to the farm-to-market road fund.
5. The amount of the road use tax fund which has been credited to carry out the provisions of section 307A.2, subsection 11, section 313.4, subsection 2, and section 307.45.

[C24, §4693; C27, 31, 35, §4755-b7; C39, **§4686.07, 4755.07**; C46, §310.7, 313.7; C50, §308A.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §312.4]

2011 Acts, ch 34, §77

Subsection 2 amended

## CHAPTER 313

### PRIMARY ROADS

#### **313.4 Disbursement of fund.**

1. *a.* Said primary road fund is hereby appropriated for and shall be used in the establishment, construction, and maintenance of the primary road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination or improvement of railroad crossings, the acquiring of additional right-of-way, all other expense incurred in the construction and maintenance of said primary road system and the maintenance and housing of the department.

*b.* The department may expend moneys from the fund for dust control on a secondary road or municipal street within a municipal street system when there is a notable increase in traffic on the secondary road or municipal street due to closure of a road by the department for purposes of establishing, constructing, or maintaining a primary road.

2. Such fund is also appropriated and shall be used for the construction, reconstruction, improvement and maintenance of state institutional roads and state park roads and bridges on such roads and roads and bridges on community college property as provided in section 307A.2, subsection 11, for restoration of secondary roads used as primary road detours and for compensation of counties for such use, for restoration of municipal streets so used and for compensation of cities for such use, and for the payments required in section 307.45.

3. There is appropriated from funds appropriated to the department which would otherwise revert to the primary road fund pursuant to the provisions of the Act appropriating the funds or chapter 8, an amount sufficient to pay the increase in salaries, which increase is not otherwise provided for by the general assembly in an appropriation bill, resulting from the annual review of the merit pay plan as provided in section 8A.413, subsection 3. The appropriation herein provided shall be in effect from the effective date of the revised pay plan to the end of the fiscal biennium in which it becomes effective.

4. *a.* Such fund is appropriated and shall be used by the department to provide energy

and for the operation and maintenance of those primary road freeway lighting systems within the corporate boundaries of cities including energy and maintenance costs associated with interchange conflict lighting on existing and future freeway and expressway segments constructed to interstate standards.

b. The costs of serving freeway lighting for each utility providing the service shall be determined by the utilities division of the department of commerce, and rates for such service shall be no higher than necessary to recover these costs. Funds received under the provisions of this subsection shall be used solely for the operation and maintenance of a freeway lighting system.

5. During the fiscal year beginning July 1, 1990, and ending June 30, 1991, and each subsequent fiscal year, the department shall spend from the primary road fund an amount of not less than thirty million dollars for the network of commercial and industrial highways.

6. a. A transfer of jurisdiction fund is created in the office of the treasurer of state under the control of the department. For each fiscal year in the period beginning July 1, 2003, and ending June 30, 2013, there is transferred from the primary road fund to the transfer of jurisdiction fund one and seventy-five hundredths percent of the moneys credited to the primary road fund pursuant to section 312.2, subsection 1, paragraph "a".

b. For each fiscal year in the period beginning July 1, 2003, and ending June 30, 2013, there is appropriated the following percentages of the moneys deposited in the transfer of jurisdiction fund for the fiscal year for the following purposes:

(1) Seventy-five percent of the moneys shall be apportioned among the counties and cities that assume jurisdiction of primary roads pursuant to section 306.8A. Such apportionment shall be made based upon the specific construction needs identified for the specific counties and cities in the transfer of jurisdiction report on file with the department pursuant to section 306.8A. All funds, including any interest or other earnings on the funds, received by a county from the transfer of jurisdiction fund shall be deposited in the secondary road fund of the county to be used only for the maintenance and construction of roads under the county's jurisdiction. All funds received by a city from the transfer of jurisdiction fund shall be used only for the maintenance and construction of roads under the city's jurisdiction.

(2) Twenty-two and one-half percent of the moneys shall be deposited in the secondary road fund.

(3) Two and one-half percent of the moneys shall be deposited in the street construction fund of the cities.

7. For the fiscal year beginning July 1, 2013, and ending June 30, 2014, and each subsequent fiscal year, there is transferred the following percentages of the moneys credited to the primary road fund pursuant to section 312.2, subsection 1, paragraph "a", to the following funds:

a. One and five hundred seventy-five thousandths percent to the secondary road fund.

b. One hundred seventy-five thousandths of one percent to the street construction fund of the cities.

[C24, §4690; C27, 31, 35, §4755-b4; C39, §4755.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.4]

88 Acts, ch 1019, §6; 90 Acts, ch 1253, §120; 92 Acts, ch 1163, §74; 92 Acts, ch 1238, §29; 99 Acts, ch 118, §1; 2000 Acts, ch 1017, §1; 2003 Acts, ch 144, §8; 2003 Acts, ch 145, §243; 2008 Acts, ch 1031, §110; 2009 Acts, ch 133, §236, 237; 2011 Acts, ch 25, §27

Subsection 2 amended

## CHAPTER 314

### ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

#### 314.28 Keep Iowa beautiful fund.

1. A keep Iowa beautiful fund is created in the office of the treasurer of state. The fund is

composed of moneys appropriated or available to and obtained or accepted by the treasurer of state for deposit in the fund. All interest earned on moneys in the fund shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

2. Moneys in the fund that are authorized by the department for expenditure are appropriated, and shall be used, to educate and encourage Iowans to take greater responsibility for improving their community environment and enhancing the beauty of the state through litter prevention, improving waste management and recycling efforts, and beautification projects.

3. The department may authorize payment of moneys from the fund upon approval of an application from a private or public organization. The applicant shall submit a plan for litter prevention, improving waste management and recycling efforts, or a beautification project along with its application. The department shall establish standards relating to the type of projects available for assistance.

2001 Acts, ch 160, §1; 2004 Acts, ch 1175, §435; 2004 Acts, ch 1177, §3; 2006 Acts, ch 1182, §60; 2011 Acts, ch 34, §78

Section amended

## CHAPTER 317

### WEEDS

#### 317.1A Noxious weeds.

1. The following weeds are hereby declared to be noxious and shall be divided into two classes, as follows:

a. Primary noxious weeds, which shall include:

- (1) Quack grass (*Elymus repens*).
- (2) Perennial sow thistle (*Sonchus arvensis*).
- (3) Canada thistle (*Cirsium arvense*).
- (4) Bull thistle (*Cirsium vulgare*).
- (5) European morning glory or field bindweed (*Convolvulus arvensis*).
- (6) Horse nettle (*Solanum carolinense*).
- (7) Leafy spurge (*Euphorbia esula*).
- (8) Perennial pepper-grass (*Cardaria draba*).
- (9) Russian knapweed (*Acroptilon repens*).
- (10) Buckthorn (*Rhamnus* spp., not to include *Frangula alnus*, syn. *Rhamnus frangula*).
- (11) All other species of thistles belonging in the genera of *Cirsium* and *Carduus*.

b. Secondary noxious weeds, which shall include:

- (1) Butterprint (*Abutilon theophrasti*) annual.
- (2) Cocklebur (*Xanthium strumarium*) annual.
- (3) Wild mustard (*Sinapis arvensis*) annual.
- (4) Wild carrot (*Daucus carota*) biennial.
- (5) Buckhorn (*Plantago lanceolata*) perennial.
- (6) Sheep sorrel (*Rumex acetosella*) perennial.
- (7) Sour dock (*Rumex crispus*) perennial.
- (8) Smooth dock (*Rumex altissimus*) perennial.
- (9) Poison hemlock (*Conium maculatum*).
- (10) Multiflora rose (*Rosa multiflora*).
- (11) Wild sunflower (wild strain of *Helianthus annuus* L.) annual.
- (12) Puncture vine (*Tribulus terrestris*) annual.
- (13) Teasel (*Dipsacus* spp.) biennial.
- (14) Shattercane (*Sorghum bicolor*) annual.

2. a. The multiflora rose (*Rosa multiflora*) shall not be considered a secondary noxious weed when cultivated for or used as understock for cultivated roses or as ornamental shrubs

in gardens, or in any county whose board of supervisors has by resolution declared it not to be a noxious weed.

b. Shattercane (*Sorghum bicolor*) shall not be considered a secondary noxious weed when cultivated or in any county whose board of supervisors has by resolution declared it not to be a noxious weed.

[S13, §1565-b; C24, 27, 31, 35, §4818; C39, §4829.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.1]

85 Acts, ch 171, §1; 2000 Acts, ch 1154, §20

C2001, §317.1A

2010 Acts, ch 1061, §108; 2011 Acts, ch 34, §79

See also §199.1

Subsection 1, paragraphs a and b amended

## CHAPTER 321

### MOTOR VEHICLES AND LAW OF THE ROAD

Surcharge imposed on certificate fees under §321.20, 321.20A, 321.23,

321.42, 321.46, 321.47, 321.48, and 321.52; see §321.52A

Fines doubled for moving traffic violations occurring  
in road work zones; §805.8A, subsection 14, paragraph i

#### 321.1 Definitions of words and phrases.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. “*Agricultural hazardous material*” means a hazardous material, other than hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil conditioner, or fuel. “*Agricultural hazardous material*” is limited to material in class 3, 8, or 9, division 2.1, 2.2, 5.1, or 6.1, or an ORM-D material as defined in 49 C.F.R. § 171.8.

1A. “*Alcohol concentration*” means the number of grams of alcohol per any of the following:

- a. One hundred milliliters of blood.
- b. Two hundred ten liters of breath.
- c. Sixty-seven milliliters of urine.

2. “*Alcoholic beverage*” includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

3. “*Alley*” means a thoroughfare laid out, established, and platted as such, by constituted authority.

4. “*All-terrain vehicle*” means a motor vehicle designed to travel on three or more wheels and designed primarily for off-road recreational use. “*All-terrain vehicle*” includes off-road utility vehicles as defined in section 321.1.1, but does not include farm tractors or equipment, construction equipment, forestry vehicles, or lawn and grounds maintenance vehicles.

5. “*Ambulance*” means a motor vehicle which is equipped with life support systems and used to transport sick and injured persons who require emergency medical care to medical facilities.

6. “*Authorized emergency vehicle*” means vehicles of the fire department, police vehicles, ambulances, and emergency vehicles owned by the United States, this state, any subdivision of this state, or any municipality of this state, and privately owned vehicles as are designated or authorized by the director of transportation under section 321.451.

6A. “*Bona fide business address*” means the current street or highway address of a firm, association, or corporation.

6B. “*Bona fide residence*” or “*bona fide address*” means the current street or highway address of an individual’s residence. The bona fide residence of a person with more than one dwelling is the dwelling for which the person claims a homestead tax credit under chapter 425,

if applicable. The bona fide residence of a homeless person is a primary nighttime residence meeting one of the criteria listed in section 48A.2, subsection 2.

7. “*Business district*” means the territory contiguous to and including a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.

7A. “*Business-trade truck*” means a model year 2010 or newer motor truck with an unladen weight of ten thousand pounds or less which is owned by a corporation, limited liability company, or partnership or by a person who files a schedule C or schedule F form with the federal internal revenue service and which is eligible for depreciation under § 167 of the Internal Revenue Code. If the motor truck is a leased vehicle, the motor truck is a business-trade truck only if the lessee is a corporation, limited liability company, or partnership and the truck is used primarily for purposes of the business operations of the corporation, limited liability company, or partnership or the lessee is a person who files a schedule C or schedule F form with the federal internal revenue service and the truck is used primarily for purposes of the person’s own business or farming operation.

8. “*Chauffeur*” means a person who operates a motor vehicle, including a school bus, in the transportation of persons for wages, compensation, or hire, or a person who operates a truck tractor, road tractor, or a motor truck which has a gross vehicle weight rating exceeding sixteen thousand pounds.

a. A person is not a chauffeur when the operation of the motor vehicle, other than a truck tractor, by the owner or operator is occasional and merely incidental to the owner’s or operator’s principal business.

b. A person is not a chauffeur when the operation is by a volunteer fire fighter operating fire apparatus, or is by a volunteer ambulance or rescue squad attendant operating ambulance or rescue squad apparatus. If a volunteer fire fighter or ambulance or rescue squad operator receives nominal compensation not based upon the value of the services performed, the fire fighter or operator shall be considered to be receiving no compensation and classified as a volunteer.

c. If authorized to transport inmates, probationers, parolees, or work releasees by the director of the Iowa department of corrections or the director’s designee, an employee of the Iowa department of corrections or a district department of correctional services is not a chauffeur when transporting the inmates, probationers, parolees, or work releasees.

d. A farmer or the farmer’s hired help is not a chauffeur when operating a truck, other than a truck tractor, owned by the farmer and used exclusively in connection with the transportation of the farmer’s own products or property.

e. If authorized to transport patients or clients by the director of the department of human services or the director’s designee, an employee of the department of human services is not a chauffeur when transporting the patients or clients in an automobile.

f. A person is not a chauffeur when the operation is by a home care aide in the course of the home care aide’s duties.

g. If authorized to transport students or clients by the superintendent of the Iowa braille and sight saving school or of the Iowa school for the deaf, or the superintendent’s respective designee, an employee of the Iowa braille and sight saving school or the Iowa school for the deaf is not a chauffeur when transporting the students or clients.

h. If authorized to transport patients or residents of the Iowa veterans home by the commandant or the commandant’s designee, an employee of or volunteer at the Iowa veterans home is not a chauffeur when transporting the patients or residents in an automobile in the course of the employee’s or volunteer’s normal duties.

9. “*Combination*” or “*combination of vehicles*” shall be construed to mean a group consisting of two or more motor vehicles, or a group consisting of a motor vehicle and one or more trailers, semitrailers or vehicles, which are coupled or fastened together for the purpose of being moved on the highways as a unit.

10. a. “*Combined gross weight*” means the gross weight of a combination of vehicles.

b. “*Gross combination weight rating*” means the combined gross vehicle weight ratings for each vehicle in a combination of vehicles. In the absence of a weight specified by the

manufacturer for a towed vehicle, the gross vehicle weight rating of the towed vehicle is its gross weight.

11. For purposes of administering and enforcing the commercial driver's license provisions:

a. "Commercial driver" means the operator of a commercial motor vehicle.

b. "Commercial driver's license" means a driver's license valid for the operation of a commercial motor vehicle.

c. "Commercial driver's license information system" means the national information system established to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

d. "Commercial motor carrier" means a person responsible for the safe operation of a commercial motor vehicle.

e. "Commercial motor vehicle" means a motor vehicle or combination of vehicles used to transport passengers or property if any of the following apply:

(1) The combination of vehicles has a gross combination weight rating of twenty-six thousand one or more pounds provided the towed vehicle or vehicles have a gross weight rating or gross combination weight rating of ten thousand one or more pounds.

(2) The motor vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(3) The motor vehicle is designed to transport sixteen or more persons, including the operator, or is of a size and design to transport sixteen or more persons, including the operator, but is redesigned or modified to transport less than sixteen persons with disabilities.

(4) The motor vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

f. "Employer" means any person, including the United States, a state, the District of Columbia, or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns an employee to operate such a vehicle.

g. "Foreign jurisdiction" means a jurisdiction outside the fifty United States, the District of Columbia, and Canada.

h. "Nonresident commercial driver's license" means a commercial driver's license issued to a person who is not a resident of the United States or Canada.

i. "Tank vehicle" means a commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or chassis. For purposes of this paragraph, "tank" does not include a portable tank with a rated capacity of less than one thousand gallons or a permanent tank with a rated capacity of one hundred nineteen gallons or less.

12. "Commercial vehicle" means a vehicle or combination of vehicles designed principally to transport passengers or property of any kind if any of the following apply:

a. The vehicle or any combination of vehicles has a gross weight or combined gross weight of ten thousand one or more pounds.

b. The vehicle or any combination of vehicles has a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds.

c. The vehicle is designed to transport sixteen or more persons, including the driver.

d. The vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

12A. "Completed motor vehicle" means a motor vehicle which does not require any additional manufacturing operations to perform its intended function except the addition of readily attachable equipment, components, or minor finishing operations.

13. "Component part" means any part of a vehicle, other than a tire, having a component part number.

14. "Component part number" means the vehicle identification derivative consisting of numerical and alphabetical designations affixed to a component part by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the component part.

15. "Conviction" means a final conviction, including but not limited to a plea of guilty or

nolo contendere accepted by the court; a final administrative ruling or determination; or an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court.

15A. "*Crane*" means a machine for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

16. "*Crosswalk*" means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

17. "*Dealer*" means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state. "*Dealer*" includes those persons required to be licensed as dealers under chapters 322 and 322C.

18. "*Demolisher*" means any agency or person whose business is to convert a vehicle to junk, processed scrap, or scrap metal, or otherwise to wreck or dismantle vehicles.

19. "*Department*" means the state department of transportation. "*Commission*" means the state transportation commission.

20. "*Director*" means the director of the state department of transportation or the director's designee.

20A. "*Driver's license*" means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to a temporary restricted or temporary license and an instruction, chauffeur's instruction, commercial driver's instruction, or temporary permit. For purposes of license suspension, revocation, bar, disqualification, cancellation, or denial under this chapter and chapters 321A, 321C, and 321J, "*driver's license*" includes any privilege to operate a motor vehicle.

20B. "*Electric personal assistive mobility device*" means a self-balancing, nontandem two-wheeled device powered by an electric propulsion system that averages seven hundred fifty watts and is designed to transport one person, with a maximum speed on a paved level surface of less than twenty miles per hour. The maximum speed shall be calculated based on operation of the device by a person who weighs one hundred seventy pounds when the device is powered solely by the electric propulsion system. For purposes of this chapter, "*electric personal assistive mobility device*" does not include an assistive device as defined in section 216E.1.

21. "*Endorsement*" means an authorization to a person's driver's license required to permit the person to operate certain types of motor vehicles or to transport certain types or quantities of hazardous materials.

22. "*Essential parts*" mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

23. "*Established place of business*" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer's or manufacturer's books and records are kept and a large share of the dealer's or manufacturer's business is transacted.

24. "*Farm tractor*" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

24A. "*Fence-line feeder*" means a vehicle used exclusively for the mixing and dispensing of nutrients to bovine animals at a feedlot.

24B. "*Financial liability coverage*" means any of the following:

a. An owner's policy of liability insurance which is issued by an insurance carrier authorized to do business in Iowa to or for the benefit of the person named in the policy as insured, and insuring the person named as insured and any person using an insured motor vehicle with the express or implied permission of the named insured against loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of an insured motor vehicle within the United States of America or Canada, but subject to minimum limits, exclusive of interest and costs, in the amounts specified in section 321A.21 or specified in another provision of the Code, whichever is greater.

b. A bond filed with the department pursuant to section 321A.24.

c. A valid statement issued by the treasurer of state pursuant to section 321A.25 attesting to the filing of a certificate of deposit with the treasurer of state.

d. A valid certificate of self-insurance issued by the department pursuant to section 321A.34.

25. “*Fire vehicle*” means a motor vehicle which is equipped with pumps, tanks, hoses, nozzles, ladders, generators, or other fire apparatus used to transport fire personnel, fight fires, and respond to emergencies.

26. “*Foreign vehicle*” means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

27. The linear measure of the plot of ground upon which the building is located abutting upon the highway shall be deemed “*frontage occupied by the building*”, and the phrase “*frontage on such highway for a distance of three hundred feet or more*” shall mean the total frontage on both sides of the highway for such distance.

28. “*Garage*” means every place of business where motor vehicles are received for housing, storage, or repair for compensation.

28A. “*Grain cart*” means a vehicle with a nonsteerable single or tandem axle designed to move grain.

29. a. “*Gross weight*” means the empty weight of a vehicle plus the maximum load to be carried by the vehicle. The maximum load to be carried by a passenger-carrying vehicle shall be determined by multiplying one hundred fifty pounds by the number of passenger seats carried by such vehicle.

b. “*Unladen weight*” means the weight of a vehicle or vehicle combination without load.

c. “*Gross vehicle weight rating*” means the weight specified by the manufacturer as the loaded weight of a single vehicle.

30. “*Guaranteed arrest bond certificate*” means any printed, unexpired certificate issued by an automobile club or association to any of its members, or any printed, unexpired certificate issued by an insurance company authorized to write automobile liability insurance within this state, which certificate is signed by such member or insured and contains a printed statement that such automobile club, association, or insurance company and a surety company which is doing business in this state under the provisions of section 515.48, subsection 2, guarantee the appearance of the person whose signature appears on the certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed one thousand dollars. If such insurance company is itself qualified under the provisions of section 515.48, subsection 2, the insurance company may be its own surety. Bail in this form shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law.

31. “*Hazardous material*” means a substance or material which has been determined by the United States secretary of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

32. “*Implement of husbandry*” means a vehicle or special mobile equipment manufactured, designed, or reconstructed for agricultural purposes and, except for incidental uses, exclusively used in the conduct of agricultural operations. “*Implements of husbandry*” includes all-terrain vehicles operated in compliance with section 321.234A, subsection 1, paragraph “a”, fence-line feeders, and vehicles used exclusively for the application of organic or inorganic plant food materials, organic agricultural limestone, or agricultural chemicals. To be considered an implement of husbandry, a self-propelled implement of husbandry must be operated at speeds of thirty-five miles per hour or less. “*Reconstructed*” as used in this subsection means materially altered from the original construction by the removal, addition, or substitution of essential parts, new or used.

A vehicle covered under this subsection, if it otherwise qualifies, may be operated as special mobile equipment and under such circumstances this subsection shall not be applicable to such vehicle, and such vehicle shall not be required to comply with sections 321.384 through

321.423, when such vehicle is moved during daylight hours; however, the provisions of section 321.383 shall remain applicable to such vehicle.

33. “*Intersection*” means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

34. “*Laned highway*” means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

35. “*Light delivery truck*”, “*panel delivery truck*”, or “*pickup*” means any motor vehicle designed to carry merchandise or freight of any kind, not to exceed two thousand pounds.

36. “*Local authorities*” means every county, municipal, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

36A. “*Low-speed vehicle*” means a motor vehicle manufactured in compliance with the national highway and traffic safety administration standards for low-speed vehicles in 49 C.F.R. § 571.500. A low-speed vehicle which is in compliance with the equipment requirements in 49 C.F.R. § 571.500 shall be deemed to be in compliance with all equipment requirements of this chapter.

36B. “*Manufactured home*” is a factory-built structure constructed under authority of 42 U.S.C. § 5403, which is required by federal law to display a seal from the United States department of housing and urban development, and was constructed on or after June 15, 1976.

36C. a. “*Manufactured or mobile home*” means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

b. “*Travel trailer*” means a vehicle without motive power used, manufactured, or constructed to permit its use as a conveyance upon the public streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to eight feet six inches in width and its overall length shall not exceed forty feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the vehicle is used in this state as a place of human habitation for more than ninety consecutive days in one location it shall be classed as a manufactured or mobile home regardless of the size limitations provided in this paragraph.

c. “*Fifth-wheel travel trailer*” means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed forty feet.

d. “*Motor home*” means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in subparagraphs (1), (4), or (5) of this paragraph, of the following permanently installed systems which meet American national standards institute and national fire protection association standards in effect on the date of manufacture:

- (1) Cooking facilities.
- (2) Ice box or mechanical refrigerator.
- (3) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
- (4) Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
- (5) Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.
- (6) A one hundred ten – one hundred fifteen volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

37. “*Manufacturer*” means every person engaged in the business of fabricating or

assembling vehicles of a type required to be registered. It does not include a person who converts, modifies, or alters a completed motor vehicle manufactured by another person. It includes a person who uses a completed motor vehicle manufactured by another person to construct a class “B” motor home as defined in section 321.124.

38. “*Metal tire*” means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

39. Reserved.

40. a. “*Motorcycle*” means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground including a motor scooter but excluding a tractor and a motorized bicycle.

b. “*Motorized bicycle*” means a motor vehicle having a saddle or a seat for the use of a rider, designed to travel on not more than three wheels in contact with the ground, and not capable of operating at a speed in excess of thirty miles per hour on level ground unassisted by human power.

c. “*Bicycle*” means either of the following:

(1) A device having two wheels and having at least one saddle or seat for the use of a rider which is propelled by human power.

(2) A device having two or three wheels with fully operable pedals and an electric motor of less than seven hundred fifty watts (one horsepower), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden, is less than twenty miles per hour.

41. “*Motor truck*” means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over nine persons as passengers.

42. a. “*Motor vehicle*” means a vehicle which is self-propelled and not operated upon rails.

b. “*Used motor vehicle*” or “*secondhand motor vehicle*” or “*used car*” means a motor vehicle of a type subject to registration under the laws of this state which has been sold “*at retail*” as defined in chapter 322 and previously registered in this or any other state.

c. “*New motor vehicle or new car*” means a motor vehicle subject to registration which has not been sold “*at retail*” as defined in chapter 322.

d. “*Car*” or “*automobile*” means a motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

43. Reserved.

44. “*Multipurpose vehicle*” means a motor vehicle designed to carry not more than ten people, and constructed either on a truck chassis or with special features for occasional off-road operation.

45. “*Nonresident*” means every person who is not a resident of this state.

46. “*Official traffic-control devices*” means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

47. “*Official traffic-control signal*” means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

48. “*Operator*” or “*driver*” means every person who is in actual physical control of a motor vehicle upon a highway.

49. “*Owner*” means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of a security agreement with an immediate right of possession vested in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

50. “*Peace officer*” means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 801.4.

51. “*Pedestrian*” means any person afoot.

52. “*Person*” means every natural person, firm, partnership, association, or corporation. Where the term “*person*” is used in connection with the registration of a motor vehicle, it shall include any corporation, association, partnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesperson, or otherwise.

53. “*Pneumatic tire*” means every tire in which compressed air is designed to support the load.

54. “*Private road*” or “*driveway*” means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

54A. “*Product identification number*” or the acronym PIN means a group of unique numerical or alphabetical designations assigned to a complete fence-line feeder, grain cart, or tank wagon by the manufacturer or by the department and affixed to the vehicle, pursuant to rules adopted by the department, as a means of identifying the vehicle or the year of manufacture.

54B. “*Proof of financial liability coverage card*” means either a liability insurance card issued under section 321.20B, a bond insurance card issued under section 321A.24, a security insurance card issued under section 321A.25, or a self-insurance card issued under section 321A.34.

55. “*Railroad*” means a carrier of persons or property upon cars operated upon stationary rails.

56. “*Railroad corporation*” means any corporation organized under the laws of this state or any other state for the purpose of operating the railroad within this state.

57. “*Railroad sign*” or “*signal*” means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

58. “*Railroad train*” means an engine or locomotive with or without cars coupled thereto, operated upon rails.

59. “*Reconstructed vehicle*” means every vehicle of a type required to be registered under this chapter materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used. “*Reconstructed vehicle*” does not include a street rod or replica vehicle.

59A. “*Registration fees*”, unless otherwise specified, means both the annual vehicle registration fee and the fee for new registration, to the extent applicable, for purposes of administering the provisions of this chapter concerning vehicle registration fees.

60. “*Registration year*” means the period of twelve consecutive months beginning on the first day of the month following the month of the birth of the owner of the vehicle for vehicles registered by the county treasurer and the calendar year for vehicles registered by the department or motor trucks and truck tractors with a combined gross weight exceeding five tons which are registered by the county treasurer. For leased vehicles registered by the county treasurer, except for motor trucks and truck tractors with a combined gross weight exceeding five tons, “*registration year*” means the period of twelve consecutive months beginning on the first day of the month following the month in which the lease expires.

61. “*Replica vehicle*” means any completed motor vehicle other than a motorcycle or motorized bicycle with a gross vehicle weight rating of less than ten thousand pounds consisting of a body, frame, and other essential parts, assembled as a reproduction of a vehicle originally manufactured by a generally recognized manufacturer of motor vehicles with the substitution or addition of essential parts to update the vehicle for purposes of safety, performance, or reliability. For purposes of vehicle registration, the model year of a replica vehicle shall be the same as the model year of the motor vehicle that it is designed to resemble.

62. “*Rescue vehicle*” means a motor vehicle which is equipped with rescue, fire, or life support equipment used to assist and rescue persons in emergencies or support emergency personnel in the performance of their duties.

63. “*Residence district*” means the territory within a city contiguous to and including a highway, not comprising a business, suburban, or school district, where forty percent or more of the frontage on such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business.

63A. “*Retractable axle*” means an axle designed with the capability of manipulation or adjustment of the weight on the axle.

64. “*Right-of-way*” means the privilege of the immediate use of the highway.

64A. “*Road tractor*” means every motor vehicle designed and used for drawing other

vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

65. “*Roadway*” means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

66. “*Road work zone*” means the portion of a highway which is identified by posted or moving signs as the site of construction, maintenance, survey, or utility work. The zone starts upon meeting the first sign identifying the zone and continues until a posted or moving sign indicates that the work zone has ended.

67. “*Rural residence district*” means an unincorporated area established by a county board of supervisors which is contiguous to and including a secondary highway, not comprising a business district, where forty percent or more of the frontage of the highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business. For purposes of this subsection, farm houses and farm buildings are not to be considered.

68. “*Safety zone*” means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

68A. “*Salvage pool*” means the business of selling at auction wrecked or salvage vehicles, as defined in section 321.52.

69. “*School bus*” means every vehicle operated for the transportation of children to or from school, except vehicles which are:

- a. Privately owned and not operated for compensation;
- b. Used exclusively in the transportation of the children in the immediate family of the driver;
- c. Operated by a municipally or privately owned urban transit company or a regional transit system as defined in section 324A.1 for the transportation of children as part of or in addition to their regularly scheduled service; or
- d. Designed to carry not more than nine persons as passengers, either school owned or privately owned, which are used to transport pupils to activity events in which the pupils are participants or used to transport pupils to their homes in case of illness or other emergency situations. The vehicles operated under the provisions of this paragraph shall be operated by employees of the school district who are specifically approved by the local superintendent of schools for the assignment.

70. “*School district*” means the territory contiguous to and including a highway for a distance of two hundred feet in either direction from a schoolhouse in a city.

71. “*Semitrailer*” means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Wherever the word “*trailer*” is used in this chapter, same shall be construed to also include “*semitrailer*”.

A “*semitrailer*” shall be considered in this chapter separately from its power unit.

72. “*Sidewalk*” means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

73. “*Solid tire*” means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

74. “*Specially constructed vehicle*” means every vehicle of a type required to be registered under this chapter not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction. A “*specially constructed vehicle*” does not include a street rod or replica vehicle.

75. “*Special mobile equipment*” means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including road construction or maintenance machinery and ditch-digging apparatus. This description does not exclude other vehicles which are within the general terms of this subsection.

76. “*Special truck*” means a motor truck or truck tractor not used for hire with a gross weight registration of six through thirty-two tons used by a person engaged in farming to

transport commodities produced only by the owner, or to transport commodities purchased by the owner for use in the owner's own farming operation or occasional use for charitable purposes. "Special truck" also means a motor truck or truck tractor not used for hire with a gross weight registration of six through thirty-two tons used by a person engaged in farming who assists another person engaged in farming through an exchange of services. A "special truck" does not include a truck tractor operated more than fifteen thousand miles annually.

77. "Stinger-steered automobile transporter" means any vehicle combination designed and used specifically for the transport of assembled highway vehicles, recreational vehicles, or boats in which the fifth wheel is located on a drop frame located below and behind the rearmost axle of the power unit.

78. "Street" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

78A. "Street rod" means any car or motor truck with a gross vehicle weight rating of less than ten thousand pounds required to be registered under this chapter, manufactured by a generally recognized manufacturer of motor vehicles prior to the year 1949, which may contain a body or frame not manufactured by the original manufacturer, or any motor vehicle designed and manufactured to resemble a motor vehicle manufactured prior to the year 1949. For purposes of vehicle registration, the model year of a street rod shall be the same as the model year of the motor vehicle that it is designed to resemble.

79. "Suburban district" means all other parts of a city not included in the business, school, or residence districts.

80. "Tandem axle" means any two or more consecutive axles whose centers are more than forty inches but not more than ninety-six inches apart.

80A. "Tank wagon" means a vehicle designed to carry liquid animal or human excrement.

81. "Through (or thru) highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter or such entrances are controlled by a peace officer or traffic-control signal. The term "arterial" is synonymous with "through" or "thru" when applied to highways of this state.

82. "Tourist attraction" means a business, activity, service, or site where a major portion of the product or service provided is tourist oriented.

83. "Tourist-oriented directional sign" means a sign providing identification and directional information for a tourist attraction.

83A. "Towing or recovery vehicle" means a motor vehicle equipped with booms, winches, slings, or wheel lifts used to tow, recover, or transport other motor vehicles.

83B. "Tracked implement of husbandry" means a fence-line feeder, grain cart, or tank wagon that is mounted on a chassis attached to a pair of tracks that transfer the weight of the implement to the ground or the roadway surface.

84. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

85. "Trailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

86. Reserved.

87. "Transporter" means a person engaged in the business of delivering vehicles of a type required to be registered or titled in this state who has received authority to make delivery as specified by rules adopted by the department.

88. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn. However, a truck tractor may have a box, deck, or plate for carrying freight, mounted on the frame behind the cab, and forward of the fifth-wheel connection point.

89. "Used vehicle parts dealer" means a person engaged in the business of selling bodies, parts of bodies, frames, or component parts of used vehicles subject to registration under this chapter.

90. “*Vehicle*” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. “*Vehicle*” does not include:

- a. Any device moved by human power.
- b. Any device used exclusively upon stationary rails or tracks.
- c. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.
- d. Any steering axle, dolly, auxiliary axle, or other integral part of another vehicle which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

91. “*Vehicle identification number*” or the initials VIN mean the numerical and alphabetical designations affixed to a vehicle or a component part of a vehicle by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the vehicle.

92. “*Vehicle rebuilder*” means a person engaged in the business of rebuilding or restoring to operating condition vehicles subject to registration under this chapter, which have been damaged or wrecked.

93. “*Vehicle salvager*” means a person engaged in the business of scrapping vehicles, dismantling or storing wrecked or damaged vehicles or selling reusable parts of vehicles or storing vehicles not currently registered which vehicles are subject to registration under this chapter.

94. “*Where a vehicle is kept*” shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if said owner is a nonresident of the state.

[S13, §1571-m1, -m20; C24, 27, §4863, 5030, 13012; C31, 35, §4863, 4960-d1, 5030, 13012; C39, §5000.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.1; 81 Acts, ch 101, §1; 81 Acts 2d Ex, ch 2, §5; 82 Acts, ch 1056, §1, ch 1122, §1, ch 1254, §1]

82 Acts, ch 1062, §1, 2, 38; 83 Acts, ch 9, §3, 8; 83 Acts, ch 24, §1, 12; 84 Acts, ch 1219, §21; 84 Acts, ch 1252, §1; 84 Acts, ch 1292, §2; 85 Acts, ch 21, §41; 85 Acts, ch 35, §1, 2; 85 Acts, ch 37, §1; 85 Acts, ch 40, §1; 86 Acts, ch 1056, §1; 86 Acts, ch 1071, §1; 86 Acts, ch 1210, §1, 2; 86 Acts, ch 1237, §19; 86 Acts, ch 1238, §13; 87 Acts, ch 170, §2 – 4; 87 Acts, ch 186, §1, 2; 87 Acts, ch 189, §1; 88 Acts, ch 1047, §1; 88 Acts, ch 1083, §1, 2; 89 Acts, ch 34, §1; 89 Acts, ch 83, §40, 41; 89 Acts, ch 118, §1; 90 Acts, ch 1183, §3; 90 Acts, ch 1230, §6 – 14; 91 Acts, ch 56, §1; 91 Acts, ch 219, §14; 92 Acts, ch 1048, §1; 92 Acts, ch 1104, §1; 92 Acts, ch 1175, §19, 28; 93 Acts, ch 114, §1; 93 Acts, ch 139, §7; 94 Acts, ch 1087, §1; 95 Acts, ch 10, §1; 95 Acts, ch 55, §1, 2; 95 Acts, ch 56, §1; 95 Acts, ch 118, §1, 2; 96 Acts, ch 1005, §1; 96 Acts, ch 1129, §113; 97 Acts, ch 100, §1; 97 Acts, ch 104, §5; 97 Acts, ch 108, §1, 2; 97 Acts, ch 139, §1, 17, 18; 97 Acts, ch 148, §7, 9; 98 Acts, ch 1073, §1 – 4; 98 Acts, ch 1075, §20; 98 Acts, ch 1121, §8; 99 Acts, ch 13, §1 – 3, 29; 99 Acts, ch 108, §1 – 3; 99 Acts, ch 188, §1; 2000 Acts, ch 1005, §1; 2000 Acts, ch 1016, §1; 2000 Acts, ch 1025, §1, 6; 2000 Acts, ch 1133, §1; 2001 Acts, ch 32, §15; 2001 Acts, ch 132, §1; 2001 Acts, ch 153, §15, 17; 2001 Acts, ch 176, §80; 2002 Acts, ch 1063, §17, 18; 2003 Acts, ch 6, §1; 2003 Acts, ch 24, §2; 2004 Acts, ch 1013, §1, 35; 2004 Acts, ch 1132, §80; 2004 Acts, ch 1175, §397, 400; 2005 Acts, ch 8, §2, 3; 2005 Acts, ch 20, §4; 2006 Acts, ch 1068, §6, 7, 41; 2008 Acts, ch 1018, §1 – 3; 2008 Acts, ch 1021, §1 – 4; 2008 Acts, ch 1032, §106; 2008 Acts, ch 1044, §1 – 4, 8; 2008 Acts, ch 1113, §2, 11, 38; 2009 Acts, ch 90, §1; 2009 Acts, ch 130, §20; 2010 Acts, ch 1035, §1; 2010 Acts, ch 1061, §111; 2010 Acts, ch 1186, §3; 2011 Acts, ch 38, §2

Subsection 15 amended

### **321.19 Exemptions — distinguishing plates — definitions of urban transit company and regional transit system.**

1. All vehicles owned or leased for a period of sixty days or more by the government and used in the transaction of official business by the representatives of foreign governments or by officers, boards, or departments of the government of the United States, and by the state, counties, municipalities and other political subdivisions of the state including vehicles used by an urban transit company operated by a municipality or a regional transit system,

and self-propelling vehicles used neither for the conveyance of persons for hire, pleasure, or business nor for the transportation of freight other than those used by an urban transit company operated by a municipality or a regional transit system, all fire trucks, providing they are not owned and operated for a pecuniary profit, and authorized emergency vehicles used only in disaster relief owned and operated by an organization not operated for pecuniary profit, are exempted from the payment of the registration fees imposed by this chapter, except as provided for urban transit companies in subsection 2, but are not exempt from the penalties provided in this chapter.

The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates except plates on state patrol vehicles shall bear the word "official" and the department shall keep a separate record. Registration plates issued for state patrol vehicles, except unmarked patrol vehicles, shall bear two red stars on a yellow background, one before and one following the registration number on the plate, which registration number shall be the officer's badge number. Registration plates issued for county sheriff's patrol vehicles shall display one seven-pointed gold star followed by the letter "S" and the call number of the vehicle. However, the director of the department of administrative services or the director of transportation may order the issuance of regular registration plates for any exempted vehicle used by peace officers in the enforcement of the law, persons enforcing chapter 124 and other laws relating to controlled substances, persons in the department of justice, the alcoholic beverages division of the department of commerce, disease investigators of the Iowa department of public health, the department of inspections and appeals, and the department of revenue, who are regularly assigned to conduct investigations which cannot reasonably be conducted with a vehicle displaying "official" state registration plates, persons in the Iowa lottery authority whose regularly assigned duties relating to security or the carrying of lottery tickets cannot reasonably be conducted with a vehicle displaying "official" registration plates, persons in the economic development authority who are regularly assigned duties relating to existing industry expansion or business attraction, and mental health professionals or health care professionals who provide off-site or in-home medical or mental health services to clients of publicly funded programs. For purposes of sale of exempted vehicles, the exempted governmental body, upon the sale of the exempted vehicle, may issue for in-transit purposes a pasteboard card bearing the words "Vehicle in Transit", the name of the official body from which the vehicle was purchased, together with the date of the purchase plainly marked in at least one-inch letters, and other information required by the department. The in-transit card is valid for use only within forty-eight hours after the purchase date as indicated on the bill of sale which shall be carried by the driver.

2. "*Urban transit company*" means any person, firm, corporation, company, or municipality which operates buses or trolley cars or both, primarily upon the streets of cities over well-defined routes between certain termini, for the transportation of passengers for a uniform fare, and which accepts for passengers all who present themselves for transportation without discrimination up to the limit of the capacity of each vehicle. Included are street railways, plants, equipment, property, and rights, used and useful in the transportation of passengers. Motor carriers and interurbans subject to the jurisdiction of the state department of transportation, and taxicabs, are not included.

The department, in accordance with subsection 1, shall furnish distinguishing plates for vehicles used by urban transit companies operated by a municipality. No other provision of law providing for the payment of taxes, registration, or license fees for vehicles shall be applicable to any bus, car, or vehicle for the transportation of passengers owned and operated by any urban transit company.

Chapter 326 is not applicable to urban transit companies or systems.

3. "*Regional transit system*" means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into

one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

[C24, 27, 31, 35, §4867, 4922; C39, §5001.03; C46, 50, 54, 58, 62, §321.19; C66, 71, 73, §321.19, 386C.1 – 386C.3; C75, 77, 79, 81, §321.19]

83 Acts, ch 40, §1; 84 Acts, ch 1253, §1 – 3; 85 Acts, ch 67, §34; 85 Acts, ch 115, §2; 86 Acts, ch 1042, §10; 92 Acts, ch 1244, §41; 95 Acts, ch 118, §5; 96 Acts, ch 1034, §19; 96 Acts, ch 1066, §1; 96 Acts, ch 1211, §33; 97 Acts, ch 104, §6; 97 Acts, ch 158, §1; 98 Acts, ch 1028, §1; 98 Acts, ch 1074, §21; 99 Acts, ch 141, §37; 2003 Acts, ch 145, §244; 2003 Acts, ch 178, §109, 121; 2003 Acts, ch 179, §142; 2005 Acts, ch 35, §31; 2006 Acts, ch 1022, §1; 2008 Acts, ch 1113, §49; 2011 Acts, ch 118, §85, 89

See also §8A.362, 321.170

Code editor directive applied

### **321.34 Plates or validation sticker furnished — retained by owner — special plates.**

1. *Plates issued.* The county treasurer upon receiving application, accompanied by proper fee, for registration of a vehicle shall issue to the owner one registration plate for a motorcycle, motorized bicycle, truck tractor, trailer, or semitrailer and two registration plates for every other motor vehicle. The registration plates, including special registration plates, shall be assigned to the owner of a vehicle. When the owner of a registered vehicle transfers or assigns ownership of the vehicle to another person, the owner shall remove the registration plates from the vehicle. The owner shall forward the plates to the county treasurer where the vehicle is registered or the owner may have the plates assigned to another vehicle within thirty days after transfer, upon payment of the fees required by law. The owner shall immediately affix registration plates retained by the owner to another vehicle owned or acquired by the owner, providing the owner complies with section 321.46. The department shall adopt rules providing for the assignment of registration plates to the transferee of a vehicle for which a credit is allowed under section 321.46, subsection 6.

#### *2. Validation stickers.*

a. In lieu of issuing new registration plates each registration year for a vehicle renewing registration, the department may reassign the registration plates previously issued to the vehicle and may adopt and prescribe an annual validation sticker indicating payment of annual registration fees. The department shall issue one validation sticker for each set of registration plates. The sticker shall specify the month and year of expiration of the registration plates. The sticker shall be displayed only on the rear registration plate, except that the sticker shall be displayed on the front registration plate of a truck tractor.

b. The state department of transportation shall adopt rules to provide for the placement of the motor vehicle registration validation sticker.

3. *Radio operators plates.* The owner of an automobile, motorcycle, trailer, or motor truck who holds an amateur radio license issued by the federal communications commission may, upon written application to the county treasurer accompanied by a fee of five dollars, order special registration plates bearing the call letters authorized the radio station covered by the person's amateur radio license. When received by the county treasurer, such special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. Not more than one set of special registration plates may be issued to an applicant. Said fee shall be in addition to and not in lieu of the fee for regular registration plates. Special registration plates must be surrendered upon expiration of the owner's amateur radio license and the owner shall thereupon be entitled to the owner's regular registration plates. The county treasurer shall validate special plates in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

4. *Multiyear plates.* In lieu of issuing annual registration plates for trailers, semitrailers, motor trucks, and truck tractors, the department may issue a multiyear registration plate for a three-year period or a permanent registration plate for trailers and semitrailers licensed under chapter 326, and a permanent registration plate for motor trucks and truck tractors licensed under chapter 326, upon payment of the appropriate registration fee. Payment of

fees for trailers and semitrailers for a permanent registration plate shall, at the option of the registrant, be made at five-year intervals or on an annual basis. Fees from three-year and five-year payments shall not be reduced or prorated. Payment of fees for motor trucks and truck tractors shall be made on an annual basis.

5. *Personalized registration plates.*

a. Upon application and the payment of a fee of twenty-five dollars, the director may issue to the owner of a motor vehicle registered in this state or a trailer or travel trailer registered in this state, personalized registration plates marked with up to seven initials, letters, or combination of numerals and letters requested by the owner. However, personalized registration plates for motorcycles and motorized bicycles shall be marked with no more than six initials, letters, or combinations of numerals and letters. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for issuance of the personalized registration plates shall be in addition to the regular annual registration fee.

b. The county treasurer shall validate personalized registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee. A person renewing a personalized registration plate within one month following the time requirements under section 321.40 may renew the personalized plate without paying the additional registration fee under paragraph “a” but shall pay the five-dollar fee in addition to the regular annual registration fee and any penalties subject to regular registration plate holders for late renewal.

c. The fees collected by the director under this subsection shall be paid to the treasurer of state and credited by the treasurer of state as provided in section 321.145.

6. *Sample vehicle registration plates.* Vehicle registration plates displaying the general design of regular registration plates, with the word “sample” displayed on the plate, may be furnished to any person upon payment of a fee of three dollars, except that such plates may be furnished to governmental agencies without cost. Sample registration plates shall not be attached to a vehicle moved on the highways of this state.

7. *Collegiate plates.*

a. Upon application and payment of the proper fees, the director may issue to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, trailer over two thousand pounds, or travel trailer registered in this state, collegiate registration plates created pursuant to this subsection. Upon receipt of the collegiate registration plates, the applicant shall surrender the regular registration plates to the county treasurer.

b. Collegiate registration plates shall be designed for each of the three state universities. The collegiate registration plates shall be designated as follows:

(1) The letters “ISU” followed by a four-digit number all in cardinal on a gold background for Iowa state university of science and technology.

(2) The letters “UNI” followed by a four-digit number all in purple on a gold background for the university of northern Iowa.

(3) The letters “UI” followed by a four-digit number all in black on a gold background for the state university of Iowa.

(4) In lieu of the letter-number designation provided under subparagraphs (1) through (3), the collegiate registration plates may be designated in the manner provided for personalized registration plates under subsection 5, paragraph “a”, in the colors designated for the respective universities under subparagraphs (1) through (3).

c. (1) The fees for a collegiate registration plate are as follows:

(a) A registration fee of twenty-five dollars.

(b) A special collegiate registration fee of twenty-five dollars.

(2) These fees are in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall credit monthly from the statutory allocations fund created under section 321.145, subsection 2, to Iowa state university of science and technology, the university of northern Iowa, and the state university of Iowa respectively, the amount of the special collegiate registration fees collected in the previous

month for collegiate registration plates designed for the university. The moneys credited are appropriated to the respective universities to be used for scholarships for students attending the universities.

d. The county treasurer shall validate collegiate registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee.

e. A collegiate registration plate shall not be issued if its combination of alphanumeric characters are identical to those contained on a current personalized registration plate issued under subsection 5. However, the owner of a motor vehicle who has a personalized registration plate issued for the motor vehicle may, after proper application and payment of fees, be issued a collegiate registration plate containing the same alphanumeric characters as those on the personalized plate. Upon receipt of the collegiate registration plates, the owner shall surrender the personalized registration plates to the county treasurer.

7A. *Collegiate plates — Private four-year colleges and universities.*

a. Upon application by a private four-year college or university located in this state and payment of the initial set-up costs for establishing the collegiate plate, the department, in consultation with the college or university, may design a special collegiate registration plate displaying the colors associated with the college or university.

b. Upon application and payment of the proper fees, the director may issue to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, trailer over two thousand pounds, or travel trailer registered in this state, collegiate registration plates created pursuant to this subsection. The fee for the issuance of collegiate registration plates is twenty-five dollars, which fee is in addition to the regular annual registration fee for the vehicle. An applicant may obtain a personalized collegiate registration plate upon payment of the additional fee for a personalized plate as provided in subsection 5 in addition to the collegiate plate fee and the regular registration fee. The county treasurer shall validate collegiate registration plates issued under this subsection in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee. Upon receipt of the collegiate registration plates, the applicant shall surrender the regular registration plates to the county treasurer.

c. A personalized collegiate registration plate shall not be issued if its combination of alphanumeric characters are identical to those contained on a current personalized registration plate issued under subsection 5. However, the owner of a motor vehicle who has a personalized registration plate issued for the motor vehicle may, after proper application and payment of fees, be issued a collegiate registration plate containing the same alphanumeric characters as those on the personalized plate. Upon receipt of the collegiate registration plates, the owner shall surrender the personalized registration plates to the county treasurer.

8. *Medal of honor plates.*

a. The owner of a motor vehicle subject to registration under section 321.109, subsection 1, motorcycle, trailer, or motor truck who has been awarded the medal of honor may, upon written application to the department, order special registration plates which shall be red, white, and blue in color and shall bear an emblem of the medal of honor and an identifying number. Each applicant applying for special registration plates under this subsection may order only one set of registration plates under this subsection. The application is subject to approval by the department and the special registration plates shall be issued at no charge to the applicant in exchange for the registration plates previously issued to the person. A person who is issued special plates under this subsection is exempt from payment of any annual registration fee for the motor vehicle bearing the special plates. The department shall validate the special plates in the same manner as regular registration plates are validated under this section. The department shall not issue special registration plates until service organizations in the state have furnished the department either the special dies or the cost of the special dies necessary for the manufacture of the special registration plate.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use the special plates subject to registration of the special plates in the surviving spouse's name. If the surviving spouse remarries, the surviving spouse shall return

the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

8A. *Ex-prisoner of war special plates.*

a. The owner of a motor vehicle subject to registration under section 321.109, subsection 1, motorcycle, trailer, or motor truck who was a prisoner of war during a time of military conflict may, upon written application to the department, order only one set of special registration plates with an ex-prisoner of war processed emblem. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was a prisoner of war as described in this subsection. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

9. *Leased vehicles.* Registration plates under this section, including disabled veteran plates specified in section 321.105, may be issued to the lessee of a motor vehicle if the lessee provides evidence of a lease for a period of more than sixty days and if the lessee complies with the requirements, under this section, for issuance of the specific registration plates.

10. *Fire fighter plates.*

a. An owner referred to in subsection 12 who is a current or retired member of a paid or volunteer fire department may, upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa fire fighters' associations, which signify that the applicant is a current or retired member of a paid or volunteer fire department.

b. The application shall be approved by the department in consultation with representatives designated by the Iowa fire fighters' associations, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. An applicant who is the owner of a business-trade truck or special truck shall not be issued special fire fighter registration plates for more than one vehicle. The fee for the special plates is twenty-five dollars which shall be paid in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

c. The special fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the Paul Ryan memorial fire fighter safety training fund created pursuant to section 100B.12 the amount of the special fees collected in the previous month for the fire fighter plates.

d. For purposes of this subsection, a person is considered to be retired if the person is recognized by the chief of the fire department where the individual served, and on record, as officially retired from the fire department. Special registration plates with a fire fighter emblem shall be surrendered, as provided in subsection 12, in exchange for regular registration plates upon termination of the motor vehicle owner's membership in the paid or volunteer fire department, unless the person is a retired member in good standing.

10A. *Emergency medical services plates.*

a. The owner of a motor vehicle referred to in subsection 12 who is a current member of a paid or volunteer emergency medical services agency may, upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa emergency medical services association, which plates signify that the applicant is a current member of a paid or volunteer emergency medical

services agency. The application shall be approved by the department, in consultation with representatives designated by the Iowa emergency medical services association, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates is twenty-five dollars which is in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

b. The special fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the emergency medical services fund created in section 135.25 the amount of the special fees collected in the previous month for issuance of emergency medical services plates.

11. *Natural resources plates.*

a. Upon application and payment of the proper fees, the director may issue natural resources plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Natural resources plates shall be designed by the department in cooperation with the department of natural resources which design shall include on the plate the name of the county where the vehicle is registered.

c. (1) The special natural resources fee for letter-number designated natural resources plates is forty-five dollars. The fee for personalized natural resources plates is forty-five dollars which shall be paid in addition to the special natural resources fee of forty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall credit monthly from the statutory allocations fund created under section 321.145, subsection 2, to the Iowa resources enhancement and protection fund created pursuant to section 455A.18, the amount of the special natural resources fees collected in the previous month for the natural resources plates.

(2) From the moneys credited to the Iowa resources enhancement and protection fund under subparagraph (1), ten dollars of the fee collected for each natural resources plate issued, and fifteen dollars from each renewal fee, shall be allocated to the department of natural resources wildlife bureau to be used for nongame wildlife programs.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special natural resources fee for letter-number designated plates is twenty-five dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized natural resources plates is five dollars which shall be paid in addition to the annual special natural resources fee and the regular annual registration fee. The annual special natural resources fee shall be credited as provided under paragraph "c".

11A. *Love our kids plates.*

a. Upon application and payment of the proper fees, the director may issue "love our kids" plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Love our kids plates shall be designed by the department in cooperation with the Iowa department of public health.

c. The special fee for letter-number designated love our kids plates is thirty-five dollars. The fee for personalized love our kids plates is twenty-five dollars, which shall be paid in addition to the special love our kids fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the Iowa department of public health the amount of the special fees collected in the previous month for the love our kids plates.

Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special love our kids fee for letter-number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee for personalized love our kids plates is five dollars, which shall be paid in addition to the annual special love our kids fee and the regular annual registration fee. The annual love our kids fee shall be credited as provided under paragraph “c”.

11B. *Motorcycle rider education plates.*

a. Upon application and payment of the proper fees, the director may issue “motorcycle rider education” plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Motorcycle rider education plates shall be designed by the department.

c. The special fee for letter-number designated motorcycle rider education plates is thirty-five dollars. The fee for personalized motorcycle rider education plates is twenty-five dollars, which shall be paid in addition to the special motorcycle rider education fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the department for use in accordance with section 321.179, the amount of the special fees collected in the previous month for the motorcycle rider education plates.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special motorcycle rider education fee for letter-number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee for personalized motorcycle rider education plates is five dollars, which shall be paid in addition to the annual special motorcycle rider education fee and the regular annual registration fee. The annual motorcycle rider education fee shall be credited as provided under paragraph “c”.

12. *Special registration plates — general provisions.*

a. The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer may, upon written application to the department, order special registration plates with a distinguishing processed emblem as authorized by this section or as approved by the department. The fee for the issuance of special registration plates is twenty-five dollars for each vehicle, unless otherwise provided by this section, which fee is in addition to the regular annual registration fee. The county treasurer shall validate special registration plates with a distinguishing processed emblem in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

b. Upon receipt of a special registration plate with a distinguishing processed emblem as authorized by this section or as approved by the department, the applicant shall surrender the regular registration plates to the county treasurer. An applicant no longer eligible for a special registration plate shall surrender the special vehicle registration plates to the county treasurer for issuance of regular registration plates.

c. An applicant may, upon payment of the additional fee for a personalized plate as provided in subsection 5, obtain a personalized special registration plate with a processed emblem. Personalized plates authorized by this section with the processed emblem shall be limited to no more than five initials, letters, or combinations of numerals and letters.

d. A special registration plate issued for a motorcycle or motorized bicycle under this section shall be designated in the manner provided for personalized registration plates under subsection 5, paragraph “a”.

12A. *Special registration plates — armed forces services.*

a. An owner of a vehicle referred to in subsection 12 who applies for any type of special registration plates associated with service in the United States armed forces shall be issued one set of the special registration plates at no charge, but shall be subject to the annual registration fee of fifteen dollars, if the owner is eligible for, but has relinquished to the department or the county treasurer or has not been issued, ex-prisoner of war or legion of merit special registration plates under this section.

b. An owner of a vehicle referred to in subsection 12 who applies for any type of special registration plates associated with service in the United States armed forces shall be issued one set of the special registration plates at no charge and subject to no annual registration fee if the owner is eligible for, but has relinquished to the department or the county treasurer or has not been issued, medal of honor registration plates under subsection 8 or disabled veteran registration plates under section 321.105.

c. The owner shall provide the appropriate information regarding the owner's eligibility for any of the special registration plates described in paragraph "a" or "b", and regarding the owner's eligibility for the special registration plates for which the owner has applied, as required by the department.

d. The surviving spouse of a person who was issued special plates under this subsection may continue to use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the same annual registration fee, if applicable. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

13. *New special registration plates — department review.*

a. Any person may submit a request to the department to recommend a new special registration plate with a processed emblem. The request shall provide a proposed design for the processed emblem, the purpose of the special registration plate with the processed emblem, any eligibility requirements for purchase or receipt of the special registration plate with the processed emblem, and evidence there is sufficient interest in the special registration plate with the processed emblem to pay implementation costs. The department shall consider the request and make a recommendation based upon criteria established by the department which shall include consideration of the information included in the request, the number of special registration plates with processed emblems currently authorized, and any other relevant factors.

b. If a request for a proposed special registration plate with a processed emblem meets the criteria established by the department, the department shall, in consultation with the persons seeking the special registration plate with the processed emblem, approve a recommended design for the processed emblem, and propose eligibility requirements for the special registration plate with the processed emblem.

c. The department shall adopt rules pursuant to chapter 17A regarding the approval and issuance of special registration plates.

d. A state agency may submit a request to the department recommending a special registration plate. The alternate fee for letter-number designated plates is thirty-five dollars with a ten dollar annual special renewal fee. The fee for personalized plates is twenty-five dollars which is in addition to the alternative fee of thirty-five dollars with an annual personalized plate renewal fee of five dollars which is in addition to the special renewal fee of ten dollars. The alternate fees are in addition to the regular annual registration fee. The alternate fees collected under this paragraph shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall credit monthly from the statutory allocations fund created under section 321.145, subsection 2, the amount of the alternate fees collected in the previous month to the state agency that recommended the special registration plate.

14. *Persons with disabilities special plates.* An owner referred to in subsection 12 or an owner of a trailer used to transport a wheelchair who is a person with a disability, or who is the parent or guardian of a child who resides with the parent or guardian owner and who is a person with a disability, as defined in section 321L.1, may, upon written application to the department, order special registration plates with a persons with disabilities processed

emblem designed by the department bearing the international symbol of accessibility. The special registration plates with a persons with disabilities processed emblem shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148 or 149, a physician assistant licensed under chapter 148C, an advanced registered nurse practitioner licensed under chapter 152, or a chiropractor licensed under chapter 151, written on the physician's, physician assistant's, nurse practitioner's, or chiropractor's stationery, stating the nature of the applicant's or the applicant's child's disability and such additional information as required by rules adopted by the department, including proof of residency of a child who is a person with a disability. If the application is approved by the department, the special registration plates with a persons with disabilities processed emblem shall be issued to the applicant. There shall be no fee in addition to the regular annual registration fee for the special registration plates with a persons with disabilities processed emblem. The authorization for special registration plates with a persons with disabilities processed emblem shall not be renewed without the applicant furnishing evidence to the department that the owner of the vehicle or the owner's child is still a person with a disability as defined in section 321L.1. An owner who has a child who is a person with a disability shall provide satisfactory evidence to the department that the child with a disability continues to reside with the owner. The registration plates with a persons with disabilities processed emblem shall be surrendered in exchange for regular registration plates as provided in subsection 12 when the owner of the vehicle or the owner's child no longer qualifies as a person with a disability as defined in section 321L.1 or when the owner's child who is a person with a disability no longer resides with the owner.

15. *Legion of merit special plates.*

a. The owner of a motor vehicle subject to registration under section 321.109, subsection 1, motorcycle, trailer, or motor truck who has been awarded the legion of merit shall be issued one set of special registration plates with a legion of merit processed emblem, upon written application to the department and presentation of satisfactory proof of the award of the legion of merit as established by the Congress of the United States. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was awarded the legion of merit. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

16. *National guard special plates.*

a. An owner referred to in subsection 12 who is a member of the national guard, as defined in chapter 29A, may, upon written application to the department, order special registration plates with a national guard processed emblem with the emblem designed by the department in cooperation with the adjutant general which emblem signifies that the applicant is a member of the national guard. The application shall be approved by the department in consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraphs "a" and "c", from the issuance and annual validation of letter-number designated and personalized national guard plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph "a", in the previous month for national guard plates. Special registration plates with a national guard processed emblem shall be surrendered, as provided in subsection 12, in exchange for regular registration plates upon termination of the owner's membership in the active national guard.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

17. *Pearl Harbor special plates.*

a. An owner referred to in subsection 12 who was at Pearl Harbor, Hawaii, as a member of the armed services of the United States on December 7, 1941, may, upon written application to the department, order special registration plates with a Pearl Harbor processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department. The special plate fees collected by the director under subsection 12, paragraphs "a" and "c", from the issuance and annual validation of letter-number designated and personalized Pearl Harbor plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph "a", in the previous month for Pearl Harbor plates.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

18. *Purple heart special plates.*

a. An owner referred to in subsection 12 who was awarded a purple heart medal by the United States government for wounds received in military or naval combat against an armed enemy of the United States may, upon written application to the department and presentation of satisfactory proof of the award of the purple heart medal, order special registration plates with a purple heart processed emblem. The design of the emblem shall include a representation of a purple heart medal and ribbon. The application is subject to approval by the department in consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraphs "a" and "c", from the issuance and annual validation of letter-number designated and personalized purple heart plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph "a", in the previous month for purple heart plates.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

19. *United States armed forces retired special plates.*

a. An owner referred to in subsection 12 who is a retired member of the United States armed forces may, upon written application to the department and upon presentation of satisfactory proof of membership, order special registration plates with a United States armed forces retired processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department. For purposes of this subsection, a person is considered to be retired if the person is recognized by the United States armed forces as retired from the United States armed forces. The special plate fees collected by the director under subsection 12, paragraphs "a" and "c", from the issuance and annual validation of letter-number designated

and personalized armed forces retired plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph “a”, in the previous month for armed forces retired plates.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse’s name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

20. *Silver or bronze star plates.*

a. An owner referred to in subsection 12 who was awarded a silver or a bronze star by the United States government, may, upon written application to the department and presentation of satisfactory proof of the award of the silver or bronze star, order special registration plates with a silver or bronze star processed emblem. The emblem shall be designed by the department in consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraphs “a” and “c”, from the issuance and annual validation of letter-number designated and personalized silver star and bronze star plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph “a”, in the previous month for silver star and bronze star plates.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse’s name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

20A. *Distinguished service, navy, or air force cross plates.*

a. An owner referred to in subsection 12 who was awarded a distinguished service cross, a navy cross, or an air force cross by the United States government may, upon written application to the department and presentation of satisfactory proof of the award, order special registration plates with a distinguished service cross, navy cross, or air force cross processed emblem. The emblem shall be designed by the department in consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraphs “a” and “c”, from the issuance and annual validation of letter-number designated and personalized distinguished service cross, navy cross, and air force cross plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph “a”, in the previous month for distinguished service cross, navy cross, and air force cross plates.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse’s name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

20B. *Soldier’s, navy and marine corps, or airman’s medal plates.*

a. An owner referred to in subsection 12 who was awarded a soldier’s medal, a navy and marine corps medal, or an airman’s medal by the United States government may, upon written application to the department and presentation of satisfactory proof of the award, order special registration plates with a soldier’s medal, navy and marine corps medal, or airman’s medal processed emblem. The emblem shall be designed by the department in

consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraphs “a” and “c”, from the issuance and annual validation of letter-number designated and personalized soldier’s medal, navy and marine corps medal, and airman’s medal plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph “a”, in the previous month for soldier’s medal, navy and marine corps medal, and airman’s medal plates.

b. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse’s name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

20C. *Combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, and combat medical badge plates.*

a. The department, in consultation with the adjutant general, shall design combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, and combat medical badge distinguishing processed emblems. Upon receipt of two hundred fifty orders for combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, or combat medical badge special registration plates, accompanied by a start-up fee of twenty dollars per order, the department shall begin issuing special registration plates with the applicable distinguishing processed emblem as provided in paragraphs “b” and “c”. The minimum order requirement shall apply separately to each of the special registration plates created under this subsection.

b. An owner referred to in subsection 12 who was awarded a combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, or combat medical badge by the United States government may, upon written application to the department and presentation of satisfactory proof of the award, order special registration plates with a combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, or combat medical badge processed emblem. The special plate fees collected by the director under subsection 12, paragraphs “a” and “c”, from the issuance and annual validation of letter-number designated and personalized combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, and combat medical badge plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph “a”, in the previous month for combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, and combat medical badge plates.

c. The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse’s name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

21. *Iowa heritage special plates.*

a. An owner referred to in subsection 12 may, upon written application to the department, order special registration plates with an Iowa heritage emblem. The emblem shall contain a picture of the American gothic house and the words “Iowa Heritage” and shall be designed by the department in consultation with the state historical society of Iowa.

b. The special Iowa heritage fee for letter-number designated plates is thirty-five dollars. The special fee for personalized Iowa heritage plates is twenty-five dollars which shall be paid in addition to the special fee of thirty-five dollars. The annual special Iowa heritage fee is ten

dollars for letter-number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee.

c. The special fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall credit monthly from the statutory allocations fund created under section 321.145, subsection 2, to the Iowa heritage fund created under section 303.9A the amount of the special fees collected in the previous month for the Iowa heritage plates.

22. *Education plates.*

a. An owner referred to in subsection 12, upon written application to the department, may order special registration plates with an education emblem. The education emblem shall be designed by the department in cooperation with the department of education.

b. The special school transportation fee for letter-number designated education plates is thirty-five dollars. The fee for personalized education plates is twenty-five dollars, which shall be paid in addition to the special school transportation fee of thirty-five dollars. The annual special school transportation fee is ten dollars for letter-number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the school budget review committee in accordance with section 257.31, subsection 17, the amount of the special school transportation fees collected in the previous month for the education plates.

23. *Breast cancer awareness plates.*

a. Upon application and payment of the proper fees, the director may issue breast cancer awareness plates to an owner of a motor vehicle referred to in subsection 12.

b. Breast cancer awareness plates shall contain an image of a pink ribbon and shall be designed by the department in consultation with the Susan G. Komen foundation.

c. The special fee for letter-number designated breast cancer awareness plates is thirty-five dollars. The fee for personalized breast cancer awareness plates is twenty-five dollars, which shall be paid in addition to the special breast cancer awareness fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the Iowa department of public health the amount of the special fees collected in the previous month for the breast cancer awareness plates and such funds are appropriated to the Iowa department of public health. The Iowa department of public health shall distribute one hundred percent of the funds received monthly in the form of grants to support breast cancer screenings for both men and women who meet eligibility requirements like those established by the Susan G. Komen foundation. In the awarding of grants, the Iowa department of public health shall give first consideration to affiliates of the Susan G. Komen foundation and similar nonprofit organizations providing for breast cancer screenings at no cost in Iowa. Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special breast cancer awareness fee for letter-number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual special fee for personalized breast cancer awareness plates is five dollars, which shall be paid in addition to the annual special breast cancer awareness fee and the regular annual registration fee. The annual special breast cancer awareness fee shall be credited and transferred as provided under paragraph "c".

24. *Gold star plates.* An owner referred to in subsection 12 who is the surviving spouse, parent, child, or sibling of a deceased member of the United States armed forces who died while serving on active duty during a time of military conflict or who died as a result of such service may order special registration plates bearing a gold star emblem upon written

application to the department accompanied by satisfactory supporting documentation as determined by the department. The gold star emblem shall be designed by the department in cooperation with the commission of veterans affairs. The special plate fees collected by the director under subsection 12, paragraphs “a” and “c”, from the issuance and annual validation of letter-number designated and personalized gold star plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph “a”, in the previous month for gold star plates.

25. *Civil war sesquicentennial plates.*

a. The department, in consultation with the adjutant general, shall design a civil war sesquicentennial distinguishing processed emblem. Upon receipt of two hundred fifty orders for civil war sesquicentennial special registration plates, accompanied by a start-up fee of twenty dollars per order, the department shall begin issuing special registration plates with a civil war sesquicentennial processed emblem as provided in paragraph “b”.

b. An owner referred to in subsection 12, upon written application to the department, may order special registration plates with a civil war sesquicentennial processed emblem. The special plate fees collected by the director under subsection 12, paragraphs “a” and “c”, from the issuance and annual validation of letter-number designated and personalized civil war sesquicentennial plates shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the department of cultural affairs the amount of the special fees collected under subsection 12, paragraph “a”, in the previous month for civil war sesquicentennial plates, and such funds are appropriated to the department of cultural affairs to be used for the Iowa battle flag project.

26. *Fallen peace officers plates.*

a. The department, in consultation with the department of public safety and concerns of police survivors, inc., shall design a fallen peace officers distinguishing processed emblem. Upon receipt of two hundred fifty orders for fallen peace officers special registration plates, accompanied by a start-up fee of twenty dollars per order, the department shall begin issuing special registration plates with a fallen peace officers processed emblem as provided in paragraphs “b” and “c”.

b. An owner of a motor vehicle referred to in subsection 12, upon written application to the department, may order special registration plates with a fallen peace officers processed emblem. The special fee for letter-number designated fallen peace officers plates is thirty-five dollars. The fee for personalized fallen peace officers plates is twenty-five dollars, which shall be paid in addition to the special fallen peace officers fee of thirty-five dollars. The fees collected by the director under this paragraph shall be paid monthly to the treasurer of state and deposited in the road use tax fund. The treasurer of state shall transfer monthly from the statutory allocations fund created under section 321.145, subsection 2, to the department of public safety the amount of the special fees collected in the previous month for the fallen peace officers plates and such funds are appropriated to the department of public safety. The department of public safety shall distribute one hundred percent of the funds received monthly in the form of grants to nonprofit organizations that provide resources to assist in the rebuilding of the lives of surviving families and affected coworkers of law enforcement officers killed in the line of duty. In the awarding of grants, the department of public safety shall give first consideration to concerns of police survivors, inc., and similar nonprofit organizations providing such resources. Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

c. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special fallen peace officers fee for letter-number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual special fee for personalized fallen peace officers plates is five dollars, which shall be paid in

addition to the annual special fallen peace officers fee and the regular annual registration fee. The annual special fallen peace officers fee shall be credited and transferred as provided under paragraph “b”.

[SS15, §1571-m5; C24, 27, 31, 35, §4874; C39, §5001.18; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.34]

82 Acts, ch 1032, §2, 4; 82 Acts, ch 1062, §4, 38; 84 Acts, ch 1027, §1; 84 Acts, ch 1250, §1; 84 Acts, ch 1305, §49; 85 Acts, ch 67, §35; 85 Acts, ch 87, §1; 86 Acts, ch 1182, §1; 86 Acts, ch 1225, §1; 87 Acts, ch 77, §1; 88 Acts, ch 1215, §1 – 4; 88 Acts, ch 1222, §1; 89 Acts, ch 17, §1; 89 Acts, ch 27, §1; 89 Acts, ch 247, §4; 89 Acts, ch 296, §27; 89 Acts, ch 317, §31; 90 Acts, ch 1128, §1; 90 Acts, ch 1151, §1; 91 Acts, ch 49, §1, 2; 91 Acts, ch 58, §1; 91 Acts, ch 259, §3; 92 Acts, ch 1175, §29; 92 Acts, 2nd Ex, ch 1001, §204, 205; 93 Acts, ch 2, §1; 94 Acts, ch 1104, §1; 95 Acts, ch 118, §7 – 9, 40; 96 Acts, ch 1065, §1; 96 Acts, ch 1088, §3, 4, 8; 96 Acts, ch 1171, §2; 96 Acts, ch 1219, §21 – 24; 97 Acts, ch 2, §1, 2; 97 Acts, ch 70, §3, 15; 97 Acts, ch 104, §8 – 10; 97 Acts, ch 108, §5; 97 Acts, ch 123, §1; 97 Acts, ch 212, §33; 98 Acts, ch 1079, §1 – 3; 99 Acts, ch 7, §1 – 9; 99 Acts, ch 114, §20; 99 Acts, ch 141, §38; 99 Acts, ch 180, §15; 2000 Acts, ch 1154, §21; 2000 Acts, ch 1157, §1; 2000 Acts, ch 1206, §1; 2001 Acts, ch 24, §73, 74; 2001 Acts, ch 32, §17; 2001 Acts, ch 144, §2, 3; 2002 Acts, ch 1119, §42; 2003 Acts, ch 3, §1; 2003 Acts, ch 7, §1 – 9; 2003 Acts, ch 105, §2; 2003 Acts, 1st Ex, ch 2, §165 – 171, 205; 2004 Acts, ch 1013, §7 – 10, 35; 2004 Acts, ch 1175, §333, 347; 2005 Acts, ch 8, §9; 2007 Acts, ch 143, §9; 2007 Acts, ch 178, §2, 3; 2007 Acts, ch 184, §2 – 5, 7; 2007 Acts, ch 215, §106, 107, 130; 2008 Acts, ch 1018, §9 – 16; 2008 Acts, ch 1088, §118; 2008 Acts, ch 1113, §58 – 77; 2008 Acts, ch 1124, §4, 5; 2008 Acts, ch 1130, §8, 10; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1069, §142; 2011 Acts, ch 68, §1, 5; 2011 Acts, ch 114, §2; 2011 Acts, ch 131, §59, 60, 158

For applicable scheduled fines, see §805.8A, subsection 2

2011 amendment to subsection 10, paragraph b, applies for registration plates issued during registration periods beginning on or after January 1, 2012; phased-in elimination of business-trade and special truck plates; 2011 Acts, ch 68, §4, 5

Subsection 10, paragraph b amended

NEW subsections 20C, 25, and 26

### **321.47 Transfers by operation of law.**

1. If ownership of a vehicle is transferred by operation of law upon inheritance, devise or bequest, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure or execution sale, abandoned vehicle sale, or when the engine of a motor vehicle is replaced by another engine, or a vehicle is sold or transferred to satisfy an artisan’s lien as provided in chapter 577, a landlord’s lien as provided in chapter 570, a storage lien as provided in chapter 579, a judgment in an action for abandonment of a manufactured or mobile home as provided in chapter 555B, upon presentation of an affidavit relating to the disposition of a valueless mobile, modular, or manufactured home as provided in chapter 555C, or repossession is had upon default in performance of the terms of a security agreement, the county treasurer in the transferee’s county of residence or, in the case of a mobile home or manufactured home, the county treasurer of the county where the mobile home or manufactured home is located, upon the surrender of the prior certificate of title or the manufacturer’s or importer’s certificate, or when that is not possible, upon presentation of satisfactory proof to the county treasurer of ownership and right of possession to the vehicle and upon payment of a fee of twenty dollars and the presentation of an application for registration and certificate of title, may issue to the applicant a registration card for the vehicle and a certificate of title to the vehicle. A person entitled to ownership of a vehicle under a decree of dissolution shall surrender a reproduction of a certified copy of the dissolution and upon fulfilling the other requirements of this chapter is entitled to a certificate of title and registration receipt issued in the person’s name.

2. The persons entitled under the laws of descent and distribution of an intestate’s property to the possession and ownership of a vehicle owned in whole or in part by a decedent, upon filing an affidavit stating the name and date of death of the decedent, the right to possession and ownership of the persons filing the affidavit, and that there has been no administration of the decedent’s estate, which instrument shall also contain an agreement to indemnify creditors of the decedent who would be entitled to levy execution upon the motor vehicle to the extent of the value of the motor vehicle, are entitled upon fulfilling the

other requirements of this chapter, to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to it. If a decedent dies testate, and either the will is not probated or is admitted to probate without administration, the persons entitled to the possession and ownership of a vehicle owned in whole or in part by the decedent may file an affidavit and, upon fulfilling the other requirements of this chapter, are entitled to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to the vehicle. The affidavit shall contain the same information and indemnity agreement as is required in cases of intestacy pursuant to this section. A requirement of chapter 450 or 451 shall not be considered satisfied by the filing of the affidavit provided for in this section. If, from the records in the office of the county treasurer, there appear to be any liens on the vehicle, the certificate of title shall contain a statement of the liens unless the application is accompanied by proper evidence of their satisfaction or extinction. Evidence of extinction may consist of, but is not limited to, an affidavit of the applicant stating that a security interest was foreclosed as provided in chapter 554, article 9, part 6. The department shall waive the certificate of title fee and surcharge required under sections 321.20, 321.20A, 321.23, 321.46, 321.52, and 321.52A if the person entitled to possession and ownership of a vehicle, as provided in this subsection, is the surviving spouse of a decedent.

3. Whenever ownership of a vehicle is transferred under the provisions of this section, the registration plates shall be removed and forwarded to the county treasurer of the county where the vehicle is registered or to the department if the vehicle is owned by a nonresident. Upon transfer the vehicle shall not be operated upon the highways of this state until the person entitled to possession of the vehicle applies for and obtains registration for the vehicle.

4. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2.

[S13, §1571-m9; C24, 27, 31, 35, §4963; C39, §5002.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.47]

84 Acts, ch 1243, §1; 84 Acts, ch 1305, §53; 91 Acts, ch 119, §1; 93 Acts, ch 154, §2; 95 Acts, ch 118, §11; 99 Acts, ch 83, §2; 2000 Acts, ch 1149, §165, 187; 2000 Acts, ch 1203, §2; 2001 Acts, ch 137, §5; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2004 Acts, ch 1092, §2; 2005 Acts, ch 34, §6, 26; 2008 Acts, ch 1113, §18, 21; 2008 Acts, ch 1119, §5; 2010 Acts, ch 1138, §51; 2010 Acts, ch 1190, §33; 2011 Acts, ch 38, §3

Surcharge imposed; §321.52A

Subsection 2 amended

## USED MOTOR VEHICLE REQUIREMENTS — NEW AND USED MOTOR VEHICLE DISCLOSURE REQUIREMENTS

### **321.69A Disclosure of repairs to new vehicles.**

1. *a.* A person licensed as a new motor vehicle dealer pursuant to chapter 322 shall not be required to disclose to a prospective or actual buyer or lessee of a new motor vehicle repairs of damage to or adjustments on or replacements of parts with new parts on the motor vehicle if all of the following are true:

(1) The repairs, adjustments, or replacements were made to achieve compliance with factory specifications.

(2) The actual cost of any labor or parts charged to or performed by the dealer for any such repairs, adjustments, or parts does not exceed four percent of the dealer's adjusted cost.

(3) The dealer posts in a conspicuous place notice that repairs, adjustments, or replacements will be disclosed upon request.

(4) The dealer discloses any such repairs, adjustments, or replacements upon request.

*b.* The provisions of this section take precedence over and shall supersede section 714.16, subsection 2, paragraph "a", unnumbered paragraph 4, and section 714H.4, subsection 2.

2. A person licensed as a new motor vehicle dealer pursuant to chapter 322 shall disclose in writing, at or before the time of sale or lease, to the buyer or lessee of a new motor vehicle that the vehicle has been subject to any repairs of damage to or adjustments on or replacements of parts with new parts if the actual cost of any labor or parts charged to or

performed by the dealer for any such repairs, adjustments, or parts exceeds four percent of the dealer's adjusted cost. The written disclosure shall include the signature of the buyer or lessee and be in a form and in a format approved by the attorney general by rule. A dealer shall retain a copy of each written disclosure issued pursuant to this section for five years from the date of issuance.

3. As used in this section, "*dealer's adjusted cost*" means the amount paid by the dealer to the manufacturer or other source for the vehicle, including any freight charges, but excluding any sum paid by the manufacturer to the dealer as a holdback or other monetary incentive relating to the vehicle.

4. A violation of this section is an unlawful practice pursuant to section 714.16.

5. A violation of this section is a prohibited practice or act pursuant to section 714H.5.

2011 Acts, ch 90, §1

NEW section

### **321.105A Fee for new registration.**

1. *Definitions.* The following terms, when used in this section, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

a. "*Department*" means the department of revenue.

b. "*Director*" means the director of revenue.

c. "*Owner*" means as defined in section 321.1. For purposes of the fee for new registration imposed on leased vehicles under subsection 3, "*owner*" means the "*lessor*".

d. "*Purchase*" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration.

2. *Fee imposed — exemptions.* In addition to the annual registration fee required under section 321.105, a "fee for new registration" is imposed in the amount of five percent of the purchase price for each vehicle subject to registration. The fee for new registration shall be paid by the owner of the vehicle to the county treasurer at the time application is made for a new registration and certificate of title, if applicable. A new registration receipt shall not be issued until the fee has been paid. The county treasurer or the department of transportation shall require every applicant for a new registration receipt for a vehicle subject to registration to supply information as the county treasurer or the director deems necessary as to the time of purchase, the purchase price, and other information relative to the purchase of the vehicle. On or before the tenth day of each month, the county treasurer or the department of transportation shall remit to the department of revenue the amount of the fees for new registration collected during the preceding month.

a. For purposes of this subsection, "*purchase price*" applies to the measure subject to the fee for new registration. "*Purchase price*" shall be determined in the same manner as "*sales price*" is determined for purposes of computing the tax imposed upon the sales price of tangible personal property under chapter 423, pursuant to the definition of sales price in section 423.1, subject to the following exemptions:

(1) Exempted from the purchase price of any vehicle subject to registration is the amount of any cash rebate which is provided by a motor vehicle manufacturer to the purchaser of the vehicle subject to registration so long as the rebate is applied to the purchase price of the vehicle.

(2) (a) In transactions, except those subject to subparagraph division (b), in which a vehicle subject to registration is traded toward the purchase price of another vehicle subject to registration, the purchase price is only that portion of the purchase price which is valued in money, whether received in money or not, if the following conditions are met:

(i) The vehicle traded to the retailer is the type of vehicle normally sold in the regular course of the retailer's business.

(ii) The vehicle traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like vehicle.

(b) In a transaction between persons, neither of which is a retailer of vehicles subject to registration, in which a vehicle subject to registration is traded toward the purchase price

of another vehicle subject to registration, the amount of the trade-in value allowed on the vehicle subject to registration traded is exempted from the purchase price.

(c) In order for the trade-in value to be excluded from the purchase price, the name or names on the title and registration of the vehicle being purchased must be the same name or names on the title and registration of the vehicle being traded. The following trades qualify under this subparagraph division (c):

(i) A trade involving spouses, if the traded vehicle and the acquired vehicle are titled in the name of one or both of the spouses, with no outside party named on the title.

(ii) A trade involving a grandparent, parent, or child, including adopted and step relationships, if the name of one of the family members from the title of the traded vehicle is also on the title of the newly acquired vehicle.

(iii) A trade involving a business, if one of the owners listed on the title of the traded vehicle is a business, and the names on the title are separated by "or".

(iv) A trade in which the vehicle being purchased is titled in the name of an individual other than the owner of the traded vehicle due to the cosigning requirements of a financial institution.

(3) Exempted from the purchase price of a replacement motor vehicle owned by a motor vehicle dealer licensed under chapter 322 which is being registered by that dealer and is not otherwise exempt from the fee for new registration is the fair market value of a replaced motor vehicle if all of the following conditions are met:

(a) The motor vehicle being registered is being placed in service as a replacement motor vehicle for a motor vehicle registered by the motor vehicle dealer.

(b) The motor vehicle being registered is taken from the motor vehicle dealer's inventory.

(c) Use tax or the fee for new registration on the motor vehicle being replaced was paid by the motor vehicle dealer when that motor vehicle was registered.

(d) The replaced motor vehicle is returned to the motor vehicle dealer's inventory for sale.

(e) The application for registration and title of the motor vehicle being registered is filed with the county treasurer within two weeks of the date the replaced motor vehicle is returned to the motor vehicle dealer's inventory.

(f) The motor vehicle being registered is placed in the same or substantially similar service as the replaced motor vehicle.

b. For purposes of this subsection, the fee for new registration on a vehicle registered in this state by the manufacturer of that vehicle from a manufacturer's statement of origin is calculated on the base value of fifty percent of the retail list price of the vehicle.

c. The following are exempt from the fee for new registration imposed under this subsection, as long as a valid affidavit is filed with the county treasurer at the time of application for registration:

(1) Entities listed in section 423.3, subsections 17, 18, 19, 20, 21, 22, 26, 27, 28, 31, and 79, to the extent that those entities are exempt from the tax imposed on the sale of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users.

(2) Vehicles as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, except such vehicles subject to registration which are designed primarily for carrying persons, when purchased for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation.

(3) (a) Vehicles subject to registration which are transferred from a business or individual conducting a business within this state as a sole proprietorship, partnership, or limited liability company to a corporation formed by the sole proprietorship, partnership, or limited liability company for the purpose of continuing the business when all of the stock of the corporation so formed is owned by the sole proprietor and the sole proprietor's spouse, by all the partners in the case of a partnership, or by all the members in the case of a limited liability company. This exemption is equally available where the vehicles subject to registration are transferred from a corporation to a sole proprietorship, partnership, or limited liability company formed by that corporation for the purpose of continuing the business when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

(b) This exemption also applies where the vehicles subject to registration are transferred from a corporation as part of the liquidation of the corporation to its stockholders if within three months of such transfer the stockholders retransfer those vehicles subject to registration to a sole proprietorship, partnership, or limited liability company for the purpose of continuing the business of the corporation when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

(c) This exemption applies to corporations that have been in existence for not longer than twenty-four months.

(4) Vehicles subject to registration which are transferred from a corporation that is primarily engaged in the business of leasing vehicles subject to registration to a corporation that is primarily engaged in the business of leasing vehicles subject to registration when the transferor and transferee corporations are part of the same controlled group for federal income tax purposes.

(5) (a) Vehicles registered or operated under chapter 326 and used substantially in interstate commerce. For purposes of this subparagraph (5), “*substantially in interstate commerce*” means that a minimum of twenty-five percent of the miles operated by the vehicle accrues in states other than Iowa. This subparagraph (5) applies only to vehicles which are registered for a gross weight of thirteen tons or more.

(b) For purposes of this subparagraph (5), trailers and semitrailers registered or operated under chapter 326 are deemed to be used substantially in interstate commerce and to be registered for a gross weight of thirteen tons or more.

(c) For the purposes of this subparagraph (5), if a vehicle meets the requirement that twenty-five percent of the miles operated accrues in states other than Iowa in each year of the first four-year period of operation, the exemption from the fee for new registration shall continue until the vehicle is sold or transferred. If the vehicle is found to have not met the exemption requirements or the exemption was revoked, the value of the vehicle upon which the fee for new registration shall be imposed is based on the original purchase price if revocation or nonqualification for this exemption occurs during the first year following registration. If revocation or nonqualification for this exemption occurs after the first year following registration, the value of the vehicle upon which the fee shall be imposed is the book or market value, whichever is less, at the time the exemption requirements were not met or the exemption was revoked.

(6) Vehicles subject to registration in any state when purchased for rental or registered and titled by a motor vehicle dealer licensed pursuant to chapter 322 for rental use, and held for rental for a period of one hundred twenty days or more and actually rented for periods of sixty days or less by a person regularly engaged in the business of renting vehicles including but not limited to motor vehicle dealers licensed pursuant to chapter 322 who rent automobiles to users, if the rental of the vehicles is subject to taxation under chapter 423C.

(7) Vehicles subject to registration in this state for which the applicant for registration has paid to another state a state sales, use, or occupational tax. However, if the tax paid to another state is less than the fee for new registration calculated for the vehicle, the difference shall be the amount to be collected as the fee for new registration.

(8) A vehicle subject to registration in this state which is owned by a person who has moved from another state with the intention of changing residency to Iowa, provided that the vehicle was purchased for use in the state from which the applicant moved and was not, at or near the time of purchase, purchased for use in Iowa.

(9) A vehicle that was previously registered in this state and was subsequently registered in another state is not subject to the fee for new registration when it is again registered in this state, provided that the applicant for registration has maintained ownership of the vehicle since its initial registration in this state and has previously paid the use tax or fee for new registration for the vehicle in this state.

(10) Vehicles transferred by operation of law as provided in section 321.47.

(11) Vehicles for which ownership is transferred to or from a revocable or irrevocable trust, if no consideration is present.

(12) Vehicles transferred to the surviving corporation for no consideration as a result of

a corporate merger according to the laws of this state in which the merging corporation is immediately extinguished and dissolved.

(13) Vehicles purchased in this state by a nonresident for removal to the nonresident's state of residence if the purchaser applies to the county treasurer for a transit plate under section 321.109.

(14) Vehicles purchased by a licensed motor vehicle dealer for resale.

(15) Vehicles purchased by a licensed wholesaler of new motor vehicles for resale.

(16) Homemade vehicles built from parts purchased at retail, upon which the consumer paid a tax to the seller, but only on such vehicles never before registered. This exemption does not apply for vehicles subject to registration which are made by a manufacturer engaged in the business for the purpose of sales or rental.

(17) Vehicles titled under a salvage certificate of title. However, when such a vehicle has been repaired and a regular certificate of title is applied for, the fee for new registration is due as follows:

(a) If the owner of the vehicle is a licensed recycler, unless the applicant is licensed as a vehicle dealer, the fee for new registration applies based on the fair market value of the vehicle, with deduction allowed for the cost of parts, supplies, and equipment for which sales tax was paid and which were used to rebuild the vehicle.

(b) If the owner is a person who is not licensed as a recycler or vehicle dealer, the fee for new registration applies based on the fair market value of the vehicle, with deduction allowed for the cost of parts, frames, chassis, auto bodies, or supplies that were purchased to rebuild the vehicle and for which sales tax was paid.

(18) A vehicle delivered to a resident Native American Indian on the reservation.

(19) A vehicle transferred from one individual to another as a gift in a transaction in which no consideration is present.

(20) A vehicle given by a corporation as a gift to a retiring employee.

(21) A vehicle sold by an entity where the profits from the sale are used by or donated to a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a nonprofit private educational institution, and where the entire proceeds from the sale of the vehicle are expended for any of the following purposes:

(a) Educational.

(b) Religious.

(c) Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add to or to improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

(22) A vehicle given or sold to be subsequently awarded as a raffle prize under chapter 99B.

(23) A vehicle won as a raffle prize under chapter 99B.

(24) A vehicle that is directly and primarily used in the recycling or reprocessing of waste products.

(25) Vehicles subject to registration under this chapter with a gross vehicle weight rating of less than sixteen thousand pounds when purchased for lease and titled by the lessor licensed pursuant to chapter 321F and actually leased for a period of twelve months or more if the lease of the vehicle is subject to the fee for new registration under subsection 3 or exempt from the fee for new registration pursuant to subsection 3, paragraph "f".

(a) A lessor may maintain the exemption under this subparagraph (25) for a qualifying lease that terminates at the conclusion or prior to the contracted expiration date if the lessor does not use the vehicle for any purpose other than for lease.

(b) Once the vehicle is used by the lessor for a purpose other than for lease, the exemption under this subparagraph (25) no longer applies and, unless there is another exemption from the fee for new registration, the fee for new registration is due on the fair market value of the vehicle determined at the time the lessor uses the vehicle for a purpose other than for lease, payable to the department.

(c) If the lessor holds the vehicle exclusively for sale, the fee for new registration is due

and payable on the purchase price of the vehicle at the time of purchase pursuant to this subsection.

(26) A vehicle repossessed by a licensed vehicle dealer pursuant to the uniform commercial code, chapter 554, provided there is a valid lien on the title and the dealer anticipates reselling the vehicle.

(27) A vehicle repossessed by a financial institution or an individual by means of a foreclosure affidavit pursuant to the uniform commercial code, chapter 554, provided there is a valid lien on the vehicle and the foreclosure affidavit is used for the sole purpose of retaining possession of the vehicle until a new buyer is found. However, if the financial institution or individual uses the foreclosure affidavit to take title to the vehicle and register the vehicle, the fee for new registration shall be due based on the outstanding loan amount on the vehicle.

(28) A damaged vehicle acquired by an insurance company from a client or financial institution, provided the insurance company has a vehicle dealers license.

(29) A vehicle returned to a manufacturer and titled in the manufacturer's name under section 322G.12.

(30) A vehicle purchased directly by a federal, state, or local governmental agency and titled in an individual's name pursuant to a governmental program authorized by law.

3. *Leased vehicles.*

a. A fee for new registration is imposed in an amount equal to five percent of the leased price for each vehicle subject to registration with a gross vehicle weight rating of less than sixteen thousand pounds which is leased by a lessor licensed pursuant to chapter 321F for a period of twelve months or more. The fee for new registration shall be paid by the owner of the vehicle to the county treasurer from whom the registration receipt or certificate of title is obtained. A registration receipt for a vehicle subject to registration or issuance of a certificate of title shall not be issued until the fee for new registration is paid in the initial instance.

b. The amount of the lease price subject to the fee for new registration shall be computed on each separate lease transaction by taking the total of the lease payments, plus the down payment, and excluding the following charges, if included as part of the lease payment:

- (1) Title fee.
- (2) Annual registration fees.
- (3) Fee for new registration.
- (4) Federal excise taxes attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner.
- (5) Optional service or warranty contracts subject to tax pursuant to section 423.2, subsection 1.

(6) Insurance.

(7) Manufacturer's rebate.

(8) Refundable deposit.

(9) Finance charges, if any, on items listed in subparagraphs (1) through (8).

c. If any or all of the items in paragraph "b", subparagraphs (1) through (8), are excluded from the lease price subject to the fee for new registration, the owner shall maintain adequate records of the amounts of those items. If the parties to a lease enter into an agreement providing that the fee for new registration is to be paid by the lessee or included in the monthly lease payments to be paid by the lessee, the total cost of the fee for new registration shall not be included in the computation of the lease price for the purpose of the fee for new registration under this section. The county treasurer or the department of transportation shall require every applicant for a registration receipt for a vehicle subject to a fee for new registration to supply information as the county treasurer or the director deems necessary as to the date of the lease transaction, the lease price, and other information relative to the lease of the vehicle.

d. On or before the tenth day of each month, the county treasurer or the department of transportation shall remit to the department of revenue the amount of the fees for new registration collected during the preceding month.

e. If the lease is terminated prior to the termination date contained in the lease agreement, no refund shall be allowed for a fee for new registration previously paid under this section, except as provided in section 322G.4.

f. The following are exempt from the fee for new registration imposed under this subsection as long as a valid affidavit is filed with the county treasurer at the time of application for registration:

(1) Vehicles leased to entities listed in section 423.3, subsections 17, 18, 19, 20, 21, 22, 26, 27, 28, 31, and 79, to the extent that those entities are exempt from the tax imposed on the sale of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users.

(2) A vehicle leased directly to a federal, state, or local governmental agency and titled in an individual's name pursuant to a governmental program authorized by law.

4. *Administration and enforcement — director of revenue.*

a. The director of revenue in consultation with the department of transportation shall administer and enforce the fee for new registration as nearly as possible in conjunction with the administration and enforcement of the state use tax law, except that portion of the law which implements the streamlined sales and use tax agreement.

b. Section 422.25, subsection 4, sections 422.30, 422.67, and 422.68, section 422.69, subsection 1, sections 422.70, 422.71, 422.72, 422.74, and 422.75, section 423.14, subsection 2, and sections 423.23, 423.24, 423.25, 423.32, 423.33, 423.35, 423.37 through 423.42, 423.45, and 423.47, consistent with the provisions of this section, apply with respect to the fees for new registration authorized under this section in the same manner and with the same effect as if the fees for new registration were retail use taxes within the meaning of those statutes.

5. *Collections by dealers.*

a. If an amount of the fee for new registration represented by a dealer to the purchaser of a vehicle is computed upon a purchase price that is not subject to the fee for new registration or the amount represented is in excess of the actual amount subject to the fee and the amount represented is actually paid by the purchaser to the dealer, the excess amount of fee for new registration paid shall be returned to the purchaser upon notification to the dealer by the department that an excess payment exists.

b. If an amount of the fee for new registration represented by a dealer to a purchaser is computed upon a purchase price that is not subject to the fee for new registration or the amount represented is in excess of the actual amount subject to the fee and the amount represented is actually paid by the purchaser to the dealer, the excess amount of fee for new registration paid shall be returned to the purchaser upon proper notification to the dealer by the purchaser that an excess payment exists. "Proper" notification is written notification which allows a dealer at least sixty days to respond and which contains enough information to allow a dealer to determine the validity of a purchaser's claim that an excess amount of fee for new registration has been paid. No cause of action shall accrue against a dealer for excess fee for new registration paid until sixty days after proper notice has been given the dealer by the purchaser.

c. In the circumstances described in paragraphs "a" and "b", a dealer has the option to either return any excess amount of fee for new registration paid to a purchaser, or to remit the amount which a purchaser has paid to the dealer to the department.

6. *Refunds.*

a. A fee for new registration is not refundable, except in the following circumstances:

(1) If a vehicle is sold and later returned to the seller and the entire purchase price is refunded by the seller, the purchaser is entitled to a refund of the fee for new registration paid. To obtain a refund, the purchaser shall make application on forms provided by the department and show proof that the entire purchase price was returned and that the fee for new registration had been paid.

(2) If a vehicle manufacturer reimburses a purchaser for the fee for new registration paid on a returned defective vehicle, the manufacturer may obtain a refund from the department by providing proof that the fee was paid and the purchaser reimbursed in accordance with the provisions of chapter 322G.

(3) If the department determines that, as a result of a mistake, an amount of the fee for new registration has been paid which was not due, such amount shall be refunded to the vehicle owner by the department.

b. A claim for refund under this subsection that has not been filed with the department

within three years after the fee for new registration was paid shall not be allowed by the director.

7. *Penalty for false statement.* A person who willfully makes a false statement in regard to the purchase price of a vehicle subject to a fee for new registration is guilty of a fraudulent practice. A person who willfully makes a false statement in regard to the purchase price of such a vehicle with the intent to evade payment of the fee for new registration shall be assessed a penalty of seventy-five percent of the amount of the fee unpaid and required to be paid on the actual purchase price less trade-in allowance.

2008 Acts, ch 1113, §40; 2008 Acts, ch 1191, §128; 2009 Acts, ch 41, §251, 263; 2009 Acts, ch 60, §2, 3; 2009 Acts, ch 179, §122 – 124; 2010 Acts, ch 1145, §1, 17; 2011 Acts, ch 110, §1, 2

Fraudulent practices, see §714.8 – 714.14

Subsection 2, paragraph c, subparagraph (25), unnumbered paragraph 1 amended

Subsection 3, NEW paragraph f

### **321.113 Automatic reduction.**

1. The annual registration fee for a motor vehicle shall not be automatically reduced under this section unless the fee is based on the value and weight of the motor vehicle as provided in section 321.109, subsection 1.

2. If a motor vehicle is more than seven model years old, the part of the annual registration fee that is based on the value of the vehicle shall be seventy-five percent of the rate as fixed when the motor vehicle was new and the total fee shall not be less than fifty dollars; except that if the registration is a renewal for a vehicle registered to the same owner prior to January 1, 2009, the annual registration fee shall not be more than the fee paid for the previous registration year.

3. If a motor vehicle is more than nine model years old, the part of the annual registration fee that is based on the value of the vehicle shall be fifty percent of the rate as fixed when the motor vehicle was new and the total fee shall not be less than fifty dollars; except that if the registration is a renewal for a vehicle registered to the same owner prior to January 1, 2009, the annual registration fee shall not be more than the fee paid for the previous registration year.

4. a. Except as provided in paragraph “b”, if a motor vehicle is twelve model years old or older, the annual registration fee is fifty dollars; except that if the registration is a renewal for a vehicle registered to the same owner prior to January 1, 2009, the annual registration fee shall not be more than the fee paid for the previous registration year.

b. If the registration is a renewal for a motor vehicle registered as an antique vehicle by the same owner prior to January 1, 2009, the annual registration fee shall be twenty-three dollars for a motor vehicle that is model year 1970 through 1983 and sixteen dollars for a motor vehicle that is model year 1969 or older.

c. For purposes of determining the portion of an annual registration fee under paragraph “a” or “b” that is based upon the value of the motor vehicle, sixty percent of the annual registration fee is attributable to the value of the vehicle.

5. As used in this section, “owner” includes a surviving spouse who is required to transfer title pursuant to section 321.46 or 321.47.

[SS15, §1571-m7; C24, 27, 31, 35, §4910; C39, §5008.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.113]

82 Acts, ch 1062, §15, 38; 2001 Acts, ch 132, §4, 24; 2001 Acts, ch 176, §65; 2008 Acts, ch 1113, §4, 11, 90; 2011 Acts, ch 38, §4

NEW subsection 5

### **321.120 Business-trade trucks.**

1. The annual registration fee for a business-trade truck shall be determined pursuant to section 321.122, subsection 1, paragraph “a”.

2. Upon application for a new registration, an owner who registers a motor vehicle as a business-trade truck shall be required to provide proof or affirm that the vehicle meets the definition of a business-trade truck. The department may adopt rules as necessary to prescribe the documentation required of the applicant as proof or affirmation under this subsection but shall not require that such documentation be notarized. If requested by the

department of transportation or a county treasurer, the department of revenue shall confirm or refute, according to the most recent records available, that an applicant for registration of a business-trade truck is either a corporation, limited liability company, or partnership or a person who files a schedule C or schedule F form for federal income tax purposes and that the corporation, limited liability company, partnership, or person is allowed a depreciation deduction with respect to the vehicle under section 167 of the Internal Revenue Code.

3. Upon approval of the application and payment of the proper fees, the county treasurer shall issue regular registration plates for the business-trade truck. The department may adopt rules requiring the use of a sticker or other means to identify motor vehicles registered under this section.

4. If the department determines by audit or other means that a person has registered a vehicle as a business-trade truck that is not qualified for such registration, the person shall be required to pay the difference between the regular annual registration fees owed for the vehicle for each year the vehicle was registered in violation of this section and the fees actually paid.

5. If the department determines by audit or other means that the person had knowingly registered a vehicle as a business-trade truck that is not qualified for such registration, the person shall be required to pay a penalty for improper registration in the amount of seven hundred fifty dollars for each registration year in which the vehicle was registered in violation of this section, not to exceed two thousand two hundred fifty dollars.

2008 Acts, ch 1113, §5, 11; 2011 Acts, ch 68, §2, 5

2011 amendment to subsection 3 applies for registration plates issued during registration periods beginning on or after January 1, 2012; phased-in elimination of business-trade truck plates; 2011 Acts, ch 68, §4, 5  
 Subsection 3 amended

**321.121 Special trucks for farm use.**

1. a. Except as provided in paragraph “b”, the annual registration fee for a special truck with a gross weight of six tons shall be one hundred dollars, and the annual registration fee for a special truck with a gross weight exceeding six tons but not exceeding eighteen tons shall be as follows:

For a gross weight exceeding:	And not exceeding:	The annual registration fee shall be:
6 Tons .....	7 Tons .....	\$125
7 Tons .....	8 Tons .....	\$155
8 Tons .....	9 Tons .....	\$170
9 Tons .....	10 Tons .....	\$190
10 Tons .....	11 Tons .....	\$205
11 Tons .....	12 Tons .....	\$225
12 Tons .....	13 Tons .....	\$245
13 Tons .....	14 Tons .....	\$265
14 Tons .....	15 Tons .....	\$280
15 Tons .....	16 Tons .....	\$295
16 Tons .....	17 Tons .....	\$305
17 Tons .....	18 Tons .....	\$315

b. If the registration is a renewal for a special truck registered to the same owner prior to January 1, 2009, the annual registration fee shall be eighty dollars for a gross weight of six tons, one hundred dollars for a gross weight of seven tons, one hundred twenty dollars for a gross weight of eight tons, and in addition, fifteen dollars for each ton over eight tons and not exceeding eighteen tons. As used in this paragraph, “owner” includes a surviving spouse who is required to transfer title pursuant to section 321.46 or 321.47.

c. The annual registration fee for a special truck with a gross weight registration exceeding eighteen tons but not exceeding nineteen tons shall be three hundred twenty-five

dollars and for a gross weight registration exceeding nineteen tons but not exceeding twenty tons the annual registration fee shall be three hundred seventy-five dollars.

d. The additional annual registration fee for a special truck for a gross weight registration in excess of twenty tons is twenty-five dollars for each ton over twenty tons and not exceeding thirty-two tons.

2. Upon approval of the application and payment of the proper fees, the county treasurer shall issue regular registration plates for the special truck. The department may adopt rules requiring the use of a sticker or other means to identify motor vehicles registered under this section.

3. A person convicted of or found by audit to be using a motor vehicle registered as a special truck for any purpose other than permitted by section 321.1, subsection 76, shall, in addition to any other penalty imposed by law, be required to pay regular annual motor vehicle registration fees for such motor vehicle.

[C71, 73, 75, 77, 79, 81, §321.121; 81 Acts 2d Ex, ch 2, §6]

82 Acts, ch 1062, §18, 38; 86 Acts, ch 1210, §3; 2008 Acts, ch 1113, §6, 11, 93; 2011 Acts, ch 38, §5; 2011 Acts, ch 68, §3, 5

Subsection 2 applies for registration plates issued during registration periods beginning on or after January 1, 2012; phased-in elimination of special truck plates; 2011 Acts, ch 68, §4, 5

Subsection 1, paragraph b amended

NEW subsection 2 and former subsection 2 renumbered as 3

**321.122 Trucks, truck tractors, and road tractors — fees.**

1. The annual registration fee for truck tractors, road tractors, and motor trucks, except 2010 and subsequent model year motor trucks required to be registered under section 321.109 and motor trucks registered as special trucks, shall be based on the combined gross weight of the vehicle or combination of vehicles. All such trucks, truck tractors, or road tractors registered under this section shall be registered for a gross weight equal to or in excess of the unladen weight of the vehicle or combination of vehicles. The annual registration fee for such vehicles or combination of vehicles, except special trucks, shall be the applicable fee under paragraph “a” or “b”.

a. (1) For a combined gross weight of three tons or less, the annual registration fee is one hundred fifty dollars; for such a vehicle more than seven model years old, one hundred twenty dollars; for such a vehicle more than nine model years old, one hundred dollars; and for such a vehicle twelve model years old or older, fifty dollars.

(2) For a combined gross weight exceeding three tons, the annual registration fee shall be as set forth in the following schedule:

For a combined gross weight exceeding:	And not exceeding:	The annual registration fee shall be:
3 Tons .....	4 Tons .....	\$ 165
4 Tons .....	5 Tons .....	\$ 180
5 Tons .....	6 Tons .....	\$ 195
6 Tons .....	7 Tons .....	\$ 215
7 Tons .....	8 Tons .....	\$ 220
8 Tons .....	9 Tons .....	\$ 225
9 Tons .....	10 Tons .....	\$ 235
10 Tons .....	11 Tons .....	\$ 270
11 Tons .....	12 Tons .....	\$ 305
12 Tons .....	13 Tons .....	\$ 340
13 Tons .....	14 Tons .....	\$ 375
14 Tons .....	15 Tons .....	\$ 445
15 Tons .....	16 Tons .....	\$ 485
16 Tons .....	17 Tons .....	\$ 525
17 Tons .....	18 Tons .....	\$ 565
18 Tons .....	19 Tons .....	\$ 610
19 Tons .....	20 Tons .....	\$ 675

20 Tons .....	21 Tons .....	\$ 715
21 Tons .....	22 Tons .....	\$ 755
22 Tons .....	23 Tons .....	\$ 795
23 Tons .....	24 Tons .....	\$ 835
24 Tons .....	25 Tons .....	\$ 965
25 Tons .....	26 Tons .....	\$1,010
26 Tons .....	27 Tons .....	\$1,060
27 Tons .....	28 Tons .....	\$1,105
28 Tons .....	29 Tons .....	\$1,150
29 Tons .....	30 Tons .....	\$1,200
30 Tons .....	31 Tons .....	\$1,245
31 Tons .....	32 Tons .....	\$1,295
32 Tons .....	33 Tons .....	\$1,340
33 Tons .....	34 Tons .....	\$1,415
34 Tons .....	35 Tons .....	\$1,465
35 Tons .....	36 Tons .....	\$1,510
36 Tons .....	37 Tons .....	\$1,555
37 Tons .....	38 Tons .....	\$1,605
38 Tons .....	39 Tons .....	\$1,650
39 Tons .....	40 Tons .....	\$1,695

b. If the registration is a renewal for a motor vehicle with a combined gross weight of nine tons or less registered to the same owner prior to January 1, 2009, the following applies:

(1) For a combined gross weight of three tons or less, the annual registration fee is sixty-five dollars; for such a vehicle which is more than ten model years old, fifty-five dollars; for such a vehicle which is more than thirteen model years old, forty-five dollars; and for such a vehicle which is more than fifteen model years old, thirty-five dollars.

(2) For a combined gross weight exceeding three tons but not exceeding nine tons, the annual registration fee shall be as set forth in the following schedule:

For a combined gross weight exceeding:	And not exceeding:	The annual registration fee shall be:
3 Tons .....	4 Tons .....	\$ 80
4 Tons .....	5 Tons .....	\$ 90
5 Tons .....	6 Tons .....	\$105
6 Tons .....	7 Tons .....	\$130
7 Tons .....	8 Tons .....	\$165
8 Tons .....	9 Tons .....	\$200

(3) As used in this paragraph “b”, “owner” includes a surviving spouse who is required to transfer title pursuant to section 321.46 or 321.47.

c. For a combined gross weight exceeding forty tons, the annual registration fee shall be one thousand six hundred ninety-five dollars plus eighty dollars for each ton over forty tons.

2. For truck tractors or road tractors equipped with two or more solid rubber tires, the annual registration fee shall be the fee for truck tractors or road tractors with pneumatic tires and of the same combined gross weight, plus twenty-five percent thereof.

3. This section shall not apply to a rubber-tired farm tractor not operated for hire upon the public highways.

4. A person who violates this section commits a simple misdemeanor.

[C31, 35, §4919-d1; C39, §5008.18; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.122] 82 Acts, ch 1062, §19, 38; 86 Acts, ch 1182, §3; 86 Acts, ch 1210, §4; 88 Acts, ch 1019, §11, 12; 90 Acts, ch 1233, §17; 95 Acts, ch 118, §17; 2008 Acts, ch 1113, §7, 11, 23, 25; 2010 Acts, ch 1140, §4; 2011 Acts, ch 38, §6

Subsection 1, paragraph b, NEW subparagraph (3)

### 321.145 Disposition of moneys and fees.

1. Except for fines, forfeitures, court costs, and the collection fees retained by the county treasurer pursuant to section 321.152, and except as provided in subsection 2, moneys and motor vehicle registration fees collected under this chapter shall be credited by the treasurer of state to the road use tax fund.

2. Revenues derived from trailer registration fees collected pursuant to sections 321.105 and 321.105A, fees charged for driver's licenses and nonoperator's identification cards, fees charged for the issuance of a certificate of title, the certificate of title surcharge collected pursuant to section 321.52A, and revenues credited pursuant to section 423.43, subsection 2, and section 423C.5 shall be deposited in a fund to be known as the statutory allocations fund under the control of the department and credited as follows:

a. Moneys shall be deposited into and credited to the following funds:

(1) First, three million five hundred thousand dollars per quarter shall be deposited into and credited to the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes.

(2) Second, seven hundred fifty thousand dollars per quarter shall be deposited into and credited to the renewable fuel infrastructure fund created in section 159A.16, and the moneys so deposited are a continuing appropriation for expenditure under chapter 159A, subchapter III, and moneys so appropriated shall not be used for other purposes.

b. Moneys remaining after the operation of paragraph "a" shall be credited in order of priority as follows:

(1) An amount equal to four percent of the revenue from the operation of section 321.105A, subsection 2, shall be credited to the department, to be used for purposes of public transit assistance under chapter 324A.

(2) An amount equal to two dollars per year of license validity for each issued or renewed driver's license which is valid for the operation of a motorcycle shall be credited to the motorcycle rider education fund established under section 321.179.

(3) The amounts required to be transferred pursuant to section 321.34 from revenues available under this subsection shall be transferred and credited as provided in section 321.34, subsections 7, 10, 10A, 11, 11A, 11B, 13, 16, 17, 18, 19, 20, 20A, 20B, 20C, 21, 22, 23, 24, 25, and 26 for the various purposes specified in those subsections.

c. Any such revenues remaining shall be credited to the road use tax fund.

[SS15, §1571-m32; C24, 27, 31, 35, §4999; C39, §5010.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.145]

90 Acts, ch 1230, §19; 2008 Acts, ch 1113, §30, 36; 2009 Acts, ch 97, §9; 2009 Acts, ch 130, §1; 2010 Acts, ch 1069, §144; 2011 Acts, ch 113, §47, 55, 56; 2011 Acts, ch 114, §3

Road use tax fund, §312.1

Subsection 2, paragraph a amended

Subsection 2, paragraph b, subparagraph (3) amended

### 321.174 Operators licensed — operation of commercial motor vehicles.

1. A person, except those expressly exempted, shall not operate any motor vehicle upon a highway in this state unless the person has a driver's license issued by the department valid for the vehicle's operation.

2. a. A person operating a commercial motor vehicle shall not have more than one driver's license. A nonresident may operate a commercial motor vehicle in Iowa if the nonresident has been issued a license by another state, a nonresident commercial driver's license, or a driver's license issued by a foreign jurisdiction which the federal highway administration has determined to be issued in conformity with the federal commercial driver testing and licensing standards, if the license, commercial driver's license, or driver's license is valid for the vehicle operated.

b. A person who operates a commercial motor vehicle upon the highways of this state without having been issued a driver's license valid for the vehicle operated commits a simple misdemeanor.

c. A person who operates a commercial motor vehicle upon the highways of this state after

the person's commercial driver's license has been downgraded to a noncommercial status pursuant to section 321.207 commits a simple misdemeanor.

3. A licensee shall have the licensee's driver's license in immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a judicial magistrate, district associate judge, district judge, peace officer, or examiner of the department. However, a person charged with violating this subsection shall not be convicted and the citation shall be dismissed by the court if the person produces to the clerk of the district court, prior to the licensee's court date indicated on the citation, a driver's license issued to that person and valid for the vehicle operated at the time of the person's arrest or at the time the person was charged with a violation of this section. Upon dismissal, the court or clerk of court shall assess the costs of the action against the defendant named on the citation.

[C31, 35, §4960-d2, -d29; C39, §5013.01, 5013.15; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.174, 321.190; C77, 79, §321.174, 321.189; C81, §321.174]

90 Acts, ch 1230, §20; 98 Acts, ch 1073, §9; 2004 Acts, ch 1120, §2; 2006 Acts, ch 1144, §4; 2011 Acts, ch 38, §7

For applicable scheduled fines, see §805.8A, subsection 4  
Subsection 2 amended

### **321.178 Driver education — restricted license — reciprocity.**

#### *1. Approved course.*

a. An approved driver education course as programmed by the department shall consist of at least thirty clock hours of classroom instruction, of which no more than one hundred eighty minutes shall be provided to a student in a single day, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. Classroom instruction shall include all of the following:

- (1) A minimum of four hours of instruction concerning substance abuse.
- (2) A minimum of twenty minutes of instruction concerning railroad crossing safety.
- (3) Instruction relating to becoming an organ donor under the revised uniform anatomical gift Act as provided in chapter 142C.

(4) Instruction providing an awareness about sharing the road with bicycles and motorcycles. The instruction course shall be first approved by the state department of transportation. Instructional materials creating an awareness about sharing the road with bicycles and motorcycles shall also be distributed during the course of instruction.

b. (1) To be qualified as a classroom driver education instructor, a person shall have satisfied the educational requirements for a teaching license at the elementary or secondary level and hold a valid license to teach driver education in the public schools of this state.

(2) (a) To be qualified to provide street or highway driving instruction, a person shall be certified by the department and authorized by the board of educational examiners. A person shall not be required to hold a current Iowa teacher or administrator license at the elementary or secondary level or to have satisfied the educational requirements for an Iowa teacher license at the elementary or secondary level in order to be certified by the department or authorized by the board of educational examiners to provide street or highway driving instruction.

(b) The department shall adopt rules pursuant to chapter 17A to provide for certification of persons qualified to provide street or highway driving instruction. The board of educational examiners shall adopt rules pursuant to chapter 17A to provide for authorization of persons certified by the department to provide street or highway driving instruction. The department may disqualify a person from providing street or highway driving instruction without concurrent or further action by the board of educational examiners, and the board of educational examiners may withhold or withdraw authorization to provide street or highway driving instruction without concurrent or further action by the department.

(3) The department shall not disqualify a person from providing street or highway driving instruction and the board of educational examiners shall not withhold or withdraw authorization to provide street or highway instruction for the sole reason that the person was involved in a motor vehicle accident, unless either of the following circumstances exist:

(a) The person contributed to the motor vehicle accident and the accident caused the death or serious injury of another person.

(b) The person contributed to the motor vehicle accident and it was the person's second or subsequent contributive motor vehicle accident in a two-year period.

(4) A person who provides street or highway driving instruction shall hold a driver's license valid for the vehicle operated.

c. Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a nonpublic school in the district an approved course in driver education. The receiving district shall be the school district responsible for making driver education available to a student participating in open enrollment under section 282.18. The courses may be offered at sites other than at the public school, including nonpublic school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved course in driver education or an approved course in motorcycle education may, upon proof of such fact, be excused from any field test which the student would otherwise be required to take in demonstrating the student's ability to operate a motor vehicle. A student shall not be excused from any field test if a parent, guardian, or instructor requests that a test be administered. A final field test prior to a student's completion of an approved course shall be administered by a person qualified as a classroom driver education instructor and certified to provide street and highway driving instruction. A person qualified as a classroom driver education instructor but not certified to provide street and highway driving instruction may administer the final field test if accompanied by another person qualified to provide street and highway driving instruction.

d. "Student", for purposes of this section, means a person between the ages of fourteen years and twenty-one years who satisfies the preliminary licensing requirements of the department.

e. Any person who successfully completes an approved driver education course at a private or commercial driver education school licensed by the department shall likewise be eligible for a driver's license as provided in section 321.180B or 321.194.

## 2. *Restricted license.*

a. (1) A person between sixteen and eighteen years of age who has completed an approved driver education course and is not in attendance at school and has not met the requirements described in section 299.2, subsection 1, may be issued a restricted license only for travel to and from work or to transport dependents to and from temporary care facilities, if necessary for the person to maintain the person's present employment. The restricted license shall be issued by the department only upon confirmation of the person's employment and need for a restricted license to travel to and from work or to transport dependents to and from temporary care facilities if necessary to maintain the person's employment. The employer shall notify the department if the employment of the person is terminated before the person attains the age of eighteen.

(2) (a) A person issued a restricted license under this section shall not use an electronic communication device or an electronic entertainment device while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway. This subparagraph division does not apply to the use of electronic equipment which is permanently installed in the motor vehicle or to a portable device which is operated through permanently installed equipment.

(b) For the period beginning July 1, 2010, through June 30, 2011, peace officers shall issue only warning citations for violations of subparagraph division (a). The department, in cooperation with the department of public safety, shall establish educational programs to foster compliance with the requirements of subparagraph division (a).

b. The department may suspend a restricted driver's license issued under this section upon receiving satisfactory evidence that the licensee has violated the restrictions imposed

under paragraph “a”, subparagraph (2), subparagraph division (a). The department may also suspend a restricted license issued under this section upon receiving a record of the person’s conviction for one violation and shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways, other than parking violations as defined in section 321.210. After revoking a license under this section the department shall not grant an application for a new license or permit until the expiration of one year or until the person attains the age of eighteen, whichever is the longer period.

c. A person who violates the restrictions imposed under paragraph “a”, subparagraph (2), subparagraph division (a), may be issued a citation under this section and shall not be issued a citation under section 321.193. A violation of the restrictions imposed under paragraph “a”, subparagraph (2), subparagraph division (a), shall not be considered a moving violation.

3. *Driver’s license reciprocity.*

a. The department may issue a class C or M driver’s license to a person who is sixteen or seventeen years of age and who is a current resident of the state, but who has been driving as a resident of another state for at least one year prior to residency within the state.

b. The following criteria must be met prior to issuance of a driver’s license pursuant to this subsection:

(1) The minor must reside with a parent or guardian.

(2) The minor must have driven under a valid driver’s license for at least one year in the prior state of residence. Six months of the one year computation may include driving with an instruction permit.

(3) The minor must have had no moving traffic violations on the minor’s driving record.

(4) The minor must pass the written and driving skills tests as required by the department, but is not required to have taken a driver education class.

[C66, §321.177; C71, 73, 75, 77, 79, 81, §321.178; 82 Acts, ch 1215, §1, 2, ch 1248, §1]

84 Acts, ch 1022, §3; 86 Acts, ch 1220, §28; 89 Acts, ch 266, §1; 90 Acts, ch 1230, §25; 91 Acts, ch 128, §1, 2; 92 Acts, ch 1163, §75; 92 Acts, ch 1231, §44; 94 Acts, ch 1102, §1; 98 Acts, ch 1112, §2, 14, 16; 99 Acts, ch 13, §11; 2000 Acts, ch 1133, §3; 2001 Acts, ch 33, §1; 2002 Acts, ch 1140, §32, 33; 2003 Acts, ch 108, §55; 2005 Acts, ch 8, §15; 2006 Acts, ch 1021, §1; 2007 Acts, ch 44, §28; 2007 Acts, ch 214, §40; 2010 Acts, ch 1075, §1, 2; 2010 Acts, ch 1105, §1; 2011 Acts, ch 25, §28, 29; 2011 Acts, ch 38, §8

Driver education courses to include instruction relating to energy efficiency and safety; 90 Acts, ch 1252, §54

Department of public health to cooperate to provide materials and information relating to becoming an organ donor; 94 Acts, ch 1102, §3  
For applicable scheduled fine, see §805.8A, subsection 4

Additional penalties for violations of subsection 2, paragraph a, subparagraph (2) causing serious injury or death, see §321.482A

2010 enactment of subsection 1, paragraph b, subparagraph (3) takes effect March 19, 2010, and applies retroactively to July 1, 2008, and to any accident that occurred on or after that date; 2010 Acts, ch 1075, §2

See Code editor’s note on simple harmonization

Subsection 2 amended

Subsection 3, paragraph b, subparagraph (4) amended

**321.180B Graduated driver’s licenses for persons aged fourteen through seventeen.**

Persons under age eighteen shall not be issued a license or permit to operate a motor vehicle except under the provisions of this section. However, the department may issue restricted and special driver’s licenses to certain minors as provided in sections 321.178 and 321.194, and driver’s licenses restricted to motorized bicycles as provided in section 321.189. A license or permit shall not be issued under this section or section 321.178 or 321.194 without the consent of a parent or guardian or a person having custody of the applicant under chapter 232 or 600A. An additional consent is required each time a license or permit is issued under this section or section 321.178 or 321.194. The consent must be signed by at least one parent, guardian, or custodian on an affidavit form provided by the department.

1. *Instruction permit.*

a. The department may issue an instruction permit to an applicant between the ages of fourteen and eighteen years if the applicant meets the requirements of sections 321.184 and 321.186, other than a driving demonstration, and pays the required fee. An instruction permit issued under this section shall be valid for a period not to exceed four years from the licensee’s birthday anniversary in the year of issuance. A motorcycle instruction permit issued under this section is not renewable.

b. Subject to the limitations in this subsection, an instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to operate a motor vehicle other than a commercial motor vehicle or as a chauffeur or a motor vehicle with a gross vehicle weight rating of sixteen thousand one or more pounds upon the highways.

c. Except as otherwise provided, a permittee who is less than eighteen years of age and who is operating a motor vehicle must be accompanied by a person issued a driver's license valid for the vehicle operated who is the parent, guardian, or custodian of the permittee, member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent, guardian, or custodian, and who is actually occupying a seat beside the driver. A permittee shall not operate a motor vehicle if the number of passengers in the motor vehicle exceeds the number of passenger safety belts in the motor vehicle. If the applicant for an instruction permit holds a driver's license issued in this state valid for the operation of a motorized bicycle or a motorcycle, the instruction permit shall be valid for such operation without the requirement of an accompanying person.

d. However, if the permittee is operating a motorcycle in accordance with this section, the accompanying person must be within audible and visual communications distance from the permittee and be accompanying the permittee on or in a different motor vehicle. Only one permittee shall be under the immediate supervision of an accompanying qualified person.

e. A permittee shall not be penalized for failing to have the instruction permit in the permittee's immediate possession if the permittee produces in court, within a reasonable time, an instruction permit issued to the permittee and valid at the time of the permittee's arrest or at the time the permittee was charged with failure to have the permit in the permittee's immediate possession.

2. *Intermediate license.*

a. The department may issue an intermediate driver's license to a person sixteen or seventeen years of age who possesses an instruction permit issued under subsection 1 or a comparable instruction permit issued by another state for a minimum of six months immediately preceding application, and who presents an affidavit signed by a parent, guardian, or custodian on a form to be provided by the department that the permittee has accumulated a total of twenty hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the permittee's parent, guardian, custodian, instructor, a person certified by the department, or a person at least twenty-five years of age who had written permission from a parent, guardian, or custodian to accompany the permittee, and whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and violation free continuously for, the six-month period immediately preceding the application for an intermediate license. An applicant for an intermediate license must meet the requirements of section 321.186, including satisfactory completion of driver education as required in section 321.178, and payment of the required license fee before an intermediate license will be issued. A person issued an intermediate license must limit the number of passengers in the motor vehicle when the intermediate licensee is operating the motor vehicle to the number of passenger safety belts.

b. Except as otherwise provided, a person issued an intermediate license under this subsection who is operating a motor vehicle between the hours of 12:30 a.m. and 5:00 a.m. must be accompanied by a person issued a driver's license valid for the vehicle operated who is the parent, guardian, or custodian of the permittee, a member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent, guardian, or custodian, and who is actually occupying a seat beside the driver. However, a licensee may operate a vehicle to and from school-related extracurricular activities and work without an accompanying driver between the hours of

12:30 a.m. and 5:00 a.m. if such licensee possesses a waiver on a form to be provided by the department. An accompanying driver is not required between the hours of 5:00 a.m. and 12:30 a.m.

3. *Remedial driver improvement action — suspension of permit, intermediate license, or full license.*

a. A person who has been issued an instruction permit, an intermediate license, or a full driver's license under this section, upon conviction of a moving traffic violation or involvement in a motor vehicle accident which occurred during the term of the instruction permit or intermediate license, shall be subject to remedial driver improvement action or suspension of the permit or current license. A person possessing an instruction permit who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued an intermediate license until the person has completed the remedial driver improvement action and has been accident and violation free continuously for the six-month period immediately preceding the application for the intermediate license. A person possessing an intermediate license who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued a full driver's license until the person has completed the remedial driver improvement action and has been accident and violation free continuously for the twelve-month period immediately preceding the application for a full driver's license.

b. The department may suspend an instruction permit, intermediate license, or full license issued under this section upon receiving satisfactory evidence that the person issued the instruction permit, intermediate license, or full license violated the restrictions imposed under subsection 1, 2, or 6 during the term of the instruction permit or intermediate license.

4. *Full driver's license.* A full driver's license may be issued to a person seventeen years of age who possesses an intermediate license issued under subsection 2 or a comparable intermediate license issued by another state for a minimum of twelve months immediately preceding application, and who presents an affidavit signed by a parent, guardian, or custodian on a form to be provided by the department that the intermediate licensee has accumulated a total of ten hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the licensee's parent, guardian, custodian, instructor, a person certified by the department, or a person at least twenty-five years of age who had written permission from a parent, guardian, or custodian to accompany the licensee, whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and violation free continuously for, the twelve-month period immediately preceding the application for a full driver's license, and who has paid the required fee.

5. *Class M license education requirements.* A person under the age of eighteen applying for an intermediate or full driver's license valid for the operation of a motorcycle shall be required to successfully complete a motorcycle education course either approved and established by the department of transportation or from a private or commercial driver education school licensed by the department of transportation before the class M license will be issued. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction minus moneys received by the school district under section 321.179.

6. *Use of electronic devices or equipment.*

a. A person issued an instruction permit or intermediate driver's license under this section shall not use an electronic communication device or an electronic entertainment device while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway. This paragraph does not apply to the use of electronic equipment which is permanently installed in the motor vehicle or to a portable device which is operated through permanently installed equipment.

b. For the period beginning July 1, 2010, through June 30, 2011, peace officers shall issue only warning citations for violations of paragraph "a". The department, in cooperation with the department of public safety, shall establish educational programs to foster compliance with the requirements of paragraph "a".

7. *Citations for violation of restrictions.* A person who violates the restrictions imposed

under subsection 1, 2, or 6 may be issued a citation under this section and shall not be issued a citation under section 321.193. A violation of the restrictions imposed under subsection 1, 2, or 6 shall not be considered a moving violation.

8. *Rules.* The department may adopt rules pursuant to chapter 17A to administer this section.

98 Acts, ch 1112, §5, 14, 16; 99 Acts, ch 13, §12, 13; 99 Acts, ch 128, §1 – 3; 2006 Acts, ch 1068, §22 – 24; 2009 Acts, ch 130, §2 – 5; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1069, §44; 2010 Acts, ch 1105, §2; 2011 Acts, ch 38, §9 – 11

For applicable scheduled fine, see §805.8A, subsection 4

Additional penalties for violations causing injury or death, see §321.482A

Subsection 3 amended

Subsection 6, paragraph a amended

NEW subsection 7 and former subsection 7 renumbered as 8

### **321.186 Examination of new or incompetent operators.**

1. The department may examine every new applicant for a driver's license or any person holding a valid driver's license when the department has reason to believe that the person may be physically or mentally incompetent to operate a motor vehicle, or whose driving record appears to the department to justify the examination. The department shall make every effort to accommodate a functionally illiterate applicant when the applicant is taking a knowledge test. The department shall make every effort to have an examiner conduct the commercial driver's license driving skills tests at other locations in this state where skills may be adequately tested when requested by a person representing ten or more drivers requiring driving skills testing.

2. The department shall make every effort to accommodate a commercial driver's license applicant's need to arrange an appointment for a driving skills test at an established test site other than where the applicant passed the required knowledge test. The department shall report to the governor and the general assembly on any problems, extraordinary costs, and recommendations regarding the appointment scheduling process.

3. The examination shall include a screening of the applicant's eyesight, a test of the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, a test of the applicant's knowledge of the traffic laws of this state, an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, and other physical and mental examinations as the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. However, an applicant for a new driver's license other than a commercial driver's license need not pass a vision test administered by the department if the applicant files with the department a vision report in accordance with section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department.

4. A physician licensed under chapter 148, an advanced registered nurse practitioner licensed under chapter 152 and registered with the board of nursing, a physician assistant licensed under chapter 148C, or an optometrist licensed under chapter 154 may report to the department the identity of a person who has been diagnosed as having a physical or mental condition which would render the person physically or mentally incompetent to operate a motor vehicle in a safe manner. The physician, advanced registered nurse practitioner, physician assistant, or optometrist shall make reasonable efforts to notify the person who is the subject of the report, in writing. The written notification shall state the nature of the disclosure and the reason for the disclosure. A physician, advanced registered nurse practitioner, physician assistant, or optometrist making a report under this section shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report. A physician, advanced registered nurse practitioner, physician assistant, or optometrist has no duty to make a report or to warn third parties with regard to any knowledge concerning a person's mental or physical competency to operate a motor vehicle in a safe manner. Any report received by the department from a physician, advanced registered nurse practitioner, physician assistant, or optometrist under this section

shall be kept confidential. Information regulated by chapter 141A shall be subject to the confidentiality provisions and remedies of that chapter.

[C31, 35, §4960-d14; C39, §5013.12; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.186] 90 Acts, ch 1230, §31; 92 Acts, ch 1175, §32; 98 Acts, ch 1029, §1; 98 Acts, ch 1073, §9; 99 Acts, ch 181, §16; 2002 Acts, ch 1032, §1; 2008 Acts, ch 1088, §119; 2011 Acts, ch 5, §1

Subsection 4 amended

### **321.186A Vision report in lieu of vision test.**

1. An applicant for a new or renewed driver's license need not take a vision test administered by the department if the applicant files with the department a vision report signed by a licensed vision specialist in accordance with this section.

2. An applicant for such a new or renewed driver's license who fails a vision test administered by the department may subsequently be issued the driver's license without need of passing a department administered vision test, if the applicant files with the department a vision report from a licensed vision specialist in accordance with this section.

3. The vision report shall state the visual acuity level of the applicant as measured by the vision specialist and shall be in the form and include other information as required by rule of the department. A vision report is valid only if the visual acuity level of the applicant has been measured by the licensed vision specialist within thirty days before the application for the new or renewed driver's license.

4. As used in this section, a "*licensed vision specialist*" means a physician licensed under chapter 148 or an optometrist licensed under chapter 154.

90 Acts, ch 1230, §32; 98 Acts, ch 1073, §9; 2008 Acts, ch 1088, §120; 2011 Acts, ch 38, §12  
Subsection 1 amended

### **321.188 Commercial driver's license requirements.**

1. Before the department issues, renews, or upgrades a commercial driver's license and in addition to the requirements of section 321.182, the license applicant shall do all of the following:

a. Certify whether the applicant is subject to and meets applicable driver qualifications of 49 C.F.R. pt. 391 as adopted by rule by the department.

b. Certify the applicant is not subject to any commercial driver's license disqualification and has committed no offense and has not acted in a manner which either alone or with previous actions or offenses could result in commercial driver's license disqualification.

c. Successfully pass knowledge tests and driving skills tests, provide self-certification of type of driving, and provide a medical examiner's certificate prepared by a medical examiner, as defined in 49 C.F.R. § 390.5, as required by rule by the department. The rules adopted shall substantially comply with the federal minimum testing and licensing requirements in 49 C.F.R. pt. 383, subpts. E, G, and H, as adopted by rule by the department. Except as required under 49 C.F.R. pt. 383, subpt. E, G, or H, a commercial driver's license is renewable without a driving skills test within one year after its expiration date.

d. Certify the vehicle to be operated in the driving skills tests represents the largest class of vehicle the applicant will operate on the highway.

e. Certify that the applicant is a resident of Iowa or a resident of a foreign jurisdiction.

f. Identify all states where the applicant has been licensed to drive any type of motor vehicle during the previous ten years.

2. An applicant for a commercial driver's license may substitute for a driving skills test the applicant's operating record and previous passage of a driving skills test or the applicant's operating record and previous driving experience if all of the following conditions exist:

a. The applicant is currently licensed to operate a commercial motor vehicle.

b. The applicant certifies that during the two years immediately preceding application all of the following apply:

(1) The applicant has not held driver's licenses valid for the operation of commercial motor vehicles from more than one state simultaneously.

(2) The applicant has not had any convictions which are federal commercial driver's

license disqualifying offenses under 49 C.F.R. § 383.51 as adopted by rule by the department while operating any type of vehicle.

(3) The applicant has not committed a traffic violation, other than a parking violation, arising in connection with a traffic accident.

(4) No record of an accident exists for which the applicant was convicted of a moving traffic violation.

(5) The applicant has not had any driver's license suspended, revoked, or canceled.

c. The applicant provides evidence of and certifies that the applicant is employed in a job requiring operation of a commercial motor vehicle and the applicant has done one of the following:

(1) Has previously passed a driving skills test given by this state or its designee in a motor vehicle representative of the class of motor vehicle the applicant will operate.

(2) Has operated during the two-year period immediately preceding the application a motor vehicle representative of the class of motor vehicle the applicant will operate.

3. An applicant for a hazardous material endorsement must pass a knowledge test as required under 49 C.F.R. § 383.121 as adopted by rule by the department to obtain or retain the endorsement. However, an applicant for license issuance who was previously issued a commercial driver's license from another state may retain the hazardous material endorsement from the previously issued license if the applicant successfully passed the endorsement test within the preceding twenty-four months. Pursuant to procedures established by the department, an applicant for a hazardous material endorsement must also comply with the application and security threat assessment requirements established under 49 C.F.R. pt. 383, 384, and 1572. A hazardous material endorsement shall be revoked or denied if the department determines that the applicant has not complied with or met the security threat assessment standards.

4. The department shall check the applicant's driving record as maintained by the applicant's current licensing state, the national commercial driver's license information system, and the national driver register to determine whether the applicant qualifies to be issued a commercial driver's license. The department shall notify the national commercial driver's license information system of the issuance, renewal, or upgrade of a commercial driver's license and shall post the driver's self-certification of type of driving as required by rule. The department shall also post information from the medical examiner's certificate required under subsection 1, paragraph "c", to the national commercial driver's license information system, if required by rule.

5. A resident of this state holding a commercial driver's license issued by a former state of residence in conformity with the federal commercial driver testing and licensing standards shall not be required to take a knowledge or driving skills test prior to issuance of a commercial driver's license in this state, except a basic Iowa rules of the road knowledge test and, when applicable, motorcycle operator knowledge and driving skills tests. The commercial driver's license issued by this state shall be valid for operation of the same class of vehicles with the same endorsements and restrictions as in the former state of licensure. However, a person with a hazardous materials endorsement must comply with subsection 3.

90 Acts, ch 1230, §34; 92 Acts, ch 1175, §21; 98 Acts, ch 1073, §9, 10; 99 Acts, ch 96, §30 – 32; 2000 Acts, ch 1133, §4; 2004 Acts, ch 1013, §28, 35; 2006 Acts, ch 1068, §25; 2011 Acts, ch 25, §30; 2011 Acts, ch 38, §13, 14

See Code editor's note on simple harmonization  
Subsection 1, paragraphs a and c amended  
Subsection 4 amended

### **321.190 Issuance of nonoperator's identification cards — fee.**

#### **1. *Application for and contents of card.***

a. The department shall, upon application and payment of the required fee, issue to an applicant a nonoperator's identification card. To be valid the card shall bear a distinguishing number other than a social security number assigned to the cardholder, the full name, date of birth, sex, residence address, a physical description and a colored photograph of the cardholder, the usual signature of the cardholder, and such other information as the department may require by rule. An applicant for a nonoperator's identification card shall

apply for the card in the manner provided in section 321.182, subsections 1 through 3. The card shall be issued to the applicant at the time of application pursuant to procedures established by rule. An applicant for a nonoperator's identification card who is required by 50 U.S.C. app. § 451 et seq. to register with the United States selective service system shall be registered by the department with the selective service system as provided in section 321.183.

b. The department shall not issue a card to a person holding a driver's license. However, a card may be issued to a person holding a temporary permit under section 321.181. The card shall be identical in form to a driver's license issued under section 321.189 except the word "nonoperator" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person under eighteen years of age shall contain the same information as any other nonoperator's identification card except that the words "under eighteen" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person eighteen years of age or older but under twenty-one years of age shall contain the same information as any other nonoperator's identification card except that the words "under twenty-one" shall appear prominently on the face of the card.

c. The department shall use a process or processes for issuance of a nonoperator's identification card, that prevent, as nearly as possible, the opportunity for alteration or reproduction of, and the superimposition of a photograph on the nonoperator's identification card without ready detection.

d. The fee for a nonoperator's identification card shall be five dollars and the card shall be valid for a period of five years from the date of issuance. A nonoperator's identification card shall be issued without expiration to anyone age seventy or over. If an applicant for a nonoperator's identification card is a foreign national who is temporarily present in this state, the nonoperator's identification card shall be issued only for the length of time the foreign national is authorized to be present as determined by the department, not to exceed two years. An issuance fee shall not be charged for a person whose driver's license or driving privilege has been suspended under section 321.210, subsection 1, paragraph "a", subparagraph (3).

2. *Cancellation.* The department shall cancel a person's nonoperator's identification card upon determining the person was not entitled to be issued the card, did not provide correct information, committed fraud in applying for the card, or unlawfully used a nonoperator's identification card.

[C77, 79, 81, §321.190]

84 Acts, ch 1305, §65; 89 Acts, ch 317, §32; 90 Acts, ch 1230, §36, 37; 96 Acts, ch 1090, §2; 96 Acts, ch 1152, §11; 97 Acts, ch 74, §2; 98 Acts, ch 1073, §9; 2001 Acts, ch 132, §6; 2002 Acts, ch 1063, §24; 2003 Acts, ch 41, §2; 2006 Acts, ch 1068, §27; 2010 Acts, ch 1061, §112; 2011 Acts, ch 34, §80

Voter registration, see §48A.18  
Subsection 1, paragraph e stricken

### **321.194 Special minors' licenses.**

1. *Driver's license issued for travel to and from school.* Upon certification of a special need by the school board, superintendent of the applicant's school, or principal, if authorized by the superintendent, the department may issue a class C or M driver's license to a person between the ages of fourteen and eighteen years whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has not been convicted of a moving traffic violation or involved in a motor vehicle accident for, the six-month period immediately preceding the application for the special minor's license and who has successfully completed an approved driver education course. However, the completion of a course is not required if the applicant demonstrates to the satisfaction of the department that completion of the course would impose a hardship upon the applicant. The department shall adopt rules defining the term "*hardship*" and establish procedures for the demonstration and determination of when completion of the course would impose a hardship upon an applicant.

a. The driver's license entitles the holder, while having the license in immediate

possession, to operate a motor vehicle other than a commercial motor vehicle or as a chauffeur:

(1) During the hours of 5 a.m. to 10 p.m. over the most direct and accessible route between the licensee's residence and schools of enrollment or the closest school bus stop or public transportation service, and between schools of enrollment, for the purpose of attending duly scheduled courses of instruction and extracurricular activities within the school district.

(2) To a service station for the purpose of refueling, so long as the service station is the station closest to the route the licensee is traveling on under subparagraph (1).

(3) At any time when the licensee is accompanied in accordance with section 321.180B, subsection 1.

b. Each application shall be accompanied by a statement from the school board, superintendent, or principal, if authorized by the superintendent, of the applicant's school. The statement shall be upon a form provided by the department. The school board, superintendent, or principal, if authorized by the superintendent, shall certify that a need exists for the license and that the board, superintendent, or principal authorized by the superintendent is not responsible for actions of the applicant which pertain to the use of the driver's license. Upon receipt of a statement of necessity, the department shall issue the driver's license. The fact that the applicant resides at a distance less than one mile from the applicant's school of enrollment is prima facie evidence of the nonexistence of necessity for the issuance of a license. The school board shall develop and adopt a policy establishing the criteria that shall be used by a school district administrator to approve or deny certification that a need exists for a license. The student may appeal to the school board the decision of a school district administrator to deny certification. The decision of the school board is final. The driver's license shall not be issued for purposes of attending a public school in a school district other than either of the following:

(1) The district of residence of the parent or guardian of the student.

(2) A district which is contiguous to the district of residence of the parent or guardian of the student, if the student is enrolled in the public school which is not the school district of residence because of open enrollment under section 282.18 or as a result of an election by the student's district of residence to enter into one or more sharing agreements pursuant to the procedures in chapter 282.

c. (1) A person issued a driver's license under this section shall not use an electronic communication device or an electronic entertainment device while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway. This subparagraph does not apply to the use of electronic equipment which is permanently installed in the motor vehicle or to a portable device which is operated through permanently installed equipment.

(2) For the period beginning July 1, 2010, through June 30, 2011, peace officers shall issue only warning citations for violations of subparagraph (1). The department, in cooperation with the department of public safety, shall establish educational programs to foster compliance with the requirements of subparagraph (1).

2. *Suspension and revocation.* A driver's license issued under this section is subject to suspension or revocation for the same reasons and in the same manner as suspension or revocation of any other driver's license. The department may also suspend a driver's license issued under this section upon receiving satisfactory evidence that the licensee has violated the restrictions of the license or has been involved in one or more accidents chargeable to the licensee. The department may suspend a driver's license issued under this section upon receiving a record of the licensee's conviction for one violation. The department shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways other than parking violations as defined in section 321.210. After a person licensed under this section receives two or more convictions which require revocation of the person's license under this section, the department shall not grant an application for a new driver's license until the expiration of one year.

3. *Citations for violation of restrictions.* A person who violates the restrictions imposed under subsection 1, paragraph "a" or "c", may be issued a citation under this section and shall

not be issued a citation under section 321.193. A violation of the restrictions imposed under subsection 1, paragraph “a” or “c”, shall not be considered a moving violation.

[C31, 35, §4960-d5; C39, §5013.19; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.194; 82 Acts, ch 1248, §3]

83 Acts, ch 49, §1, 4; 83 Acts, ch 101, §68; 84 Acts, ch 1022, §5; 84 Acts, ch 1219, §24; 89 Acts, ch 266, §2; 90 Acts, ch 1230, §40; 98 Acts, ch 1073, §9; 98 Acts, ch 1112, §8, 14, 16; 2001 Acts, ch 159, §17; 2005 Acts, ch 8, §18; 2009 Acts, ch 130, §7, 8; 2010 Acts, ch 1105, §3; 2011 Acts, ch 38, §15, 16

For applicable scheduled fine, see §805.8A, subsection 4

Additional penalties for violations causing injury or death, see §321.482A

Subsection 1, paragraph c, subparagraph (1) amended

NEW subsection 3

### **321.207 Downgrade of commercial driver’s license.**

The department shall adopt rules for downgrading a commercial driver’s license to a noncommercial status upon a driver’s failure to provide a medical examiner’s certificate as required pursuant to section 321.188, subsection 1, paragraph “c”, or upon a driver’s failure to provide a self-certification of type of driving as required pursuant to section 321.188, subsection 1, paragraph “c”. The rules shall substantially comply with 49 C.F.R. § 383.71 and 383.73, as adopted by rule by the department.

2011 Acts, ch 38, §17

NEW section

### **321.252 Department to adopt sign manual.**

1. a. The department shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway and transportation officials.

b. The department shall include in its manual of traffic-control devices, specifications for a uniform system of highway signs for the purpose of guiding traffic to organized off-highway permanent camps, and camp areas, operated by recognized and established civic, religious, and nonprofit charitable organizations and to for-profit campgrounds and ski areas. The department shall purchase, install, and maintain the signs upon the prepayment of the costs by the organization or owner.

2. The department shall also establish criteria for guiding traffic on all fully controlled-access, divided, multilaned highways including interstate highways to each tourist attraction which is located within thirty miles of the highway and receives fifteen thousand or more visitors annually. Nothing in this subsection shall be construed to prohibit the department from erecting signs to guide traffic on these highways to tourist attractions which are located more than thirty miles from the highway or which receive fewer than fifteen thousand visitors annually.

3. a. The department shall establish, by rule, in cooperation with a tourist signing committee, the standards for tourist-oriented directional signs and shall annually review the list of attractions for which signing is in place. The rules shall conform to national standards for tourist-oriented directional signs adopted under 23 U.S.C. § 131(q) and to the manual of uniform traffic-control devices.

(1) The tourist signing committee shall be made up of the directors or their designees of the departments of agriculture and land stewardship, natural resources, cultural affairs, and transportation, the director or the director’s designee of the economic development authority, the chairperson or the chairperson’s designee of the Iowa travel council, and a member of the outdoor advertising association of Iowa. The director or the director’s designee of the economic development authority shall be the chairperson of the committee.

(2) The department of transportation shall be responsible for calling and setting the date of the meetings of the committee which meetings shall be based upon the amount of activity relating to signs. However, the committee shall meet at least once a month.

b. A tourist attraction is not subject to a minimum number of visitors annually to qualify for tourist-oriented directional signing.

4. The rules shall not be applicable to directional signs relating to historic sites on land owned or managed by state agencies, as provided in section 321.253A. The rules shall include but are not limited to the following:

a. Criteria for eligibility for signing.

b. Criteria for limiting or excluding businesses, activities, services, and sites that maintain signs that do not conform to the requirements of chapter 306B, chapter 306C, division II, or other statutes or administrative rules regulating outdoor advertising.

c. Provisions for a fee schedule to cover the direct and indirect costs of sign manufacture, erection, and maintenance, and related administrative costs.

d. Provisions specifying maximum distances to eligible businesses, activities, services, and sites. Tourist-oriented directional signs may be placed on highways within the maximum travel distance that have the greatest traffic count per day, if sufficient space is available. If an adjacent landowner complains to the department about the placement of a tourist-oriented directional sign, the department shall attempt to reach an agreement with the landowner for relocating the sign. If possible, the sign shall be relocated from the place of objection. If the sign must be located on an objectionable place, it shall be located on the least objectionable place possible.

e. Provisions for trailblazing to facilities that are not on the crossroad. Appropriate trailblazing shall be installed over the most desirable routes on lesser traveled primary highways, secondary roads, and city streets leading to the tourist attraction.

f. Criteria for determining when to permit advance signing.

g. Provisions specifying conditions under which the time of operation of a business, activity, service, or site is shown.

h. Provisions for masking or removing signs during off seasons for businesses, activities, services, and sites operated on a seasonal basis. Faded signs shall be replaced and the commercial vendor charged for the cost of replacement based upon the fee schedule adopted.

i. Provisions specifying the maximum number of signs permitted per intersection.

j. Provisions for determining what businesses, activities, services, or sites are signed when there are more applicants than the maximum number of signs permitted.

k. Provisions for removing signs when businesses, activities, services, or sites cease to meet minimum requirements for participation and related costs.

5. Local authorities shall adhere to the specifications for signs as established by the department, and shall purchase, install, and maintain signs in their respective jurisdictions upon prepayment by the organization of the cost of such purchase, installation, and maintenance. The department shall include in its manual of traffic-control devices specifications for a uniform system of traffic-control devices in legally established school zones.

[C24, 27, §4627; C31, 35, §4627, 5079-d7; C39, §5019.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.252]

86 Acts, ch 1060, §1, 2; 90 Acts, ch 1183, §4; 2010 Acts, ch 1069, §93; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **321.256 Obedience to official traffic-control devices.**

No driver of a vehicle shall disobey the instructions of any official traffic-control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a peace officer subject to the exceptions granted the driver of an authorized emergency vehicle.

[C39, §5019.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.256]

For applicable scheduled fine, see §805.8A, subsection 8

Additional penalties for violations causing injury or death, see §321.482A

Section not amended; footnote added

### **321.257 Official traffic-control signal.**

1. For the purposes of this section “*stop at the official traffic-control signal*” means

stopping at the first opportunity at either the clearly marked stop line or before entering the crosswalk or before entering the intersection.

2. Official traffic-control signals consisting of colored lights or colored lighted arrows shall regulate vehicle and pedestrian traffic in the following manner:

a. A “*steady circular red*” light means vehicular traffic shall stop. Vehicular traffic shall remain standing until a signal to proceed is shown or vehicular traffic, unless prohibited by a sign, may cautiously enter the intersection to make a right turn from the right lane of traffic or a left turn from a one-way street to a one-way street from the left lane of traffic on a one-way street onto the leftmost lane of traffic on a one-way street. Turns made under this paragraph shall be made in a manner that does not interfere with other vehicular or pedestrian traffic lawfully using the intersection. Pedestrian traffic facing a steady circular red light shall not enter the roadway unless the pedestrian can safely cross the roadway without interfering with any vehicular traffic.

b. A “*steady circular yellow*” or “*steady yellow arrow*” light means vehicular traffic is warned that the related green movement is being terminated and vehicular traffic shall no longer proceed into the intersection and shall stop. If the stop cannot be made in safety, a vehicle may be driven cautiously through the intersection. Pedestrian traffic is warned that there is insufficient time to cross the intersection and any pedestrian starting to cross the roadway shall yield the right-of-way to all vehicles.

c. A “*steady circular green*” light means vehicular traffic may proceed straight, turn right or turn left through the intersection unless otherwise specifically prohibited. Vehicular traffic shall yield the right-of-way to other vehicular and pedestrian traffic lawfully within the intersection.

d. A “*steady green arrow*” light shown alone or with another official traffic-control signal means vehicular traffic may cautiously enter the intersection and proceed in the direction indicated by the arrow. Vehicular traffic shall yield the right-of-way to other vehicles and pedestrians lawfully within the intersection.

e. A “*flashing circular red*” light means vehicular traffic shall stop and after stopping may proceed cautiously through the intersection yielding to all vehicles not required to stop or yield which are within the intersection or approaching so closely as to constitute a hazard, but then may proceed.

f. A “*flashing yellow*” light means vehicular traffic shall proceed through the intersection or past such signal with caution.

g. A “*don’t walk*” light is a pedestrian signal which means that pedestrian traffic facing the illuminated pedestrian signal shall not start to cross the roadway in the direction of the pedestrian signal, and pedestrian traffic in the crossing shall proceed to a safety zone.

h. A “*walk*” light is a pedestrian signal which means that pedestrian traffic facing the illuminated pedestrian signal may proceed to cross the roadway in the direction of the pedestrian signal and shall be given the right-of-way by drivers of all vehicles.

[C39, §5019.06, 5019.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §321.257, 321.258; C79, 81, §321.257]

For applicable scheduled fines, see §805.8A, subsections 7 and 9  
Additional penalties for violations causing injury or death, see §321.482A  
Section not amended; footnote added

### **321.376 License — authorization — instruction requirement.**

1. The driver of a school bus shall hold a driver’s license issued by the department of transportation valid for the operation of the school bus and a certificate of qualification for operation of a commercial motor vehicle issued by a physician or osteopathic physician licensed pursuant to chapter 148, physician’s assistant, advanced registered nurse practitioner, or chiropractor or any other person identified by federal and state law as authorized to perform physical examinations, and shall successfully complete an approved course of instruction in accordance with subsection 2. A person holding a temporary restricted license issued under chapter 321J shall be prohibited from operating a school bus. The department of education shall refuse to issue an authorization to operate a school bus to any person who, after notice and opportunity for hearing, is determined to have committed any of the acts proscribed under section 321.375, subsection 2. The department of education

shall take adverse action against any person who, after notice and opportunity for hearing, is determined to have committed any of the acts proscribed under section 321.375, subsection 2. Such action may include a reprimand or warning of the person or the suspension or revocation of the person's authorization to operate a school bus. The department of education shall recommend, and the state board of education shall adopt under chapter 17A, rules and procedures for issuing and suspending or revoking authorization to operate a school bus in this state. Rules and procedures adopted shall include but are not limited to provisions for the revocation or suspension of, or refusal to issue, authorization to persons who are determined to have committed any of the acts proscribed under section 321.375, subsection 2.

2. A person applying for employment or employed as a school bus driver shall successfully complete a department of education approved course of instruction for school bus drivers before or within the first six months of employment and at least every twenty-four months thereafter. If an employee fails to provide an employer with a certificate of completion of the required school bus driver's course, the driver's employer shall report the failure to the department of education and the employee's authorization to operate a school bus shall be revoked. The department of education shall send notice of the revocation to both the employee and the employer. A person whose school bus authorization has been revoked under this section shall not be issued another authorization until certification of the completion of an approved school bus driver's course is received by the department of education.

3. As used in this section and section 321.375, "driver of a school bus" or "school bus driver" does not include a mechanic, delivery driver, or other person operating an empty school bus for purposes other than the transportation of passengers. Such persons must still hold a commercial driver's license valid for the operation of a vehicle of the size and type operated, including a passenger endorsement, but are not required to hold a driver's license with a school bus endorsement.

[C39, §5032.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.376]

89 Acts, ch 222, §1; 90 Acts, ch 1230, §71; 91 Acts, ch 201, §1; 92 Acts, ch 1163, §76; 93 Acts, ch 127, §9; 2002 Acts, ch 1140, §36; 2006 Acts, ch 1152, §51; 2009 Acts, ch 133, §120; 2011 Acts, ch 38, §18

NEW subsection 3

### **321.435 Motorcycles equipped with detachable stabilizing wheels.**

Notwithstanding any other provision of law, a motor vehicle that is originally designed as a two-wheeled motorcycle and is modified using conversion hardware which allows for the attachment and detachment of two stabilizing rear wheels may be operated on a highway with the stabilizing wheels attached in accordance with the provisions of this chapter applicable to motorcycles. A motorcycle shall not be determined to be reconstructed based on the sole fact that two stabilizing wheels have been added as described in this section.

2011 Acts, ch 15, §1

NEW section

## **CHAPTER 321A**

### **MOTOR VEHICLE FINANCIAL RESPONSIBILITY**

For sanctions related to driving a motor vehicle without financial liability coverage, see §321.20B

#### **321A.3 Abstract of operating record — fees to be charged and disposition of fees.**

1. The department shall upon request furnish any person a certified abstract of the operating record of a person subject to chapter 321, 321J, or this chapter. The abstract shall also fully designate the motor vehicles, if any, registered in the name of the person. If there is no record of a conviction of the person having violated any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the department shall so

certify. A fee of five dollars and fifty cents shall be paid for each abstract except for state, county, or city officials, court officials, public transit officials, or other officials of a political subdivision of the state or a nonprofit charitable organization described in section 501(c)(3) of the Internal Revenue Code. The department shall transfer the moneys collected under this section to the treasurer of state who shall credit to the general fund all moneys collected.

2. A sheriff may provide an abstract of the operating record of a person to the person or an individual authorized by the person. The sheriff shall charge a fee of five dollars and fifty cents for each abstract which the sheriff shall transfer to the department quarterly. The sheriff may charge an additional fee sufficient to cover costs incurred by the sheriff in producing the abstract.

3. The abstracts are not admissible as evidence in an action for damages or criminal proceedings arising out of a motor vehicle accident.

4. The abstract of operating record provided under this section shall designate which speeding violations occurring on or after July 1, 1986, but before May 12, 1987, are for violations of ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour. For speeding violations occurring on or after May 12, 1987, the abstract provided under this section shall designate which speeding violations are for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour.

5. The department shall not require a fee for a person to view their own operating record.

6. Fees under subsection 1 may be paid by credit cards, as defined in section 537.1301, subsection 17, approved for that purpose by the department of transportation. The department shall enter into agreements with financial institutions extending credit through the use of credit cards to ensure payment of the fees. The department shall adopt rules pursuant to chapter 17A to implement the provisions of this subsection.

7. Notwithstanding chapter 22 or any other law of this state, except as provided in subsection 5, the department shall not make available a certified operating record in a manner which would result in a fee of less than that provided under subsection 1. Should the department make available certified copies of abstracts of operating records on magnetic tape or on disk or through electronic data transfer, the five dollar and fifty cent fee under subsection 1 applies to each abstract supplied, and an additional access fee may be charged for each abstract supplied through electronic data transfer.

8. *a.* (1) A person who purchases a certified abstract of an operating record directly from the department under this section shall only use, sell, disclose, or distribute the abstract or any portion of the abstract one time, for one purpose, and the person shall not supply that abstract or any portion of that abstract to more than one other person. The person shall make a subsequent request for the abstract and pay an additional fee for the request in the same manner as provided for the initial request for any subsequent use, sale, disclosure, or distribution of the same certified abstract or any portion of the abstract or to supply the same certified abstract or any portion of the abstract to another person, except as provided in subparagraph (2).

(2) Notwithstanding the limitation on use, sale, disclosure, and distribution of a certified abstract under subparagraph (1), a person who purchases a certified abstract under this section may provide a copy of the previously purchased certified abstract to the person who is an insurer who was originally supplied the certified abstract by the person who purchased the certified abstract.

*b.* A person who is supplied a certified abstract or any portion of the abstract by a person who purchases the certified abstract under paragraph “*a*” shall only use the abstract one time, for one purpose, and shall not reuse, sell, disclose, or distribute the abstract or any portion of the abstract except as provided in paragraph “*c*”.

*c.* A person who is an insurer or an insurance producer licensed under chapter 522B who purchases a certified abstract under this section or a person who is supplied a certified abstract or any portion of the abstract pursuant to paragraph “*b*” may use the certified abstract pursuant to this paragraph “*c*” for more than one use for the following purposes:

(1) To provide a copy to a consumer with respect to a specific decision impacting the

consumer and made in whole or in part based upon information contained in the certified abstract, as defined by rule of the department.

(2) Internal auditing purposes, or similar internal purposes as defined by rule of the department.

(3) Internal purposes in a manner consistent with the federal Driver's Privacy Protection Act, 18 U.S.C. § 2721 – 2725, by a person who is an insurer.

(4) To show compliance with the retention requirements imposed under this section or other applicable law.

(5) By an insurer, to provide a copy to an insurance producer licensed under chapter 522B and appointed by the insurer for purposes of a specific application for coverage. However, a producer who is provided a certified abstract pursuant to this subparagraph shall not reuse, sell, disclose, or distribute the abstract with respect to any transaction not associated with the insurer who appointed the producer.

(6) To provide a copy to an insurer for purposes of a specific application for coverage if the person requesting the certified abstract is an insurance producer licensed under chapter 522B and appointed by the insurer for purposes of the specific application for coverage.

(7) To provide a copy, for the purpose of a specific application for coverage or for a purpose as provided under subparagraphs (1) through (4), to an affiliate of the person who is an insurer who originally purchased or was supplied the certified abstract. An affiliate who receives a copy of a certified abstract pursuant to this subparagraph shall only use the copy of the abstract one time and shall not reuse, sell, disclose, or distribute the copy to any other person, except as provided under subparagraphs (1) through (5) in the same manner as permitted for a person who is an insurer.

d. For purposes of this subsection, “*affiliate*” means an insurer who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the person who is an insurer.

e. A person who purchases a certified abstract directly from the department pursuant to this section shall keep records for a period of five years identifying the persons to whom the abstract is provided and the use of the abstract. Records maintained pursuant to this subsection shall be made available to the department upon request. A person who is otherwise supplied a certified abstract and who then provides that abstract to another person for a purpose other than the purposes identified under paragraph “c” shall also be subject to the recordkeeping requirements under this paragraph.

f. A person shall not use, sell, disclose, or distribute any abstract information or portion of the abstract information acquired under this section except as authorized by this section and any applicable rules of the department. Nothing in this section shall be construed to authorize the use, sale, disclosure, or distribution of personal information, protected personal information, or highly protected personal information as prohibited under section 321.11 or the federal Driver's Privacy Protection Act, 18 U.S.C. § 2721 – 2725.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.3; 81 Acts, ch 14, §26]

83 Acts, ch 80, §1; 87 Acts, ch 120, §6; 88 Acts, ch 1158, §67; 88 Acts, ch 1214, §1; 88 Acts, ch 1278, §35 – 39; 89 Acts, ch 296, §37; 89 Acts, ch 317, §35; 90 Acts, ch 1267, §38; 92 Acts, ch 1175, §43; 93 Acts, ch 169, §19; 99 Acts, ch 207, §14; 2008 Acts, ch 1191, §58, 59; 2009 Acts, ch 126, §1; 2009 Acts, ch 179, §37

For the fiscal years beginning July 1, 2011, and July 1, 2012, a portion of the fees collected for furnishing a certified abstract of a vehicle operating record to be transferred to the lowAccess revolving fund; 2011 Acts, ch 127, §5, 63, 89

Section not amended; footnote revised

### **321A.5 Security required following accident — exceptions.**

1. The department shall, immediately or within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death or damage to the property of any one person in the amount of one thousand five hundred dollars or more, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in the accident, and if the operator is a nonresident the privilege of operating a motor vehicle within this state, and if the owner is a nonresident the privilege of the use within this state of any motor vehicle owned by the owner, unless the operator or owner or both shall deposit security in a sum which shall be sufficient in the judgment of the

department to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against the operator or owner; provided notice of the suspension shall be sent by the department to the operator and owner not less than ten days prior to the effective date of the suspension and shall state the amount required as security.

2. This section shall not apply under the conditions stated in section 321A.6 or to any of the following:

a. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

b. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to the operator's operation of motor vehicles not owned by the operator;

c. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance policy or bonds; or

d. To such owner if such owner is at the time of such accident qualified as a self-insurer under section 321A.34, or to any such operator operating such motor vehicle for such self-insurer.

3. A policy or bond is not effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if the motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, the policy or bond is not effective under this section unless the insurance company or surety company if not authorized to do business in this state executes a power of attorney authorizing the department to accept service on its behalf of notice or process in any action upon the policy or bond arising out of the accident. However, with respect to accidents occurring on or after January 1, 1981, and before January 1, 1983, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than fifteen thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, to a limit of not less than thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident; and with respect to accidents occurring on or after January 1, 1983, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, to a limit of not less than forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than fifteen thousand dollars because of injury to or destruction of property of others in any one accident.

4. Upon receipt of a report of a motor vehicle accident and information that an automobile liability policy or surety bond meeting the requirements of this chapter was in effect at the time of this accident covering liability for damages resulting from such accident, the department shall forward by regular mail to the insurance carrier or surety carrier which issued such policy or bond a copy of such information concerning insurance or bond coverage, and it shall be presumed that such policy or bond was in effect and provided coverage to both the operator and the owner of the motor vehicle involved in such accident unless the insurance carrier or surety carrier shall notify the department otherwise within fifteen days from the mailing of such information to such carrier; provided, however, that in the event the department shall later ascertain that erroneous information had been given the department in respect to the insurance or bond coverage of the operator or owner of a motor vehicle involved in such accident, the department shall take such action as the department

is otherwise authorized to do under this chapter within sixty days after the receipt by the department of correct information with respect to such coverage.

[C31, 35, §5079-c4; C39, §5021.01; C46, §321.275; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.5; 81 Acts, ch 103, §8]

92 Acts, ch 1175, §43; 97 Acts, ch 72, §2; 2006 Acts, ch 1068, §32; 2010 Acts, ch 1061, §180; 2011 Acts, ch 38, §19

Subsection 1 amended

### **321A.17 Proof required upon certain convictions.**

1. Whenever the department, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail or revokes the license of any person pursuant to chapter 321J, the department shall also suspend the registration for all motor vehicles registered in the name of the person, except that the department shall not suspend the registration, unless otherwise required by law, if the person has previously given or immediately gives and thereafter maintains proof of financial responsibility with respect to all motor vehicles registered by the person.

2. Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until the person shall give and thereafter maintain proof of financial responsibility.

3. If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until the person shall give and thereafter maintain proof of financial responsibility.

4. An individual applying for a driver's license following a period of suspension or revocation pursuant to a dispositional order issued under section 232.52, subsection 2, paragraph "a", or under section 321.180B, section 321.210, subsection 1, paragraph "a", subparagraph (4), or section 321.210A, 321.213A, 321.213B, 321.216B, or 321.513, following a period of suspension under section 321.178 or 321.194, or following a period of revocation pursuant to a court order issued under section 901.5, subsection 10, or under section 321J.2A, is not required to maintain proof of financial responsibility under this section.

5. This section does not apply to a commercial driver's licensee who is merely disqualified from operating a commercial motor vehicle under section 321.208 if the licensee's driver's license is not suspended or revoked.

6. This section does not apply to an individual whose administrative license suspension under section 321.210D has been rescinded and who is otherwise under no obligation to furnish proof of financial responsibility.

7. This section does not apply to an individual whose administrative license revocation has been rescinded under section 321J.13, and who is otherwise under no obligation to furnish proof of financial responsibility.

8. This section does not apply to an individual whose privilege to operate a motor vehicle has been suspended or revoked when the period of suspension or revocation has ended and the individual provides evidence satisfactory to the department that the individual has established residency in another state. The individual may not apply for an Iowa driver's license for two years from the effective date of the person's last suspension or revocation unless proof of financial responsibility is filed with the department, as required by this section.

9. The registration suspension required under this section does not apply to a motor vehicle awarded to an individual under an order entered pursuant to section 598.21, if all of the following apply:

a. The individual was the co-owner of the motor vehicle with a spouse who is required to file and maintain proof of financial responsibility.

b. The individual is not otherwise required to file and maintain proof of financial responsibility.

c. The individual is not able to obtain title to the motor vehicle in the individual's sole name due to a lien against the motor vehicle that existed at the time the order was entered pursuant to section 598.21.

[C31, 35, §5079-c5, -c6; C39, §5021.03, 5021.04; C46, §321.277, 321.278; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.17; 82 Acts, ch 1167, §11]

85 Acts, ch 197, §5; 86 Acts, ch 1220, §38; 89 Acts, ch 266, §3; 90 Acts, ch 1230, §78; 92 Acts, ch 1175, §43; 93 Acts, ch 16, §11; 93 Acts, ch 164, §5; 94 Acts, ch 1172, §36; 95 Acts, ch 48, §6; 95 Acts, ch 55, §11; 96 Acts, ch 1218, §67; 98 Acts, ch 1073, §9; 98 Acts, ch 1088, §2; 98 Acts, ch 1112, §12; 99 Acts, ch 13, §19, 29; 2002 Acts, ch 1063, §34, 35; 2009 Acts, ch 130, §27, 38; 2010 Acts, ch 1061, §176; 2011 Acts, ch 38, §20

Subsection 4 amended

## CHAPTER 321G

### SNOWMOBILES

#### **321G.10 Accident reports.**

If a snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to one thousand five hundred dollars or more, either the operator or someone acting for the operator shall immediately notify the county sheriff or another law enforcement agency in the state. If the accident occurred on public land or ice under the jurisdiction of the commission, the operator shall file with the commission a report of the accident, within seventy-two hours, containing information as the commission may require. All other accidents shall be reported as required under section 321.266.

[C71, 73, 75, 77, 79, 81, §321G.10; 81 Acts, ch 113, §7]

89 Acts, ch 244, §22; 2004 Acts, ch 1132, §16; 2010 Acts, ch 1157, §2; 2011 Acts, ch 38, §21  
Section amended

#### **321G.29 Owner's certificate of title — in general.**

1. The owner of a snowmobile acquired on or after January 1, 1998, other than a snowmobile used exclusively as a farm implement or a snowmobile more than thirty years old registered as provided in section 321G.4, subsection 4, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the snowmobile. The owner of a snowmobile used exclusively as a farm implement may obtain a certificate of title. A person who owns a snowmobile that is not required to have a certificate of title may apply for and receive a certificate of title for the snowmobile and, subsequently, the snowmobile shall be subject to the requirements of this chapter as if the snowmobile were required to be titled. All snowmobiles that are titled shall be registered.

2. A certificate of title shall contain the information and shall be issued on a form the department prescribes.

3. An owner of a snowmobile shall apply to the county recorder for issuance of a certificate of title within thirty days after acquisition. The application shall be on forms the department prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the snowmobile or the fair market value if no sale immediately preceded the transfer and any additional information the department requires. If the application is made for a snowmobile last previously registered or titled in another state or foreign country, the application shall contain this information and any other information the department requires.

4. If a dealer buys or acquires a snowmobile for resale, the dealer may apply for and

obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used snowmobile, the dealer may apply for a certificate of title in the dealer's name within thirty days. If a dealer buys or acquires a new snowmobile for resale, the dealer may apply for a certificate of title in the dealer's name.

5. A manufacturer or dealer shall not transfer ownership of a new snowmobile without supplying the transferee with the manufacturer's or importer's certificate of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for a snowmobile by the department upon good cause shown by the owner.

6. A dealer transferring ownership of a snowmobile under this chapter shall assign the title to the new owner, or in the case of a new snowmobile, assign the certificate of origin. Within fifteen days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain a record of any certificate of title which the county recorder issues and shall keep each certificate of title on record until the certificate of title has been inactive for five years. When issuing a title for a new snowmobile, the county recorder shall obtain and keep on file a copy of the certificate of origin. When issuing a title and registration for a used snowmobile for which there is no title or registration, the county recorder shall obtain and keep on file the affidavit for the unregistered and untitled snowmobile.

8. Once titled, a person shall not sell or transfer ownership of a snowmobile without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire a snowmobile without obtaining a certificate of title for it in that person's name.

9. If the county recorder is not satisfied as to the ownership of the snowmobile or that there are no undisclosed security interests in the snowmobile, the county recorder may issue a certificate of title for the snowmobile but, as a condition of such issuance, may require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and also executed by a person authorized to conduct a surety business in this state. The form and amount of the bond shall be established by rule of the department. The bond shall be conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the snowmobile or person acquiring any security interest in the snowmobile, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title of the snowmobile on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the snowmobile. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of three years or prior thereto if the snowmobile is no longer registered in this state and the certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

97 Acts, ch 148, §1, 9; 99 Acts, ch 113, §4; 2002 Acts, ch 1027, §10; 2002 Acts, ch 1113, §3; 2004 Acts, ch 1132, §38; 2007 Acts, ch 141, §21, 22; 2011 Acts, ch 34, §81

Subsection 1 amended

## CHAPTER 321I

### ALL-TERRAIN VEHICLES

#### **321I.11 Accident reports.**

If an all-terrain vehicle is involved in an accident resulting in injury or death to anyone or property damage amounting to one thousand five hundred dollars or more, either the operator or someone acting for the operator shall immediately notify the county sheriff or another law enforcement agency in the state. If the accident occurred on public land or ice under the

jurisdiction of the commission, the operator shall file with the commission a report of the accident, within seventy-two hours, containing information as the commission may require. All other accidents shall be reported as required under section 321.266.

2004 Acts, ch 1132, §54; 2010 Acts, ch 1157, §3; 2011 Acts, ch 38, §22  
Section amended

## CHAPTER 321J

### OPERATING WHILE INTOXICATED

1986 Iowa Acts, ch 1220 enactment of this chapter applies to any judicial or administrative action which arises due to a violation which occurs after July 1, 1986, and also applies to any judicial or administrative action which arose prior to July 1, 1986, due to a violation of a preceding Code section or implementing rule which was the same or substantially similar to a section in 1986 Iowa Acts, ch 1220, or an implementing rule, if the defendant or defendant's counsel requests that the action proceed under 1986 Iowa Acts, ch 1220

References to actions which occurred previously under "this chapter" or "this section" include the preceding Code chapter or section which covers the same or substantially similar actions;  
86 Acts, ch 1220, §51, 52

#### **321J.2 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .08 or more (OWI).**

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of .08 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

a. A serious misdemeanor for the first offense.

b. An aggravated misdemeanor for a second offense.

c. A class "D" felony for a third offense and each subsequent offense.

3. A first offense is punishable by all of the following:

a. A minimum period of imprisonment in the county jail of forty-eight hours, but not to exceed one year, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest or for any time the person spent in a court-ordered operating-while-intoxicated program that provides law enforcement security. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

b. (1) With the consent of the defendant, the court may defer judgment pursuant to section 907.3 and may place the defendant on probation upon conditions as it may require. Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908. Upon fulfillment of the conditions of probation and the payment of fees imposed and not waived by the judicial district department of correctional services under section 905.14, the defendant shall be discharged without entry of judgment.

(2) A person is not eligible for a deferred judgment under section 907.3 if the person has been convicted of a violation of this section or the person's driver's license has been revoked under this chapter, and any of the following apply:

(a) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the

chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(b) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(c) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(d) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(e) If the offense under this chapter results in bodily injury to a person other than the defendant.

c. Assessment of a fine of one thousand two hundred fifty dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, the court may waive up to six hundred twenty-five dollars of the fine when the defendant presents to the court at the end of the minimum period of ineligibility a temporary restricted license issued pursuant to section 321J.20.

(1) Upon the entry of a deferred judgment, a civil penalty shall be assessed as provided in section 907.14 in an amount not less than the amount of the criminal fine authorized pursuant to this paragraph "c".

(2) As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service. However, the court shall not order the person to perform unpaid community service in lieu of a civil penalty or victim restitution. Surcharges and fees shall also be assessed pursuant to chapter 911.

d. Revocation of the person's driver's license for a minimum period of one hundred eighty days up to a maximum revocation period of one year, pursuant to section 321J.4, subsection 1, section 321J.9, or section 321J.12, subsection 2. If a revocation occurs due to test refusal under section 321J.9, the defendant shall be ineligible for a temporary restricted license for a minimum period of ninety days.

(1) A defendant whose alcohol concentration is .08 or more but not more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred. The department shall require the defendant to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be required to install an ignition interlock device.

(2) A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained, and an accident resulting in personal injury or property damage occurred or the defendant's alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant's alcohol concentration did not exceed .15. In either case, where a defendant's alcohol concentration is more than .10, the department shall require the defendant to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

e. Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to section 321J.24.

4. A second offense is punishable by all of the following:

a. A minimum period of imprisonment in the county jail or community-based correctional facility of seven days but not to exceed two years.

b. Assessment of a minimum fine of one thousand eight hundred seventy-five dollars and a maximum fine of six thousand two hundred fifty dollars. Surcharges and fees shall be assessed pursuant to chapter 911.

c. Revocation of the defendant's driver's license for a period of one year, if a revocation occurs pursuant to section 321J.12, subsection 1. If a revocation occurs due to test refusal

under section 321J.9, or pursuant to section 321J.4, subsection 2, the defendant's license shall be revoked for a period of two years.

d. Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to section 321J.24.

5. A third offense is punishable by all of the following:

a. Commitment to the custody of the director of the department of corrections for an indeterminate term not to exceed five years, with a mandatory minimum term of thirty days.

(1) If the court does not suspend a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "a", the person shall be assigned to a facility pursuant to section 904.513.

(2) If the court suspends a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "a", the court shall order the person to serve not less than thirty days nor more than one year in the county jail, and the person may be committed to treatment in the community under section 907.6.

b. Assessment of a minimum fine of three thousand one hundred twenty-five dollars and a maximum fine of nine thousand three hundred seventy-five dollars. Surcharges and fees shall be assessed pursuant to chapter 911.

c. Revocation of the person's driver's license for a period of six years pursuant to section 321J.4, subsection 4.

d. Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to section 321J.24.

6. To the extent that section 907.3 allows, the court may impose additional sentencing terms and conditions.

7. a. All persons convicted of an offense under subsection 2 shall be ordered, at the person's expense, to undergo, prior to sentencing, a substance abuse evaluation. The court shall order the person to follow the recommendations proposed in the substance abuse evaluation as provided in section 321J.3.

b. Where the program is available and is appropriate for the convicted person, a person convicted of an offense under subsection 2 shall be ordered to participate in a reality education substance abuse prevention program as provided in section 321J.24.

c. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2, paragraph "b" or "c" shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

8. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license revocation under this chapter:

a. Any conviction or revocation deleted from motor vehicle operating records pursuant to section 321.12 shall not be considered as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the one defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

9. A person shall not be convicted and sentenced for more than one violation of this

section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1.

10. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

11. *a.* This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

*b.* When charged with a violation of subsection 1, paragraph “c”, a person may assert, as an affirmative defense, that the controlled substance present in the person’s blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

12. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant’s blood, breath, or urine is admissible upon proof of a proper foundation.

*a.* The alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

*b.* The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant’s blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

*c.* The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation’s initial laboratory screening test for controlled substances.

13. *a.* In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

*b.* The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, “*emergency response*” means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

14. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph “b” or “c”, if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1, paragraph “b” or “c”.

86 Acts, ch 1220, §2; 87 Acts, ch 118, §4; 87 Acts, ch 215, §46; 90 Acts, ch 1233, §20; 90 Acts, ch 1251, §33; 97 Acts, ch 177, §4, 5; 98 Acts, ch 1073, §9; 98 Acts, ch 1100, §50; 98 Acts, ch 1138, §2, 3, 11 – 13, 37; 99 Acts, ch 96, §36; 2000 Acts, ch 1118, §1; 2000 Acts, ch 1135, §1; 2002 Acts, ch 1042, §1; 2003 Acts, ch 60, §1, 2; 2003 Acts, ch 179, §120; 2003 Acts, 1st Ex, ch

2, §48, 209; 2006 Acts, ch 1010, §90; 2006 Acts, ch 1166, §1 – 3; 2007 Acts, ch 10, §174; 2010 Acts, ch 1124, §1, 9; 2010 Acts, ch 1193, §50, 81; 2011 Acts, ch 25, §31; 2011 Acts, ch 131, §93, 158

For provisions relating to third offense OWI driver's license revocations and restoration of driving privileges, see 99 Acts, ch 153, §25  
 Subsection 4, paragraph b amended  
 Subsection 5, paragraph d amended

### **321J.3 Substance abuse evaluation or treatment — rules.**

1. *a.* In addition to orders issued pursuant to section 321J.2, subsections 3, 4, and 5, and section 321J.17, the court shall order any defendant convicted under section 321J.2 to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86.

*b.* If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

*c.* The court may prescribe the length of time for the evaluation and treatment or it may request that the community college or other approved provider conducting the course for drinking drivers which the person is ordered to attend or the treatment program to which the person is committed immediately report to the court when the person has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

*d.* Upon successfully completing a course for drinking drivers or an ordered substance abuse treatment program, a court may place the person on probation for six months and as a condition of probation, the person shall attend a program providing posttreatment services relating to substance abuse as approved by the court.

*e.* A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

*f.* A defendant who fails to carry out the order of the court shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

*g.* In addition to any other condition of probation, the person shall attend a program providing substance abuse prevention services or posttreatment services related to substance abuse as ordered by the court. The person shall report to the person's probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

2. *a.* Upon a second or subsequent offense in violation of section 321J.2, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in Iowa providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

*b.* The court may prescribe the length of time for the evaluation and treatment or it may request that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

*c.* A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

3. The state department of transportation, in cooperation with the judicial branch, shall adopt rules, pursuant to the procedure in section 125.33, regarding the assignment of persons ordered under section 321J.17 to submit to substance abuse evaluation and

treatment. The rules shall be applicable only to persons other than those committed to the custody of the director of the department of corrections under section 321J.2. The rules shall be consistent with the practices and procedures of the judicial branch in sentencing persons to substance abuse evaluation and treatment under section 321J.2. The rules shall include the requirement that the treatment programs utilized by a person pursuant to an order of the department meet the licensure standards of the department of public health for substance abuse treatment programs under chapter 125. The rules shall also include provisions for payment of costs by the offenders, including insurance reimbursement on behalf of offenders, or other forms of funding, and shall also address reporting requirements of the facility, consistent with the provisions of sections 125.84 and 125.86. The department shall be entitled to treatment information contained in reports to the department, notwithstanding any provision of chapter 125 that would restrict department access to treatment information and records.

86 Acts, ch 1220, §3; 87 Acts, ch 118, §5; 90 Acts, ch 1251, §34; 90 Acts, ch 1253, §120; 97 Acts, ch 177, §6, 7; 98 Acts, ch 1047, §28; 2006 Acts, ch 1010, §91; 2010 Acts, ch 1124, §2, 9; 2011 Acts, ch 20, §15

Subsection 1, paragraph c amended

### **321J.17 Civil penalty — disposition — conditions for license reinstatement.**

1. If the department revokes a person's driver's license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit one-half of the money in the separate fund established in section 915.94 and one-half of the money in the general fund of the state. A temporary restricted license shall not be issued unless an ignition interlock device has been installed pursuant to section 321J.4. A driver's license or nonresident operating privilege shall not be reinstated unless proof of deinstallation of an ignition interlock device installed pursuant to section 321J.4 has been submitted to the department. Except as provided in section 321.210B, a temporary restricted license shall not be issued or a driver's license or nonresident operating privilege reinstated until the civil penalty has been paid. A person assessed a penalty under this section may remit the civil penalty along with a processing fee of five dollars to a county treasurer authorized to issue driver's licenses under chapter 321M, or the civil penalty may be paid directly to the department.

2. a. If the department or a court orders the revocation of a person's driver's license or nonresident operating privilege under this chapter, the department or court shall also order the person, at the person's own expense, to do the following:

(1) Enroll, attend, and satisfactorily complete a course for drinking drivers, as provided in section 321J.22.

(2) Submit to evaluation and treatment or rehabilitation services.

b. The court or department may request that the community college or substance abuse treatment providers licensed under chapter 125 or other approved provider conducting the course for drinking drivers that the person is ordered to attend immediately report to the court or department that the person has successfully completed the course for drinking drivers. The court or department may request that the treatment program which the person attends periodically report on the defendant's attendance and participation in the program, as well as the status of treatment or rehabilitation.

c. A driver's license or nonresident operating privilege shall not be reinstated until proof of completion of the requirements of this subsection is presented to the department.

3. The department shall also require certification of installation of an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by any person seeking reinstatement following a second or subsequent revocation under section 321J.4, 321J.9, or 321J.12, unless such a person has previously received a temporary restricted license during the term of the revocation as authorized by this chapter. The requirement for the installation of an approved ignition interlock device

shall be for one year from the date of reinstatement unless a different time period is required by statute.

86 Acts, ch 1220, §17; 87 Acts, ch 232, §24; 87 Acts, ch 234, §113; 89 Acts, ch 317, §37; 91 Acts, ch 258, §50; 93 Acts, ch 110, §1; 95 Acts, ch 143, §6; 97 Acts, ch 177, §17; 98 Acts, ch 1073, §9; 98 Acts, ch 1075, §25; 98 Acts, ch 1090, §67, 84; 2000 Acts, ch 1118, §2; 2002 Acts, ch 1119, §155; 2008 Acts, ch 1018, §25, 31; 2010 Acts, ch 1097, §10; 2011 Acts, ch 20, §16

Subsection 2, paragraph b amended

### **321J.22 Drinking drivers course.**

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

a. “*Approved provider*” means a provider of a course for drinking drivers offered outside this state which has been approved by the department of education.

b. “*Course for drinking drivers*” means an approved course designed to inform the offender about drinking and driving and encourage the offender to assess the offender’s own drinking and driving behavior in order to select practical alternatives.

c. “*Satisfactory completion of a course*” means receiving at the completion of a course a grade from the course instructor of “C” or “2.0” or better.

2. a. The course provided according to this section shall be offered on a regular basis at each community college as defined in section 260C.2, or by substance abuse treatment programs licensed under chapter 125, or may be offered at a state correctional facility listed in section 904.102. However, a community college shall not be required to offer the course if a substance abuse treatment program licensed under chapter 125 offers the course within the merged area served by the community college.

b. Enrollment in the courses is not limited to persons ordered to enroll, attend, and successfully complete the course required under sections 321J.2 and 321J.17, subsection 2. However, any person under age eighteen who is required to attend the courses for violation of section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under chapter 125.

c. The course required by this section shall be:

(1) Taught by a community college under the supervision of the department of education or by a substance abuse treatment program licensed under chapter 125, and may be offered at a state correctional facility.

(2) Approved by the department of education, in consultation with the community colleges, substance abuse treatment programs licensed under chapter 125, the department of public health, and the department of corrections.

d. The department of education may approve a provider of a course for drinking drivers offered outside this state upon proof to the department’s satisfaction that the course is comparable to those offered by community colleges, substance abuse treatment programs licensed under chapter 125, and state correctional facilities as provided in this section. The department shall comply with the requirements of subsection 5 regarding such approved providers.

e. The department of education shall establish reasonable fees to defray the expense of obtaining classroom space, instructor salaries, and class materials for courses offered both by community colleges and by substance abuse treatment programs licensed under chapter 125, or for classes offered at a state correctional facility, and for administrative expenses incurred by the department of education in implementing subsection 5 on behalf of in-state and out-of-state offenders.

f. A person shall not be denied enrollment in a course by reason of the person’s indigency.

3. An employer shall not discharge a person from employment solely for the reason of work absence to attend a course required by this section. Any employer who violates this section is liable for damages which include but are not limited to actual damages, court costs, and reasonable attorney fees. The person may also petition the court for imposition of a cease and desist order against the person’s employer and for reinstatement to the person’s previous position of employment.

4. The department of education, substance abuse treatment programs licensed under chapter 125, and state correctional facilities shall prepare for their respective courses a list

of the locations of the courses taught under this section, the dates and times taught, the procedure for enrollment, and the schedule of course fees. The list shall be kept current and a copy of the list shall be sent to each court having jurisdiction over offenses provided in this chapter.

5. The department of education, substance abuse treatment programs licensed under chapter 125, and state correctional facilities shall maintain enrollment, attendance, successful and unsuccessful completion data for their respective courses on the persons ordered to enroll, attend, and successfully complete a course for drinking drivers. This data shall be forwarded to the court by the department of education, substance abuse treatment programs licensed under chapter 125, and the department of corrections.

86 Acts, ch 1220, §22; 90 Acts, ch 1253, §120; 97 Acts, ch 177, §22; 2000 Acts, ch 1138, §5; 2002 Acts, ch 1140, §37; 2002 Acts, 2nd Ex, ch 1003, §240, 262; 2003 Acts, ch 180, §60; 2008 Acts, ch 1124, §16; 2011 Acts, ch 20, §17, 18

Subsection 1, NEW paragraph a and former paragraphs a and b redesignated as b and c

Subsection 2, NEW paragraph d and former paragraphs d and e redesignated as e and f

## CHAPTER 322C

### TRAVEL TRAILER DEALERS, MANUFACTURERS, AND DISTRIBUTORS

Court action required for termination of installment contracts during military service; §29A.102, 29A.105

Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service; §29A.103, 29A.104

#### **322C.3 Prohibited acts — exception.**

1. A person shall not engage in this state in the business of selling at retail new travel trailers of any make, or represent or advertise that the person is engaged or intends to engage in such business in this state, unless the person is authorized by a contract in writing between that person and the manufacturer or distributor of that make of new travel trailers to sell the trailers in this state, and unless the department has issued to the person a license as a travel trailer dealer for the same make of travel trailer.

2. A person, other than a licensed travel trailer dealer in new travel trailers, shall not engage in the business of selling at retail used travel trailers or represent or advertise that the person is engaged or intends to engage in such business in this state unless the department has issued to the person a license as a used travel trailer dealer.

3. A person is not required to obtain a license as a travel trailer dealer if the person is disposing of a travel trailer acquired or repossessed, so long as the person is exercising a power or right granted by a lien, title-retention instrument, or security agreement given as security for a loan or a purchase money obligation.

4. A travel trailer dealer shall not enter into a contract, agreement, or understanding, expressed or implied, with a manufacturer or distributor that the dealer will sell, assign, or transfer an agreement or contract arising from the retail installment sale of a travel trailer only to a designated person or class of persons. Any such condition, agreement or understanding between a manufacturer or distributor and a travel trailer dealer is against the public policy of this state and is unlawful and void.

5. A manufacturer or distributor of travel trailers or an agent or representative of the manufacturer or distributor, shall not refuse to renew a contract for a term of less than five years, and shall not terminate or threaten to terminate a contract, agreement or understanding for the sale of new travel trailers to a travel trailer dealer in this state without just, reasonable and lawful cause or because the travel trailer dealer failed to sell, assign or transfer a contract or agreement arising from the retail sale of a travel trailer to only a person or a class of persons designated by the manufacturer or distributor.

6. A travel trailer dealer shall not make and enter into a security agreement or other contract unless the agreement or contract meets the following requirements:

a. The security agreement or contract is in writing, is signed by both the buyer and the seller and is complete as to all essential provisions prior to the signing of the agreement or contract by the buyer except that, if delivery of the travel trailer is not made at the time of the execution of the agreement or contract, the identifying numbers of the travel trailer or similar information and the due date of the first installment may be inserted in the agreement or contract after its execution.

b. The agreement or contract complies with the Iowa consumer credit code, chapter 537, where applicable.

7. A manufacturer or distributor of travel trailers or an agent or representative of a manufacturer or distributor shall not coerce or attempt to coerce a travel trailer dealer to accept delivery of a travel trailer or travel trailer parts or accessories, or any other commodity which has not been ordered by the dealer.

8. Except under subsection 9 of this section, a person licensed under section 322C.4 shall not, either directly or through an agent, salesperson or employee, engage or represent or advertise that the person is engaged or intends to engage in this state, in the business of buying or selling new or used travel trailers on Sunday.

9. A travel trailer dealer may display new travel trailers at fairs, shows, and exhibitions on any day of the week as provided in this subsection. Travel trailer dealers, in addition to selling travel trailers at their principal place of business and lots, may, upon receipt of a temporary permit approved by the department, display and offer new travel trailers for sale and negotiate sales of new travel trailers at fairs, shows, and exhibitions. Application for temporary permits shall be made upon forms provided by the department and shall be accompanied by a ten dollar permit fee. Temporary permits shall be issued for a period not to exceed fourteen days. The department may issue multiple consecutive temporary permits.

10. A person who has been convicted of a fraudulent practice, has been convicted of three or more violations of section 321.92, subsection 2, or section 321.99, or has been convicted of any other indictable offense in connection with selling or other activity relating to vehicles, in this state or any other state, shall not for a period of five years from the date of conviction be an owner, salesperson, employee, officer of a corporation, or representative of a licensed travel trailer dealer or represent themselves as an owner, salesperson, employee, officer of a corporation, or representative of a licensed travel trailer dealer.

[C81, §322C.3]

2001 Acts, ch 32, §39; 2003 Acts, ch 44, §114; 2006 Acts, ch 1068, §39; 2011 Acts, ch 38, §23  
NEW subsection 10

## CHAPTER 322F

### EQUIPMENT DEALERSHIP AGREEMENTS

For provisions applicable to certain farm implement  
and all-terrain vehicle franchise agreements,  
see chapter 322D, §322D.7

#### **322F.7 Violations.**

A violation of this chapter includes but is not limited to a supplier doing any of the following:

1. Requires a dealer to accept delivery of equipment that the dealer has not ordered.
2. Requires a dealer to order or accept delivery of equipment with special features or accessories not included in the base price list of equipment as publicly advertised by the supplier.
3. Requires a dealer to enter into any agreement, whether written or oral, which amends or supplements an existing dealership agreement with the supplier, unless the supplementary or amendatory agreement is imposed on other similarly situated dealers.

4. Requires as a condition of renewal or extension of a dealership agreement that the dealer complete substantial renovation of the dealer's place of business, or acquire new or additional space to serve as the dealer's place of business, unless the supplier provides at least one year's written notice of the condition which states all grounds supporting the condition. The supplier must provide a reasonable time for the dealer to complete the renovation or acquisition.

5. Requires a dealer to refuse to purchase equipment distributed by another supplier.

6. Discriminates in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers. This subsection does not prevent the use of differentials which make only due allowance for costs related to the manufacture, sale, or delivery of equipment, or to methods or quantities of equipment sold or delivered.

7. *a.* (1) For a dealership agreement governing equipment other than outdoor power equipment, takes action terminating, canceling, or failing to renew the dealership agreement, or substantially changes the competitive circumstances intended by the dealership agreement, due to the results of conditions beyond the dealer's control, including drought, flood, labor disputes, or economic recession.

(2) For a dealership agreement governing outdoor power equipment, takes action terminating, canceling, or failing to renew the dealership agreement due to the results of conditions beyond the dealer's control, including drought, flood, labor disputes, or economic recession.

*b.* This subsection shall not apply if the dealer is in default of a security agreement in effect with the supplier.

90 Acts, ch 1077, §8; 2003 Acts, ch 55, §7; 2004 Acts, ch 1086, §63; 2011 Acts, ch 44, §1  
Unnumbered paragraph 1 amended

### **322F.8 Supplier liability.**

1. *a.* (1) A dealer may bring a legal action against a supplier for damages sustained by the dealer as a consequence of the supplier's violation of any provision of this chapter, including but not limited to a violation described in section 322F.7. A supplier violating this chapter shall compensate the dealer for damages sustained by the dealer as a consequence of the supplier's violation, together with the actual costs of the action, including reasonable attorney fees.

(2) For a dealership agreement governing equipment other than outdoor power equipment, a dealer may be granted injunctive relief against unlawful termination, cancellation, or the nonrenewal of the dealership agreement, or a substantial change of competitive circumstances as provided in section 322F.2.

(3) For a dealership agreement governing outdoor power equipment, a dealer may be granted injunctive relief against unlawful termination, cancellation, or the nonrenewal of the dealership agreement as provided in section 322F.2.

*b.* The remedies in this section are in addition to any other remedies permitted by law.

2. *a.* If the payment or allowance of equipment repurchased pursuant to section 322F.3 is not made as required, or the supplier is found liable for damages pursuant to subsection 1, paragraph "a", subparagraph (1), the amount due to the dealer shall bear interest at the rate of one and one-half percent per month calculated from the date that the dealership agreement was terminated.

*b.* Upon termination of a dealership agreement by nonrenewal or cancellation, by a dealer or supplier, if the supplier fails to make payment or credit the account of the dealer as provided in any provision of this chapter, the supplier is liable in a civil action brought by the dealer for the repurchase amount set forth in section 322F.3, plus interest as calculated pursuant to paragraph "a". The supplier's civil liability as provided in this paragraph shall be in addition to and not in lieu of any remedy provided by subsection 1, paragraph "a", subparagraph (1).

3. The requirements of this chapter supplement any agreement between a dealer and a supplier. The dealer may elect either to pursue contractual remedies under the dealership agreement or remedies provided under this chapter. An election by the dealer to pursue a remedy provided under this chapter does not bar the dealer from pursuing any other remedy under law or equity, including contractual remedies. This chapter does not affect rights of

the supplier to charge back to the dealer's accounts amounts previously paid or credited as a discount to the dealer's purchase of goods, including equipment.

90 Acts, ch 1077, §9; 2003 Acts, ch 55, §8, 9; 2011 Acts, ch 44, §2, 3

Subsection 1, paragraph a, subparagraph (1) amended

Subsection 2 amended

## CHAPTER 323A

### PURCHASING FUEL FROM ALTERNATE SOURCES

#### **323A.2 Purchase from other source.**

1. The orderly flow of an adequate supply of motor fuel is declared to be essential to the economy and to the welfare of the people of this state. Therefore, in the public interest and notwithstanding the terms, provisions, or conditions of any franchise, a franchisee unable to obtain motor fuel from the franchisor may purchase the fuel from another available source, subject to subsections 2 to 5 and provided the franchisee has done all of the following:

a. At least forty-eight hours prior to entering into an agreement to purchase motor fuel from another source, the franchisee has requested delivery of motor fuel from the franchisor and the requested motor fuel has not been delivered and the franchisor has given the franchisee notice that the franchisor is unable to provide the requested motor fuel, or prior to entering into an agreement the franchisor has stated to the franchisee that the requested motor fuel will not be delivered. The request to the franchisor for delivery shall be for a type of fuel normally provided by the franchisor to the franchisee and for a quantity of fuel not exceeding the average amount sold by the franchisee in one week, based upon average weekly sales in the three months preceding the request, except that this provision shall not restrict a franchisee from purchasing ethanol blended gasoline from a source other than the franchisor or limit the quantity to be purchased when the franchisor does not normally supply the franchisee with ethanol blended gasoline. A franchisee may also purchase E-85 gasoline as provided in section 323A.2A.

b. The franchisee has requested and has been denied delivery of motor fuel sold or distributed under the trademark named in the franchise from a person other than the franchisor.

c. The director of the economic development authority determines that the franchisee has demonstrated that a special hardship exists in the community served by the franchisee relating to the public health, safety, and welfare, as specified under the rules of the authority.

2. The quantity of motor fuel requested or purchased from another source including the source listed in subsection 1, paragraph "b", shall not exceed the quantity requested from the franchisor.

3. At the time a franchisee enters into an agreement to purchase motor fuel from a source other than the franchisor, the franchisee shall inform the franchisor by the quickest available means.

4. If the franchisee sells motor fuel supplied from a source other than the franchisor, the franchisee shall prominently post a sign disclosing this fact to the public on each motor fuel pump used for dispensing the motor fuel. The size of the sign shall not be less than eight inches by ten inches and the letters on the sign shall be at least three inches in height.

5. A franchisee who sells motor fuel supplied from a source other than the franchisor shall also fully indemnify the franchisor against any claims asserted by a user on which the claimant prevails and in which the court determines that motor fuel not acquired from the franchisor was the proximate cause of the injury.

6. Purchases of motor fuel in accordance with this section are not good cause for termination of a franchise.

[C81, §323A.2]

89 Acts, ch 83, §47; 91 Acts, ch 87, §2; 2006 Acts, ch 1142, §23, 27; 2009 Acts, ch 108, §15, 41; 2011 Acts, ch 25, §32; 2011 Acts, ch 118, §50, 87, 89

Code editor directive applied

Subsection 1, paragraph b amended

## CHAPTER 324A

### TRANSPORTATION PROGRAMS

This chapter not enacted as a part of this title; transferred  
from chapter 601J in Code 1993

#### **324A.4 Federal, state, local, and private aid — report.**

1. The department shall compile and maintain current information on the use of federal, state, local, and private aid affecting urban and rural public transit programs. Public, private, and private nonprofit organizations applying for or receiving federal, state, or local aid for providing transit services shall annually report to the department the costs of their transportation programs, depicting funds used for public transit programs and such other information as the department may require prior to receiving any federal or state funds or any aid from a political subdivision of the state. The report shall list all of the funding sources of the organization along with the listing of funds expended by that organization during the preceding fiscal year. The department, in cooperation with the regional planning agencies as the responsible agency for annual updating the regional transit development programs, shall compile this information annually. A state agency or organization administering funds for transit services is required to submit all funding requests through the regional and state clearinghouse and the department. An organization, state agency, political subdivision, or public transit system, except public school transportation, receiving federal, state, or local aid to provide or contract for public transit services or transportation to the general public and specific client groups, must coordinate and consolidate funding and resulting service, to the maximum extent possible, with the urban or regional transit system.

2. *a.* Upon request, the department shall provide assistance to political subdivisions, state agencies, and organizations affected by this chapter for federal aid applications for urban and rural transit system program aid. The department, in cooperation with the regional planning agencies, shall maintain current information reflecting the amount of federal, state, and local aid received by the public and private nonprofit organizations providing public transit services and the purpose for which the aid is received. The department shall biennially prepare a report to be submitted to the general assembly and the governor prior to December 15 of even-numbered years. The report shall recommend methods to increase transportation coordination and improve the efficiency of federal, state, and local government programs used to finance public transit services and may address other topics as appropriate. The department of human services, the department on aging, and the officers and agents of the other affected state and local government units shall provide input as requested by the department.

*b.* The department shall use the following criteria to adopt rules to determine compliance with and exceptions to subsection 1:

(1) Elimination of duplicative and inefficient administrative costs, policies, and management.

(2) Utilization of resources for transportation services effectively and efficiently.

(3) Elimination of duplicative and inefficient transportation services.

(4) Development of transportation services which meet the needs of the general public and insure services adequate to the needs of transportation disadvantaged persons.

(5) Protection of the rights of private enterprise public transit providers.

(6) Coordination of planning for transportation services at the urban and regional level by all agencies or organizations receiving public funds that are purchasing or providing transportation services.

(7) Management of equipment and facilities purchased with public funds so that efficient and routine maintenance and replacement is accomplished.

(8) Training of transit management, drivers, and maintenance personnel to provide safe, efficient, and economical transportation services.

c. Eligibility to receive or expend federal, state, or local funds for transportation services by all agencies or organizations purchasing or providing these services shall be contingent upon compliance with these criteria as determined by the department.

3. The department shall receive and distribute federal aid to public transit systems unless precluded by federal statute; however, the department shall not retain or redirect any portion of funds received by the department for a particular public transit system except that the department may redirect unused funds after a project is completed in order to prevent the lapse of funds. The department may designate the public transit systems as the direct recipients of federal aid.

[C77, 79, 81, §601J.4]

84 Acts, ch 1200, §4, 5; 91 Acts, ch 27, §5

C93, §324A.4

2002 Acts, ch 1112, §2, 3; 2009 Acts, ch 23, §62; 2011 Acts, ch 38, §31

Subsection 2 amended

## CHAPTER 325A

### MOTOR CARRIER AUTHORITY

#### SUBCHAPTER 1

#### GENERAL PROVISIONS

##### **325A.4 Fees.**

1. The department shall charge the following fees:

a. One hundred fifty dollars for a new application.

b. One hundred fifty dollars for a reinstatement.

c. Twenty-five dollars to change an address or name.

d. Ten dollars for tariff updates.

e. Twenty-five dollars for a duplicate permit or certificate.

2. Changes in ownership of motor carrier permits require a new application and the new application fee of one hundred fifty dollars shall be assessed.

3. The department shall collect a fee of two hundred dollars to cover the cost of the motor carrier safety education seminar.

97 Acts, ch 104, §35, 61; 2011 Acts, ch 38, §24

Subsection 1, paragraph e stricken and former paragraph f redesignated as e

#### SUBCHAPTER 2

#### PASSENGER TRANSPORTATION

##### **325A.21 Regular-route certificate nontransferable.**

A regular-route passenger certificate shall not be sold, transferred, leased, or assigned.

97 Acts, ch 104, §52, 61; 2000 Acts, ch 1016, §37; 2011 Acts, ch 38, §25

Section amended

## CHAPTER 327B

### REGISTRATION OF CARRIER AUTHORITY

#### **327B.1 Authority secured and registered.**

1. It is unlawful for a carrier to perform an interstate transportation service for compensation upon the highways of this state without first registering the authority obtained from the United States department of transportation or evidence that such authority is not required with the state department of transportation.

2. The department shall participate in the unified carrier registration plan and agreement for regulated motor carriers as provided in 49 U.S.C. § 14504a and United States department of transportation regulations.

3. As provided in 49 U.S.C. § 14504a, a foreign or domestic motor carrier, motor private carrier, leasing company, broker, or freight forwarder shall not operate any motor vehicle on the highways of this state without first registering the motor vehicle under the unified carrier registration agreement and paying all required fees.

[C66, 71, 73, 75, 77, 79, 81, §327B.1]

93 Acts, ch 174, §2; 95 Acts, ch 118, §31; 2003 Acts, ch 108, §57; 2005 Acts, ch 20, §10; 2005 Acts, ch 179, §129; 2006 Acts, ch 1144, §5; 2007 Acts, ch 143, §27, 35; 2011 Acts, ch 38, §26

For applicable scheduled fines, see §805.8A, subsection 13, paragraph f  
Section amended

#### **327B.2 Enforcement.**

The department of transportation may designate by resolution certain of its employees upon each of whom there is hereby conferred the authority of a peace officer to make arrests for violations of laws relating to registering a motor vehicle under the unified carrier registration agreement.

[C66, 71, 73, 75, 77, 79, 81, §327B.2]

2011 Acts, ch 38, §27

Section amended

#### **327B.5 Penalty.**

Any person violating the provisions of this chapter shall, upon conviction, be subject to a scheduled fine as provided in section 805.8A, subsection 13, paragraph "f".

[C77, 79, 81, §327B.5]

2005 Acts, ch 20, §11; 2011 Acts, ch 131, §61, 158

Section amended

## CHAPTER 327H

### RAILWAY ASSISTANCE

#### **327H.20A Railroad revolving loan and grant fund.**

1. A railroad revolving loan and grant fund is established in the office of the treasurer of state under the control of the department. Moneys in the fund shall be expended for the following purposes:

a. Grants or loans to provide assistance for the restoration, conservation, improvement, and construction of railroad main lines, branch lines, switching yards, sidings, rail connections, intermodal yards, highway grade separations, and other railroad-related improvements.

b. Grants or loans for rail economic development projects that improve rail facilities, including the construction of branch lines, sidings, rail connections, intermodal yards, and other rail-related improvements that spur economic development and job growth.

2. The department shall administer a program for the granting and administration of loans

and grants under this section. The department may establish a limit on the amount that may be awarded as a grant for any given project in order to maximize the use of the moneys in the fund. The department may enter into agreements with railroad corporations, the United States government, cities, counties, and other persons for carrying out the purposes of this section.

3. Notwithstanding any other provision to the contrary, on or after July 1, 2006, moneys received as repayments for loans made pursuant to this chapter or chapter 327I, Code 2009, before, on, or after July 1, 2005, other than repayments of federal moneys subject to section 327H.21, shall be credited to the railroad revolving loan and grant fund. Notwithstanding section 8.33, moneys in the railroad revolving loan and grant fund shall not revert to the fund from which the moneys were appropriated but shall remain available indefinitely for expenditure under this section.

98 Acts, ch 1223, §39; 2005 Acts, ch 178, §31; 2009 Acts, ch 97, §11; 2010 Acts, ch 1184, §93; 2011 Acts, ch 34, §82

Continuation of assistance agreements entered into pursuant to this chapter or former chapter 327I prior to May 4, 2009; 2009 Acts, ch 97, §15

Subsection 3 amended

## CHAPTER 327K

### MIDWEST INTERSTATE PASSENGER RAIL COMPACT

Chapter repealed by 2011 Acts, ch 131, §100, 158

## CHAPTER 330

### AIRPORTS

#### **330.20 Appointment of commission — terms.**

When a majority of the voters favors airport control and management by a commission, the governing body shall, within ten days, appoint an airport commission of three or five members, each of whom shall be a resident of the city or county establishing the commission or a resident of a city or county in this state served by the airport. At least two of the members of a three-member commission and at least three of the members of a five-member commission shall be residents of the city or county establishing the commission. The governing body shall by ordinance set the commencement dates of office and the length of the terms of office which shall be no more than six and no less than three years. The terms of the first appointees of a newly created commission shall be staggered by length of term and all subsequent appointments shall be for full terms. Vacancies shall be filled in the same manner as original appointments are made. Members of the airport commission shall serve without compensation. Each commissioner shall execute and furnish a bond in an amount fixed by the governing body and filed with the city clerk of the city, or county auditor of the county, establishing the commission. The commission shall elect from its own members a chairperson and a secretary who shall serve for a term as the commission shall determine.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.20]

83 Acts, ch 123, §131, 209; 91 Acts, ch 76, §1; 2009 Acts, ch 114, §1; 2011 Acts, ch 34, §83

Section amended

## CHAPTER 330A

### AVIATION AUTHORITIES

#### **330A.10 Funds of an authority.**

1. Moneys of an authority shall be paid to the treasurer of the authority who shall not commingle said moneys with any other moneys, but shall deposit them in a separate account or accounts. The moneys in said accounts shall be paid out by check of the treasurer on requisition of the chairperson of the authority, or of such other person, or persons, as the authority may authorize to make such requisition.

2. Notwithstanding subsection 1, an authority is hereby authorized, and shall have the right, to deposit any of its rates, fees, rentals, or other charges, receipts or income with any bank or trust company within the state and to deposit the proceeds of any bonds issued hereunder with any bank or trust company within the state, all as may be provided in any agreement with the holders of bonds issued hereunder.

[C71, 73, 75, 77, 79, 81, §330A.10]

2009 Acts, ch 133, §125; 2011 Acts, ch 34, §84

Subsection 1 amended

## CHAPTER 331

### COUNTY HOME RULE IMPLEMENTATION

#### DIVISION III

#### POWERS AND DUTIES OF A COUNTY

#### PART 1

#### GENERAL POWERS AND DUTIES

#### **331.301 General powers and limitations.**

1. A county may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent county power.

2. A power of a county is vested in the board, and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.

3. The enumeration of a specific power of a county, the repeal of a grant of power, or the failure to state a specific power does not limit or restrict the general grant of home rule power conferred by the Constitution and this section. A county may exercise its general powers subject only to limitations expressly imposed by a state law.

4. An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law.

5. A county shall substantially comply with a procedure established by a state law for exercising a county power unless a state law provides otherwise. If a procedure is not established by state law, a county may determine its own procedure for exercising the power.

6. *a.* A county shall not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

b. A county shall not impose any fee or charge on any individual or business licensed by the board for the right to perform plumbing, HVAC, refrigeration, or hydronic systems work within the scope of the license. This paragraph does not prohibit a county from charging fees for the issuance of permits for, and inspections of, work performed in its jurisdiction.

7. A county shall not levy a tax unless specifically authorized by a state statute.

8. A county is a body corporate for civil and political purposes and shall have a seal as provided in section 331.552, subsection 4.

9. Supervisors and other county officers may administer oaths and take affirmations as provided in chapter 63A.

10. A county may enter into leases or lease-purchase contracts for real or personal property in accordance with the following terms and procedures:

a. A county shall lease or lease-purchase property only for a term which does not exceed the economic life of the property, as determined by the board.

b. A lease or lease-purchase contract entered into by a county may contain provisions similar to those sometimes found in leases between private parties, including, but not limited to, the obligation of the lessee to pay any of the costs of operation or ownership of the leased property and the right to purchase the leased property.

c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A county enterprise is a separate entity under this subsection, whether it is governed by the board or another governing body.

d. The board must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a lease or a lease-purchase contract made payable from the debt service fund.

e. The board may authorize a lease or lease-purchase contract which is payable from the general fund if the contract would not cause the total of lease and lease-purchase payments due from the general fund of the county in any single future fiscal year for all lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) (a) The board must follow substantially the authorization procedures of section 331.443 to authorize a lease or lease-purchase contract for personal property which is payable from the general fund. The board must follow substantially the authorization procedures of section 331.443 to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease-purchase contract does not exceed the following limits:

(i) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.

(ii) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(iii) Six hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(iv) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(v) One million dollars in a county having a population of more than two hundred thousand.

(b) However, if the principal amount of a lease or lease-purchase contract pursuant to this subparagraph (1) is less than twenty-five thousand dollars, the board may authorize the lease or lease-purchase contract without following the authorization procedures of section 331.443.

(2) The board must follow the following procedures to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits set forth in subparagraph (1):

(a) The board must institute proceedings for entering into a lease or lease-purchase contract payable from the general fund by causing a notice of the meeting to discuss entering

into the lease or lease-purchase contract, including a statement of the principal amount and purpose of the lease or lease-purchase and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the board hold a meeting at which it is proposed to take action to enter into the lease or lease-purchase contract.

(b) (i) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the lease or lease-purchase contract, a petition is filed with the auditor in the manner provided by section 331.306, asking that the question of entering into the lease or lease-purchase contract be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to enter into the lease or lease-purchase contract to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the lease or lease-purchase contract. However, for purposes of this subparagraph (2), the petition shall not require signatures in excess of one thousand persons.

(ii) The question to be placed on the ballot shall be stated affirmatively in substantially the following manner:

Shall the county of ..... enter into a lease or lease-purchase contract in an amount of \$ ..... for the purpose of .....

(iii) Notice of the election and its conduct shall be in the manner provided in section 331.442, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into a lease or lease-purchase contract is approved at the election, the board may proceed and enter into the lease or lease-purchase contract.

f. The governing body may authorize a lease or lease-purchase contract payable from the net revenues of a county enterprise or combined county enterprise by following the authorization procedures of section 331.464.

g. A lease or lease-purchase contract to which a county is a party or in which a county has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

h. Property that is lease-purchased by a county is exempt under section 427.1, subsection 2.

i. A contract for construction by a private party of property to be leased or lease-purchased by a county is not a contract for a public improvement under section 331.341, subsection 1. However, if a lease-purchase contract is funded in advance by means of the lessor depositing moneys to be administered by a county, with the county's obligation to make rent payments commencing with its receipt of moneys, a contract for construction of the property in question awarded by the county is a public improvement and is subject to section 331.341, subsection 1.

11. A county may enter into insurance agreements obligating the county to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the county against tort liability, loss of property, or any other risk associated with the operation of the county. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

12. The board of supervisors may credit funds to a reserve for the purposes authorized by subsection 11 of this section; section 331.424, subsection 1, paragraph "a", subparagraph (6); and section 331.441, subsection 2, paragraph "b". Moneys credited to the reserve, and interest earned on such moneys, shall remain in the reserve until expended for purposes authorized

by subsection 11 of this section; section 331.424, subsection 1, paragraph “a”, subparagraph (6); or section 331.441, subsection 2, paragraph “b”.

13. The board of supervisors may waive a tax penalty, interest, or costs related to the collection of a tax if the board finds that a clerical error resulted in the penalty, interest, or cost. This subsection does not apply to bonded special assessments without the approval of the affected taxing jurisdiction.

14. The county may establish a department of public works. The department shall be administered by the county engineer or other person appointed by the board of supervisors. In addition to other duties assigned by the board, the department shall provide technical assistance to political subdivisions in the county including special districts relating to their physical infrastructure and may provide managerial and administrative services for special districts and combined special districts.

15. a. A county may adopt and enforce an ordinance requiring the construction of a storm shelter at a manufactured home community or mobile home park which is constructed after July 1, 1999. In lieu of requiring construction of a storm shelter, a county may require a community or park owner to provide a plan for the evacuation of community or park residents to a safe place of shelter in times of severe weather including tornadoes and high winds if the county determines that a safe place of shelter is available within a reasonable distance of the manufactured home community or mobile home park for use by community or park residents. Each evacuation plan prepared pursuant to this subsection shall be filed with, and approved by, the local emergency management agency. If construction of a storm shelter is required, an ordinance adopted or enforced pursuant to this subsection shall not include any of the following requirements:

(1) That the size of the storm shelter be larger than the equivalent of seven square feet for each manufactured or mobile home space in the manufactured home community or mobile home park.

(2) That the storm shelter include a restroom if the shelter is used exclusively as a storm shelter.

(3) That the storm shelter exceed the construction specifications approved by a licensed professional engineer and presented by the owner of the manufactured home community or mobile home park.

(4) That the shelter be located any closer than one thousand three hundred twenty feet from any manufactured or mobile home in the manufactured home community or mobile home park.

b. For the purposes of this subsection:

(1) “*Manufactured home community*” means the same as land-leased community defined in sections 335.30A and 414.28A.

(2) “*Manufactured home community or mobile home park*” means a manufactured home community or mobile home park as defined in section 562B.7.

(3) “*Storm shelter*” means a single structure or multiple structures designed to provide persons with temporary protection from a storm.

16. The board of supervisors may by resolution allow a five dollar county enforcement surcharge to be assessed pursuant to section 911.4.

[C51, §93; R60, §221; C73, §279; C97, §394; C24, 27, 31, 35, 39, §5128; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.1; S81, §331.301; 81 Acts, ch 117, §300]

85 Acts, ch 156, §1; 86 Acts, ch 1211, §19; 87 Acts, ch 115, §51; 89 Acts, ch 101, §1; 92 Acts, ch 1138, §1; 92 Acts, ch 1204, §8; 95 Acts, ch 67, §53; 95 Acts, ch 206, §8, 12; 99 Acts, ch 186, §1; 2001 Acts, ch 143, §1; 2001 Acts, ch 153, §9, 16; 2004 Acts, ch 1119, §1; 2006 Acts, ch 1010, §93; 2009 Acts, ch 100, §8, 21; 2010 Acts, ch 1061, §131, 132, 177; 2011 Acts, ch 100, §13, 15

See also Iowa Constitution, Art. III, §39A  
Subsection 6 amended

## PART 3

DUTIES AND POWERS OF THE BOARD  
RELATING TO COUNTY CONTRACTS

Subject to reciprocal resident bidder preference in §73A.21

**331.341 Contracts.**

1. When the estimated total cost of a public improvement, other than improvements which may be paid for from the secondary road fund, exceeds the competitive bid threshold in section 26.3, or as established in section 314.1B, the board shall follow the competitive bid procedures for governmental entities in chapter 26 and the contract letting procedures in section 384.103. As used in this section, “*public improvement*” means the same as defined in section 26.2 as modified by this subsection.

2. The board shall give preference to Iowa products in accordance with chapter 73 and shall comply with bid and contract requirements in chapter 26.

3. Contracts for improvements which may be paid for from the secondary road fund shall be awarded in accordance with sections 309.40 to 309.43, 310.14, 314.1, 314.2, and other applicable state law.

4. If the contract price for a public improvement is twenty-five thousand dollars or more, the board shall require a contractor’s bond in accordance with chapter 573.

5. In exercising its power to contract for public improvements, the board may contract for the application of contract termination procedures in accordance with chapter 573A.

[C24, 27, 31, 35, 39, §351, 5131, 5132; C46, 50, 54, 58, 62, 66, 71, 73, 75, §23.1, 332.7, 332.8; C77, 79, 81, §23.1, 332.7; S81, §331.341; 81 Acts, ch 117, §340]

94 Acts, ch 1173, §18; 95 Acts, ch 71, §2; 98 Acts, ch 1153, §1; 2006 Acts, ch 1017, §31, 32, 42, 43; 2007 Acts, ch 144, §13; 2011 Acts, ch 133, §8, 10, 11

2011 amendment to subsection 2 takes effect September 1, 2011, and applies to all public improvement, public works, and public road projects, and to contracts for public improvement, public works, and public road projects entered into on or after that date; 2011 Acts, ch 133, §10, 11

Subsection 2 amended

## PART 5

DUTIES AND POWERS OF THE BOARD  
RELATING TO COUNTY SERVICES**331.382 Powers and limitations relating to services.**

1. The board may exercise the following powers in accordance with the sections designated, and may exercise these or similar powers under its home rule powers or other provisions of law:

- a. Establishment of parks outside of cities as provided in section 461A.34.
  - b. Establishment of a water recreational area as provided in sections 461A.59 to 461A.78.
  - c. Establishment of a merged area hospital as provided in chapter 145A.
  - d. Acquisition and operation of a limestone quarry for the sale of agricultural lime, in accordance with chapter 353.
  - e. Provision of preliminary diagnostic evaluation before admissions to state mental health institutes as provided in sections 225C.14 through 225C.17.
  - f. Establishment of a community mental health center as provided in chapter 230A.
  - g. Establishment of a county care facility as provided in chapter 347B, and sections 135C.23 and 135C.24.
  - h. Provision of relocation programs and payments as provided in chapter 316.
  - i. Establishment of an airport commission as provided in sections 330.17 to 330.20.
  - j. Creation of an airport authority as provided in chapter 330A.
2. The power to establish reserve peace officers is subject to chapter 80D.
3. The power to legislate in regard to chemical substance abuse is subject to section 125.40.

4. The power to establish a county hospital is subject to the licensing requirements of chapter 135B and the power to establish a county health care facility is subject to the licensing requirements of chapter 135C.

5. The board shall not regulate, license, inspect, or collect license fees from food establishments or food and beverage vending machines except as provided in chapter 137F or from hotels except as provided in chapter 137C.

6. The power to operate juvenile detention and shelter care homes is subject to approval of the homes by the director of the department of human services or the director's designee, as provided in section 232.142.

7. If a law library is provided in the county courthouse, judges of the district court of the county shall supervise and control the law library.

8. *a.* The board is subject to chapter 161F, chapters 357 through 358, or chapter 468, subchapters I through III, subchapter IV, parts 1 and 2, or subchapter V, as applicable, in acting relative to a special district authorized under any of those chapters.

*b.* However, the board may assume and exercise the powers and duties of a governing body under chapter 357, 357A, 357B, 358, or chapter 468, subchapter III, if a governing body established under one of those chapters has insufficient membership to perform its powers and duties, and the board, upon petition of the number of property owners within a proposed district and filing of a bond as provided in section 357A.2, may establish a service district within the unincorporated area of the county and exercise within the district the powers and duties granted in chapters 357, 357A, 357B, 357C, 357I, 358, 359, chapter 384, division IV, or chapter 468, subchapter III.

9. The power to establish and administer an air pollution control program in lieu of state administration is subject to sections 455B.144 and 455B.145.

10. The board shall issue permits, conduct inspections, and adopt standards related to the construction of semipublic sewage disposal systems, as defined in section 455B.171, in relation to authority delegated by the department of natural resources pursuant to sections 455B.174 and 455B.183. Construction standards adopted pursuant to this subsection shall be consistent with and equivalent to the construction standards adopted by the environmental protection commission pursuant to section 455B.173, subsection 3. The county may adopt such standards by reference.

1. *a – f.* [S81, §331.382(1); 81 Acts, ch 117, §381]

*g.* [C51, §828; R60, §1396; C73, §1372; C97, §2241; SS15, §2241; C24, 27, 31, 35, §5338; C39, **§3828.115**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §253.1; S81, §331.382; 81 Acts, ch 117, §381]

*h – j.* [S81, §331.382(1); 81 Acts, ch 117, §381]

*2 – 6.* [S81, §331.382(2 – 6); 81 Acts, ch 117, §381]

*7.* [C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.6; S81, §331.382(7); 81 Acts, ch 117, §381]

*8.* [C77, 79, 81, §332.3(33); S81, §331.382(8); 81 Acts, ch 117, §381]

*9.* [S81, §331.382(9); 81 Acts, ch 117, §381]

83 Acts, ch 96, §157, 159; 83 Acts, ch 101, §76; 89 Acts, ch 20, §17; 98 Acts, ch 1162, §27, 30; 2008 Acts, ch 1124, §19; 2009 Acts, ch 41, §120; 2011 Acts, ch 97, §1

Contracts to provide services to tax-exempt property; see §364.19

NEW subsection 10

DIVISION IV  
POWERS AND DUTIES OF THE BOARD  
RELATING TO COUNTY FINANCES

Law enforcement officer training reimbursement; §384.15(7)

PART 1  
GENERAL FINANCIAL POWERS AND DUTIES

**331.402 Powers relating to finances — limitations.**

1. The payment of county obligations by anticipatory warrants is subject to chapters 74 and 74A and other applicable state law. Anticipatory warrants drawn on the secondary road fund are also subject to sections 309.46 to 309.55.

2. The board may:

a. Require a person who is not a part of county government but is receiving county funds to submit to audit by auditors chosen by the county. The person shall make available all pertinent records needed for the audit.

b. Enter into an agreement with the state department of human services for assistance in accordance with section 249A.12.

c. Levy within a township at a rate not to exceed the rate permitted under sections 359.30 and 359.33 for the care and maintenance of cemeteries, if the township officials fail to levy the tax as needed.

d. Authorize the county auditor to issue warrants for certain purposes as provided in section 331.506, subsection 3.

e. Authorize the auditor to issue checks in lieu of warrants. The checks shall be charged directly against a bank account controlled by the county treasurer.

f. Impose a hotel and motel tax in accordance with chapter 423A.

g. Order the suspension of property taxes or cancel and remit the taxes of certain persons as provided in sections 427.8 and 427.10.

h. Provide for a partial exemption from property taxation in accordance with chapter 427B.

i. Contract with certified public accountants to conduct the annual audit of the financial accounts and transactions of the county as provided in section 11.6.

3. A county may enter into loan agreements to borrow money for any public purpose in accordance with the following terms and procedures:

a. A loan agreement entered into by a county may contain provisions similar to those sometimes found in loan agreements between private parties, including, but not limited to, the issuance of notes to evidence its obligations.

b. A provision of a loan agreement which stipulates that a portion of the payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A county enterprise is a separate entity under this subsection, whether it is governed by the board or another governing body.

c. The board shall follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a loan agreement made payable from the debt service fund.

d. The board may authorize a loan agreement which is payable from the general fund if the loan agreement would not cause the total of scheduled annual payments of principal or interest or both principal and interest due from the general fund of the county in any single future fiscal year with respect to all loan agreements in force on the date of the authorization to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The board shall follow substantially the authorization procedures of section 331.443 to authorize a loan agreement for personal property which is payable from the general fund. The board must follow substantially the authorization procedures of section 331.443 to authorize

a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement does not exceed the following limits:

- (a) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.
- (b) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.
- (c) Six hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.
- (d) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.
- (e) One million dollars in a county having a population of more than two hundred thousand.

(2) The board must follow the following procedures to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement exceeds the limits set forth in subparagraph (1):

(a) The board must institute proceedings for entering into a loan agreement payable from the general fund by causing a notice of the meeting to discuss entering into the loan agreement, including a statement of the principal amount and purpose of the loan agreement and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the board hold a meeting at which it is proposed to take action to enter into the loan agreement.

(b) (i) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the loan agreement, a petition is filed with the auditor in the manner provided by section 331.306 asking that the question of entering into the loan agreement be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to enter into the loan agreement to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the loan agreement. However, for purposes of this subparagraph (2), the petition shall not require signatures in excess of one thousand persons.

(ii) The question to be placed on the ballot shall be stated affirmatively in substantially the following manner:

Shall the county of ..... enter into a loan agreement in amount of \$ ..... for the purpose of .....

(iii) Notice of the election and its conduct shall be in the manner provided in section 331.442, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into the loan agreement is approved at an election, the board may proceed and enter into the loan agreement.

e. The governing body may authorize a loan agreement payable from the net revenues of a county enterprise or combined county enterprise by following the authorization procedures of section 331.464.

f. A loan agreement to which a county is a party or in which a county has a participatory interest is an obligation of a political subdivision of this state for the purpose of chapters 502 and 636, and is a lawful investment for banks, trust companies, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

- 1. [S81, §331.402(1); 81 Acts, ch 117, §401]
- 2. a. [C77, 79, 81, §332.3(31); S81, §331.402(2); 81 Acts, ch 117, §401]
- b. [S81, §331.402(2); 81 Acts, ch 117, §401]

c. [C77, 79, 81, §24.37(14), 332.3(30); S81, §331.402(2); 81 Acts, ch 117, §401]  
 d – g. [S81, §331.402(2); 81 Acts, ch 117, §401]  
 83 Acts, ch 96, §157, 159; 84 Acts, ch 1123, §2; 87 Acts, ch 103, §1; 92 Acts, ch 1138, §2;  
 95 Acts, ch 67, §53; 2001 Acts, ch 45, §2; 2009 Acts, ch 100, §9, 21; 2010 Acts, ch 1061, §135;  
 2011 Acts, ch 34, §85  
 Subsection 3, paragraph f amended

## PART 2

### COUNTY LEVIES, FUNDS, BUDGETS, AND EXPENDITURES

#### **331.424A County mental health, mental retardation, and developmental disabilities services fund.**

1. For the purposes of this chapter, unless the context otherwise requires, “*services fund*” means the county mental health, mental retardation, and developmental disabilities services fund created in subsection 2. The county finance committee created in section 333A.2 shall consult with the state commission in adopting rules and prescribing forms for administering the services fund.

2. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, county revenues from taxes and other sources designated for mental health, mental retardation, and developmental disabilities services shall be credited to the mental health, mental retardation, and developmental disabilities services fund of the county. The board shall make appropriations from the fund for payment of services provided under the county management plan approved pursuant to section 331.439. The county may pay for the services in cooperation with other counties by pooling appropriations from the fund with other counties or through county regional entities including but not limited to the county’s mental health and developmental disabilities regional planning council created pursuant to section 225C.18.

3. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, receipts from the state or federal government for such services shall be credited to the services fund, including moneys allotted to the county from the state payment made pursuant to section 331.439 and moneys allotted to the county for property tax relief pursuant to section 426B.1.

4. For the fiscal year beginning July 1, 1996, and for each subsequent fiscal year, the county shall certify a levy for payment of services. For each fiscal year, county revenues from taxes imposed by the county credited to the services fund shall not exceed an amount equal to the amount of base year expenditures for services as defined in section 331.438, less the amount of property tax relief to be received pursuant to section 426B.2, in the fiscal year for which the budget is certified. The county auditor and the board of supervisors shall reduce the amount of the levy certified for the services fund by the amount of property tax relief to be received. A levy certified under this section is not subject to the appeal provisions of section 331.426 or to any other provision in law authorizing a county to exceed, increase, or appeal a property tax levy limit.

5. Appropriations specifically authorized to be made from the mental health, mental retardation, and developmental disabilities services fund shall not be made from any other fund of the county.

6. This section is repealed July 1, 2013.

95 Acts, ch 206, §10; 96 Acts, ch 1183, §33; 96 Acts, ch 1205, §1; 96 Acts, ch 1219, §103; 97 Acts, ch 198, §2; 2000 Acts, ch 1090, §1, 6; 2000 Acts, ch 1232, §5, 9, 10; 2001 Acts, ch 155, §1, 9 – 11; 2002 Acts, ch 1119, §157; 2002 Acts, ch 1146, §7; 2004 Acts, ch 1090, §18; 2011 Acts, ch 123, §22, 27

See Iowa Acts for special provisions relating to appropriations for MH/MR/DD services costs in a given year  
 Transfers of funds from other funds by county to MH/MR/DD services fund permitted during 2011 fiscal year; report; 2010 Acts, ch 1193, §99; 2011 Acts, ch 129, §46, 48

Three-year pilot project for a regional service network for mental health, mental retardation, and developmental disabilities services paid from funds under this section, see 2008 Acts, ch 1187, §59; 2010 Acts, ch 1192, §54, 73

NEW subsection 6

**331.432 Interfund transfers.**

1. It is unlawful to make permanent transfers of money between the general fund and the rural services fund.

2. Moneys credited to the secondary road fund for the construction and maintenance of secondary roads shall not be transferred.

3. Except as authorized in section 331.477, transfers of moneys between the county mental health, mental retardation, and developmental disabilities services fund and any other fund are prohibited.

4. Other transfers, including transfers from the debt service fund made in accordance with section 331.430, and transfers from the general or rural services fund to the secondary road fund in accordance with section 331.429, subsection 1, paragraphs “a” and “b”, are not effective until authorized by resolution of the board.

5. The transfer of inactive funds is subject to section 24.21.

83 Acts, ch 123, §16, 209; 98 Acts, ch 1213, §1, 2

Transfers of funds from other funds by county to MH/MR/DD services fund permitted during 2011 fiscal year; report; 2010 Acts, ch 1193, §99; 2011 Acts, ch 129, §46, 48

Section not amended; footnote revised

**331.438 County mental health, mental retardation, and developmental disabilities services expenditures — joint state-county planning, implementing, and funding.**

1. For the purposes of section 331.424A, this section, section 331.439, and chapter 426B, unless the context otherwise requires:

a. “*Base year expenditures*” means the amount selected by a county and reported to the county finance committee pursuant to this paragraph. The amount selected shall be equal to the amount of net expenditures made by the county for qualified mental health, mental retardation, and developmental disabilities services provided in one of the following:

(1) The actual amount reported to the state on October 15, 1994, for the fiscal year beginning July 1, 1993.

(2) The net expenditure amount contained in the county’s final budget certified in accordance with chapter 24 for the fiscal year beginning July 1, 1995, and reported to the county finance committee.

b. “*Qualified mental health, mental retardation, and developmental disabilities services*” means the services specified in the rules adopted by the state commission for administering the services fund, pursuant to section 331.424A.

c. “*State commission*” means the mental health and disability services commission created in section 225C.5.

d. “*State payment*” means the payment made by the state to a county determined to be eligible for the payment in accordance with section 331.439.

2. A state payment to a county for a fiscal year shall consist of the sum of the state funding the county is eligible to receive from the property tax relief fund in accordance with section 426B.2 plus the county’s portion of state funds appropriated for the allowed growth factor adjustment established by the general assembly under section 331.439, subsection 3, and paid from the allowed growth funding pool in accordance with section 426B.5.

3. The state payment shall not include any expenditures for services that were provided but not reported in the county’s base year expenditures or for any expenditures which were not included in the county management plan submitted by the county in accordance with section 331.439. A county’s eligibility for state payment is subject to the provisions of section 331.439.

4. a. The state commission shall make recommendations and take actions for joint state and county planning, implementing, and funding of mental health, mental retardation or other developmental disabilities, and brain injury services, including but not limited to developing and implementing fiscal and accountability controls, establishing management plans, and ensuring that eligible persons have access to appropriate and cost-effective services.

b. The state commission shall do all of the following:

(1) Receive and review reports from the department of human services identifying characteristics of the county services system, including amounts expended, equity of funding

among counties, funding sources, provider types, service availability, and equity of service availability among counties and among persons served.

- (2) Consider proposals for revising county services system administrative rules.
- (3) Adopt administrative rules relating to county management plans.
- (4) Provide input, when appropriate, to the director of human services in any decision involving administrative rules which were adopted by the department of human services pertaining to the services system administered by counties.
- (5) Consider recommendations for and adopt administrative rules establishing statewide minimum standards for services and other support required to be available to persons covered by a county management plan under section 331.439.
- (6) Consider recommendations for measuring and improving the quality of state and county mental health, mental retardation, and developmental disabilities services and other support.

5. This section is repealed July 1, 2013.

90 Acts, ch 1250, §2; 92 Acts, ch 1241, §75; 94 Acts, ch 1163, §2; 95 Acts, ch 120, §5, 7; 95 Acts, ch 206, §14; 96 Acts, ch 1183, §34 – 37; 96 Acts, ch 1205, §2; 97 Acts, ch 23, §36; 97 Acts, ch 198, §3; 98 Acts, ch 1213, §4, 5, 9 – 11; 99 Acts, ch 160, §7 – 10; 2000 Acts, ch 1090, §3, 6; 2001 Acts, ch 155, §3, 9 – 11; 2002 Acts, ch 1146, §8 – 11; 2004 Acts, ch 1090, §19 – 23; 2004 Acts, ch 1175, §174; 2005 Acts, ch 3, §65; 2006 Acts, ch 1093, §1, 3; 2007 Acts, ch 218, §78, 79; 2010 Acts, ch 1031, §365, 366, 389; 2011 Acts, ch 123, §23, 27

NEW subsection 5

### **331.439 Eligibility for state payment.**

1. The state payment to eligible counties under this section shall be made as provided in sections 331.438 and 426B.2. A county is eligible for the state payment, as defined in section 331.438, for a fiscal year if the director of human services determines for a specific fiscal year that all of the following conditions are met:

a. The county accurately reported by December 1 the county's expenditures for mental health, mental retardation, and developmental disabilities services and the information required under section 225C.6A, subsection 3, paragraph "c", for the previous fiscal year in accordance with rules adopted by the state commission. If the department determines good cause exists, the department may extend a deadline otherwise imposed under this chapter, chapter 225C, or chapter 426B for a county's reporting concerning mental health, mental retardation, or developmental disabilities services or related revenues and expenditures.

b. The county developed and implemented a county management plan for the county's mental health, mental retardation, and developmental disabilities services system in accordance with the provisions of this paragraph "b". The plan shall comply with the administrative rules adopted for this purpose by the state commission and is subject to the approval of the director of human services in consultation with the state commission. The plan shall include a description of the county's service management provision for mental health, mental retardation, and developmental disabilities services. For mental retardation and developmental disabilities service management, the plan shall describe the county's development and implementation of a system of cost-effective individualized services and shall comply with the provisions of paragraph "f". The goal of this part of the plan shall be to assist the individuals served to be as independent, productive, and integrated into the community as possible. The service management provisions for mental health shall comply with the provisions of paragraph "e". A county is subject to all of the following provisions in regard to the county's services system management plan and planning process:

(1) The county shall have in effect an approved policies and procedures manual for the county's services fund. The county management plan shall be defined in the manual. The manual submitted by the county as part of the county's management plan for the fiscal year beginning July 1, 2000, as approved by the director of human services, shall remain in effect, subject to amendment. An amendment to the manual shall be submitted to the department of human services at least forty-five days prior to the date of implementation. Prior to implementation of any amendment to the manual, the amendment must be approved by the director of human services in consultation with the state commission.

(2) For informational purposes, the county shall submit a management plan review to the department of human services by December 1 of each year. The annual review shall incorporate an analysis of the data associated with the services system managed during the preceding fiscal year by the county or by a private entity on behalf of the county. The annual review shall also identify measurable outcomes and results showing the county's progress in fulfilling the purposes listed in paragraph "c", and in achieving the disability services outcomes and indicators identified by the commission pursuant to section 225C.6.

(3) For informational purposes, every three years the county shall submit to the department of human services a three-year strategic plan. The strategic plan shall describe how the county will proceed to attain the plan's goals and objectives, and the measurable outcomes and results necessary for moving the county's services system toward an individualized, community-based focus in accordance with paragraph "c". The three-year strategic plan shall be submitted by April 1, 2000, and by April 1 of every third year thereafter.

c. The county implements its county management plan under paragraph "b" and other service management functions in a manner that seeks to achieve all of the following purposes identified in section 225C.1 for persons who are covered by the plan or are otherwise subject to the county's services system management functions:

(1) The services system seeks to empower persons to exercise their own choices about the amounts and types of services and other support received.

(2) The services system seeks to empower the persons to accept responsibility, exercise choices, and take risks.

(3) The services system seeks to provide services and other support that are individualized, provided to produce results, flexible, and cost-effective.

(4) The services system seeks to provide services and other support in a manner which supports the ability of the persons to live, learn, work, and recreate in communities of their choice.

d. Commencing with the fiscal year beginning July 1, 2007, the county management plan under paragraph "c" shall do both of the following:

(1) Describe how the county will provide services and other support that are individualized, provided to produce results, flexible, and cost-effective in accordance with paragraph "c", subparagraph (3).

(2) Describe how the ability of the individuals covered by the plan to live, learn, work, and recreate in communities of the individuals' choice will be enhanced as provided in paragraph "c", subparagraph (4).

e. (1) For mental health service management, the county may either directly implement a system of service management and contract with service providers, or contract with a private entity to manage the county services system, provided all requirements of this lettered paragraph are met by the private entity. The mental health services system shall incorporate a central point of coordination and clinical assessment process developed in accordance with the provisions of section 331.440.

(2) The county services system for mental health proposed by a county shall include but is not limited to all of the following elements which shall be specified in administrative rules adopted by the state commission:

(a) The enrollment and eligibility process.

(b) The scope of services included.

(c) The method of plan administration.

(d) The process for managing utilization and access to services and other assistance.

(e) The quality assurance process.

(f) The risk management provisions and fiscal viability of the provisions, if the county contracts with a private entity.

f. For mental retardation and developmental disabilities services management, the county must either develop and implement a system of care which addresses a full array of appropriate services and cost-effective delivery of services by contracting directly with service providers or by contracting with a state-approved private entity to manage the county services system. The county services system shall incorporate a central point of coordination and clinical assessment process developed in accordance with the provisions of section

331.440. The elements of a county services system shall be specified in rules developed by the department of human services in consultation with and adopted by the state commission.

2. The county management plan shall address the county's criteria for serving persons with chronic mental illness, including any rationale used for decision making regarding this population.

3. *a.* For the fiscal year beginning July 1, 1996, and succeeding fiscal years, the county's mental health, mental retardation, and developmental disabilities service expenditures for a fiscal year are limited to a fixed budget amount. The fixed budget amount shall be the amount identified in the county's management plan and budget for the fiscal year. The county shall be authorized an allowed growth factor adjustment as established by statute for services paid from the county's services fund under section 331.424A which is in accordance with the county's management plan and budget, implemented pursuant to this section. The statute establishing the allowed growth factor adjustment shall establish the adjustment for the fiscal year which commences two years from the beginning date of the fiscal year in progress at the time the statute is enacted.

*b.* Based upon information contained in county management plans and budgets and proposals made by representatives of counties, the state commission shall recommend an allowed growth factor adjustment to the governor by November 15 for the fiscal year which commences two years from the beginning date of the fiscal year in progress at the time the recommendation is made. The allowed growth factor adjustment may address various costs including but not limited to the costs associated with new consumers of service, service cost inflation, and investments for economy and efficiency. In developing the service cost inflation recommendation, the state commission shall consider the cost trends indicated by the gross expenditure amount reported in the expenditure reports submitted by counties pursuant to subsection 1, paragraph "a". The governor shall consider the state commission's recommendation in developing the governor's recommendation for an allowed growth factor adjustment for such fiscal year. The governor's recommendation shall be submitted at the time the governor's proposed budget for the succeeding fiscal year is submitted in accordance with chapter 8.

*c.* The amount of the appropriation required to fund the allowed growth factor adjustment for a fiscal year shall be calculated by applying the adjustment established by statute for that fiscal year to the sum of the following:

(1) The total amount of base year expenditures for all counties.

(2) The total amount of the appropriations for allowed growth factor adjustments made to all counties in all of the fiscal years prior to that fiscal year.

4. A county may provide assistance to service populations with disabilities to which the county has historically provided assistance but who are not included in the service management provisions required under subsection 1, subject to the availability of funding.

5. *a.* A county shall implement the county's management plan in a manner so as to provide adequate funding for the entire fiscal year by budgeting for ninety-nine percent of the funding anticipated to be available for the plan. A county may expend all of the funding anticipated to be available for the plan.

*b.* If a county determines that the county cannot provide services in accordance with the county's management plan and remain in compliance with the budgeting requirement of paragraph "a" for the fiscal year, the county may implement a waiting list for the services. The procedures for establishing and applying a waiting list shall be specified in the county's management plan. If a county implements a waiting list for services, the county shall notify the department of human services. The department shall maintain on the department's internet website an up-to-date listing of the counties that have implemented a waiting list and the services affected by each waiting list.

6. The director's approval of a county's mental health, mental retardation, and developmental disabilities services management plan shall not be construed to constitute certification of the county's budget.

7. A county shall annually report data concerning the county's services system managed in accordance with the county management plan. At a minimum, the data reported shall indicate the number of different individuals who utilized services in a fiscal year and the

various types of services. Data reported under this subsection shall be submitted with the county's expenditure report required under subsection 1, paragraph "a".

8. A county's management plans submitted under this section shall provide for services to children from community mental health centers and other mental health service providers accredited under chapter 225C.

9. The county management plan shall designate at least one hospital licensed under chapter 135B that the county has contracted with to provide services covered under the plan. If the designated hospital does not have a bed available to provide the services, the county is responsible for the cost of covered services provided at an alternate hospital licensed under chapter 135B.

10. This section is repealed July 1, 2013.

94 Acts, ch 1163, §3; 95 Acts, ch 206, §15; 96 Acts, ch 1205, §3, 11; 97 Acts, ch 169, §22 – 25; 97 Acts, ch 198, §4; 97 Acts, ch 206, §18, 24; 98 Acts, ch 1100, §53, 54; 98 Acts, ch 1181, §18, 20; 99 Acts, ch 160, §13 – 16; 2002 Acts, ch 1146, §12 – 17; 2004 Acts, ch 1090, §24 – 29, 33; 2005 Acts, ch 179, §59; 2006 Acts, ch 1115, §9, 10; 2007 Acts, ch 218, §80, 88, 92; 2008 Acts, ch 1187, §57; 2010 Acts, ch 1031, §367 – 373; 2011 Acts, ch 123, §24, 27

For specific exceptions to payments, expenditures, and reporting requirements provided under this section, see appropriations and other noncodified enactments in the annual Acts of the general assembly  
NEW subsection 10

### **331.440 Mental health, mental retardation, and developmental disabilities services — central point of coordination process — state case services.**

1. *a.* For the purposes of this section, unless the context otherwise requires, "*central point of coordination process*" means a central point of coordination process established by a county or consortium of counties for the delivery of mental health, mental retardation, and developmental disabilities services which are paid for in whole or in part by county funds. The central point of coordination process may include but is not limited to reviewing a person's eligibility for services, determining the appropriateness of the type, level, and duration of services, and performing periodic review of the person's continuing eligibility and need for services. Any recommendations developed concerning a person's plan of services shall be consistent with the person's unique strengths, circumstances, priorities, concerns, abilities, and capabilities. For those services funded under the medical assistance program, the central point of coordination process shall be used to assure that the person is aware of the appropriate service options available to the person.

*b.* The central point of coordination process may include a clinical assessment process to identify a person's service needs and to make recommendations regarding the person's plan for services. The clinical assessment process shall utilize qualified mental health professionals and qualified mental retardation professionals.

*c.* The central point of coordination and clinical assessment process shall include provision for the county's participation in a management information system developed in accordance with rules adopted pursuant to subsection 4.

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

*a.* "*Adult person*" means a person who is age eighteen or older and is a United States citizen or a qualified alien as defined in 8 U.S.C. § 1641.

*b.* "*County of residence*" means the county in this state in which, at the time an adult person applies for or receives services, the adult person is living and has established an ongoing presence with the declared, good faith intention of living for a permanent or indefinite period of time. The county of residence of an adult person who is a homeless person is the county where the homeless person usually sleeps.

*c.* "*Homeless person*" means the same as defined in section 48A.2.

*d.* "*State case services and other support*" means the mental health, mental retardation, and developmental disabilities services and other support paid for under the rules and requirements in effect prior to October 1, 2006, from the annual appropriation made to the department of human services for such services and other support provided to persons who have no established county of legal settlement or the legal settlement is unknown so that the person is deemed to be a state case. Such services and other support do not include medical assistance program services or services provided in a state institution.

3. The department of human services shall seek federal approval as necessary for the central point of coordination and clinical assessment processes to be eligible for federal financial participation under the medical assistance program. A county may implement the central point of coordination process as part of a consortium of counties and may implement the process beginning with the fiscal year ending June 30, 1995.

4. a. An application for services may be made through the central point of coordination process of an adult person's county of residence. Effective July 1, 2007, if an adult person who is subject to a central point of coordination process has legal settlement in another county, the central point of coordination process functions relating to the application shall be performed by the central point of coordination process of the person's county of residence in accordance with the county of residence's management plan approved under section 331.439 and the person's county of legal settlement is responsible for the cost of the services or other support authorized at the rates reimbursed by the county of residence.

b. The county of residence shall determine whether or not the person's county of legal settlement has implemented a waiting list in accordance with section 331.439, subsection 5. If the person's county of legal settlement has implemented a waiting list, the services or other support for the person shall be authorized by the county of residence in accordance with the county of legal settlement's waiting list provisions.

c. At the time services or other support are authorized, the county of residence shall send the county of legal settlement a copy of the authorization notice.

5. Effective October 1, 2006, if an adult person has no established county of legal settlement or the legal settlement is unknown so that the person is deemed to be a state case, the person's eligibility and the authorization for state case services and other support shall be determined by the adult person's county of residence in accordance with that county's management plan approved under section 331.439. The costs of the state case services and other support provided for the person shall be the responsibility of the person's county of legal residence. The funding appropriated to the department of human services for purposes of the state case services and other support shall be distributed as provided in the appropriation to the counties of residence responsible for the costs.

6. The state commission shall consider the recommendations of county representatives in adopting rules outlining standards and requirements for implementation of the central point of coordination and clinical assessment processes on the date required by subsection 3. The rules shall permit counties options in implementing the process based upon a county's consumer population and available service delivery system.

7. This section is repealed July 1, 2013.

94 Acts, ch 1163, §4; 95 Acts, ch 206, §16; 96 Acts, ch 1183, §38; 2002 Acts, ch 1146, §18; 2004 Acts, ch 1090, §30; 2006 Acts, ch 1115, §16 – 19; 2007 Acts, ch 218, §81; 2011 Acts, ch 123, §25, 27

Methodology for distribution of funding for state case services; rules; cost projections; 2006 Acts, ch 1115, §19  
2009-2010 appropriation; 2009 Acts, ch 182, §24; 2010 Acts, ch 1181, §8, 13; 2010 Acts, ch 1182, §18, 36  
2010-2011 appropriation; 2010 Acts, ch 1192, §26  
2011-2012 and 2012-2013 appropriations; 2011 Acts, ch 129, §22, 135, 156  
NEW subsection 7

## PART 3

### GENERAL OBLIGATION BONDS

#### **331.449 Prior projects preserved.**

Projects and proceedings for the issuance of general obligation bonds commenced before July 1, 1981, may be consummated and completed as required or permitted by any statute amended or repealed by 1981 Iowa Acts, chapter 117, as though the repeal or amendment had not occurred, and the rights, duties, and interests following from such projects and proceedings remain valid and enforceable. Projects commenced prior to July 1, 1981, may be financed by the issuance of general obligation bonds under any such amended or repealed law or by the issuance of general obligation bonds under this part. For the purposes of this

section, commencement of a project includes but is not limited to action taken by the board or an authorized officer to fix a date for a hearing in connection with any part of the project, and commencement of proceedings for the issuance of general obligation bonds includes but is not limited to action taken by the board to fix a date for either a hearing or a sale in connection with any part of the general obligation bonds, or to order any part thereof to be issued.

[S81, §331.449; 81 Acts, ch 117, §448]

2011 Acts, ch 34, §86

Section amended

## PART 4 REVENUE BONDS

### **331.470 Prior projects preserved.**

Projects and proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations, commenced before July 1, 1981 may be completed as required or permitted by any statute amended or repealed by 1981 Iowa Acts, chapter 117, as though the amendment or repeal had not occurred, and the rights, duties, and interests resulting from the projects and proceedings remain valid and enforceable. Projects commenced prior to July 1, 1981, may be financed by the issuance of revenue bonds, pledge orders, and other temporary obligations under any such amended or repealed law or by the issuance of revenue bonds and pledge orders under this part. For purposes of this section, commencement of a project includes but is not limited to action taken by the board or an authorized officer to fix a date for either a hearing or an election in connection with any part of the project, and commencement of proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations includes but is not limited to action taken by the board to fix a date for either a hearing or a sale in connection with any part of such revenue bonds, pledge orders, or other temporary obligations or to order any part thereof to be issued.

[S81, §331.470; 81 Acts, ch 117, §469]

2011 Acts, ch 34, §87

Section amended

## DIVISION V COUNTY OFFICERS

### PART 6 COUNTY ATTORNEY

#### **331.756 Duties of the county attorney.**

The county attorney shall:

1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.
2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.
3. Prosecute all preliminary hearings for charges triable upon indictment.

4. Prosecute misdemeanors under chapter 236. The county attorney shall prosecute other misdemeanors when not otherwise engaged in the performance of other official duties.

5. *a.* Enforce all forfeited bonds and recognizances and prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures accruing to the state, the county or a road district in the county, and all suits in the county against public service corporations which are brought in the name of the state. To assist in this duty, the county attorney may procure a designee to assist with collection efforts.

*b.* If the designee is a professional collection services agency, the county attorney shall file with the clerk of the district court an indication of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of that obligation, including all fees and compensation retained by the designee incident to the collection and not paid into the office of the clerk.

*c.* Before a county attorney designates another county official or agency to assist with collection of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures, the board of supervisors of the county must approve the designation.

*d.* All fines, penalties, court costs, fees, and restitution for court-appointed attorney fees ordered pursuant to section 815.9, including the expenses of a public defender which are delinquent as defined in section 602.8107 may be collected by the county attorney or the county attorney's designee. The county attorney or the county attorney's designee may collect delinquent obligations under an installment agreement pursuant to section 321.210B.

*e.* As used in this subsection, "*designee*" means a professional collection services agency operated by a person or organization, including a private attorney, that is generally considered to have knowledge and special abilities not generally possessed by the state, a local government, or another county official or agency, or a county attorney or a county attorney's designee in another county where the fine, penalty, surcharge, or court cost was not imposed.

6. Commence, prosecute, and defend all actions and proceedings in which a county officer, in the officer's official capacity, or the county is interested or a party.

7. Give advice or a written opinion, without compensation, to the board and other county officers and to township officers, when requested by an officer, upon any matters in which the state, county, or township is interested, or relating to the duty of the officer in any matters in which the state, county, or township may have an interest, but the county attorney shall not appear before the board at a hearing in which the state or county is not interested.

8. Attend the grand jury when necessary for the purpose of examining witnesses before it or giving it legal advice. The county attorney shall procure subpoenas or other process for witnesses and prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom the county attorney receives money in an official capacity and file a duplicate receipt with the county auditor.

10. Make reports relating to the duties and the administration of the county attorney's office to the governor when requested by the governor.

11. Cooperate with the auditor of state to secure correction of a financial irregularity as provided in section 11.53.

12. Submit reports as to the condition and operation of the county attorney's office when required by the attorney general as provided in section 13.2, subsection 1, paragraph "h".

13. Reserved.

14. Hear and decide objections to a nomination filed with the county election commissioner as provided in section 44.7.

15. Review the report and recommendations of the ethics and campaign disclosure board and proceed to institute the recommended actions or advise the board that prosecution is not merited, as provided in sections 68B.32C and 68B.32D.

16. Prosecute or assist in the prosecution of actions to remove public officers from office as provided in section 66.11.

17. Institute legal proceedings against persons who violate laws administered by the

division of labor services of the department of workforce development as provided in section 91.11.

18. Investigate complaints and prosecute violations of child labor laws as provided in section 92.22.

19. Prosecute violations of employment security laws and rules as provided in section 96.17, subsection 2.

20. Assist, at the request of the director of revenue, in the enforcement of cigar and tobacco tax laws as provided in sections 453A.32 and 453A.49.

21. Prosecute nuisances as provided in section 99.24.

22. Attend the hearing, interrogate witnesses, and advise a license-issuing authority relating to the revocation of a license for violation of gambling laws as provided in section 99A.7. The county attorney shall also represent the license-issuing authority in appeal proceedings taken under section 99A.6.

23. Represent the state fire marshal in legal proceedings as provided in section 100.20.

24. Prosecute, at the request of the director of the department of natural resources or an officer appointed by the director, violations of the state fish and game laws as provided in section 481A.35.

25. Assist the department of public safety in the enforcement of beer and liquor laws as provided in section 123.14. The county attorney shall also prosecute nuisances, forfeitures of abatement bonds, and foreclosures of the bonds as provided in sections 123.62 and 123.86.

26. Reserved.

27. Serve as attorney for the county health care facility administrator in matters relating to the administrator's service as a conservator or guardian for a resident of the health care facility as provided in section 135C.24.

28. Reserved.

29. At the request of the director of public health, commence legal action to enjoin the unlawful use of radiation-emitting equipment as provided in section 136C.5.

30. Reserved.

31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.

32. Assist the department of inspections and appeals in the enforcement of the rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2 and the Iowa hotel sanitation code, as provided in sections 137C.30 and 137F.19.

33. Institute legal procedures on behalf of the state to prevent violations of chapter 9H or 202B.

34. Prosecute violations of the Iowa dairy industry laws as provided in section 179.11.

35. Prosecute persons who fail to file an annual or special report with the secretary of agriculture under the meat and poultry inspection Act as provided in section 189A.17.

36. Cooperate with the secretary of agriculture in the enforcement of label requirements for food packages as provided in section 191.7.

37. Prosecute violations of the Iowa commercial feed law as provided in section 198.13, subsection 3.

38. Cooperate with the secretary of agriculture in the enforcement of the agricultural seed laws as provided in section 199.14.

39. Prosecute violations of the Iowa fertilizer law as provided in section 200.18, subsection 5.

40. Prosecute violations of the Iowa drug, device, and cosmetic Act as requested by the board of pharmacy as provided in section 126.7.

41. Provide the Iowa department of corrections with information relating to the background and criminal acts committed by each person sentenced to a state correctional institution from the county as provided in section 904.202.

42. Carry out duties relating to the commitment of a person with mental retardation as provided in section 222.18.

43. Proceed to collect, as requested by the county, the reasonable costs for the care, treatment, training, instruction, and support of a person with mental retardation from

parents or other persons who are legally liable for the support of the person with mental retardation as provided in section 222.82.

44. Reserved.

45. Appear on behalf of the administrator of the division of mental health and disability services of the department of human services in support of an application to transfer a person with mental illness who becomes incorrigible and dangerous from a state hospital for persons with mental illness to the Iowa medical and classification center as provided in section 226.30.

46. Carry out duties relating to the hospitalization of persons for mental illness as provided in section 229.12.

47. Carry out duties relating to the collection of the costs for the care, treatment, and support of persons with mental illness as provided in sections 230.25 and 230.27.

48. Carry out duties relating to the care, guidance, and control of juveniles as provided in chapter 232.

49. Prosecute violations of law relating to the family investment program, medical assistance, and supplemental assistance as provided in sections 239B.15, 249.13, and 249A.14.

50. Commence legal proceedings to enforce the rights of children placed under foster care arrangements as provided in section 233A.11.

51. Commence legal proceedings, at the request of the superintendent of the Iowa juvenile home, to recover possession of a child as provided in section 233B.12.

52. Furnish, upon request of the governor, a copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 914.5.

53. Reserved.

54. Reserved.

55. At the request of the state geologist, commence legal proceedings to obtain a copy of the map of a mine or mine extension as provided in section 456.12.

56. Enforce, upon complaint, the performance of duties by officers charged with the responsibilities of controlling or eradicating noxious weeds as provided in section 317.23.

57. Commence legal proceedings to remove billboards and signs which constitute a public nuisance as provided in section 318.11.

58. Reserved.

59. Assist, upon request, the department of transportation's general counsel in the prosecution of violations of common carrier laws and regulations as provided in section 327C.30.

60. Enforce the control of vegetation on railroad property by the railroad corporations as provided in section 327F.29.

61. Appoint a member of the civil service commission for deputy sheriffs as provided in section 341A.2 or 341A.3.

62. Represent the civil service commission for deputy sheriffs in civil suits initiated by the commission for the proper enforcement of the civil service law as provided in section 341A.16.

63. Present to the grand jury at its next session a copy of the report filed by the department of corrections of its inspection of the jails in the county as provided in section 356.43.

64. Represent the township trustees in counties having a population of less than twenty-five thousand except when the interests of the trustees and the county are adverse as provided in section 359.18.

64A. Reserved.

64B. Make a written report to the department of inspections and appeals within fifteen days of the end of each calendar quarter of the amount of funds which were owed to the state for indigent defense services and which were recouped pursuant to subsection 5.

65. Represent the assessor and the board of review in legal proceedings relating to assessments as provided in section 441.41.

66. Represent the state in litigation relating to the inheritance tax if requested by the department of revenue as provided in section 450.1.

67. Institute proceedings to enjoin persons from violating water treatment laws as provided in section 455B.224.

68. Conduct legal proceedings relating to the condemnation of private property as provided in section 6B.2.

69. Reserved.

70. Institute legal proceedings against violations of insurance laws as provided in section 511.7.

71. Assist, as requested by the attorney general, with the enforcement of the Iowa competition law as provided in section 553.7.

72. Initiate proceedings to enforce provisions relating to the recordation of conveyances and leases of agricultural land as provided in section 558.44.

73. Reserved.

74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

75. Reserved.

76. Reserved.

77. Prosecute a complaint to establish paternity and compel support for a child as provided in section 600B.19.

78. Give to an accused person a copy of each report of the findings of the criminalistics laboratory in the investigation of an indictable criminal charge against the accused as provided in section 691.4.

79. Notify state and local governmental agencies issuing licenses or permits, of a person's conviction of obscenity laws relating to minors as provided in section 728.8.

80. In the case of appeal from the district court, furnish the attorney general with a copy of the notice of appeal and pertinent material from the district court proceedings as provided in section 814.8.

81. Certify fees and mileage payable to witnesses subpoenaed by the county attorney before the district court as provided in section 815.3.

82. Carry out duties relating to extradition of fugitive defendants as provided in chapter 820 and securing witnesses as provided in chapter 819.

83. Advise the director of the judicial district department of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

83A. Carry out the duties imposed under sections 915.12 and 915.13.

83B. Establish a child protection assistance team in accordance with section 915.35.

84. Bring an action in the nature of quo warranto as provided in rule of civil procedure 1.1302.

85. Perform other duties required by law and duties assigned pursuant to section 331.323. [C97, SS15, §301; C24, 27, 31, 35, 39, §5180; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §336.2; S81, §331.756; 81 Acts, ch 117, §756; 82 Acts, ch 1021, §10, 12(1), ch 1100, §28, ch 1104, §59]

83 Acts, ch 96, §111, 112, 157, 159; 84 Acts, ch 1163, §2; 84 Acts, ch 1299, §9; 85 Acts, ch 195, §42; 86 Acts, ch 1001, §21; 86 Acts, ch 1112, §11; 86 Acts, ch 1155, §8; 86 Acts, ch 1238, §17; 86 Acts, ch 1245, §1117; 87 Acts, ch 30, §18; 87 Acts, ch 98, §4; 88 Acts, ch 1134, §73; 89 Acts, ch 197, §30; 90 Acts, ch 1165, §17; 92 Acts, ch 1242, §30, 31; 93 Acts, ch 97, §39; 93 Acts, ch 110, §2 – 4; 93 Acts, ch 142, §12; 93 Acts, ch 163, §32; 94 Acts, ch 1023, §106; 94 Acts, ch 1170, §53; 94 Acts, ch 1173, §29, 30; 95 Acts, ch 49, §9; 95 Acts, ch 143, §9; 95 Acts, ch 169, §3; 96 Acts, ch 1034, §31; 96 Acts, ch 1111, §2; 96 Acts, ch 1129, §113; 96 Acts, ch 1131, §1; 96 Acts, ch 1186, § 23; 97 Acts, ch 41, §32; 98 Acts, ch 1090, §69, 84; 98 Acts, ch 1162, §28, 30; 2002 Acts, ch 1119, §159; 2003 Acts, ch 107, §3; 2003 Acts, ch 115, §15, 19; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §40; 2005 Acts, ch 167, §57, 66; 2006 Acts, ch 1010, §94; 2006 Acts, ch 1097, §18; 2006 Acts, ch 1115, §33; 2006 Acts, ch 1185, §121; 2007 Acts, ch 10, §175; 2007 Acts, ch 152, §51; 2007 Acts, ch 196, §7; 2007 Acts, ch 215, §219; 2008 Acts, ch 1032, §199; 2008 Acts, ch 1172, §22; 2011 Acts, ch 43, §3 – 5; 2011 Acts, ch 75, §39

Subsections 7 and 11 amended

Subsection 54 stricken

Subsection 82 amended

## CHAPTER 335

### COUNTY ZONING

#### **335.8 Commission appointed — powers and duties.**

1. In order to avail itself of the powers conferred by this chapter, the board of supervisors shall appoint a commission, a majority of whose members shall reside within the county but outside the corporate limits of any city, to be known as the county zoning commission, to recommend the boundaries of the various original districts and appropriate regulations and restrictions to be enforced therein. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and the board of supervisors shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the board of supervisors amendments, supplements, changes or modifications.

2. The zoning commission may recommend to the board of supervisors for adoption a comprehensive plan pursuant to section 335.5, or amendments thereto.

3. The zoning commission, with the approval of the board of supervisors, may contract with professional consultants, regional planning commissions, the economic development authority, or the federal government, for local planning assistance.

[C50, 54, 58, §358A.8; C62, 66, 71, 73, §358A.8, 373.21; C75, 77, 79, 81, §358A.8]

C93, §335.8

2010 Acts, ch 1184, §22; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 336

### LIBRARY DISTRICTS

#### **336.16 Withdrawal from district — termination.**

1. A city may withdraw from the library district upon a majority vote in favor of withdrawal by the electorate of the city in an election held on a motion by the city council. The election shall be held simultaneously with a general or city election. Notice of a favorable vote to withdraw shall be sent by certified mail to the board of library trustees of the library district and the county auditor or city clerk, as appropriate, prior to January 10, and the withdrawal shall be effective on July 1.

2. A county may withdraw from the district after a majority of the voters of the unincorporated area of the county voting on the issue favor the withdrawal. The board of supervisors shall call for the election which shall be held at the next general election.

3. A city or county election shall not be called until a hearing has been held on the proposal to submit a proposition of withdrawal to an election. A hearing may be held only after public notice is published as provided in section 362.3 in the case of a city or section 331.305 in the case of a county. A copy of the notice submitted for publication shall be mailed to the public library on or before the date of publication. The proposal presented at the hearing must include a plan for continuing adequate library service with or without all participants and the respective allocated costs and levels of service shall be stated. At the hearing, any interested person shall be given a reasonable time to be heard, either for or against the withdrawal or the plan to accompany it.

4. A library district may be terminated if a majority of the electors of the unincorporated area of the county and the cities included in the library district voting on the issue favor the termination. If the vote favors termination, the termination shall be effective on the succeeding July 1.

5. An election for withdrawal from or termination of a library district shall not be held more than once each four years.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.16]

84 Acts, ch 1168, §2; 85 Acts, ch 125, §1

C93, §336.16

2001 Acts, ch 158, §35; 2002 Acts, ch 1119, §51; 2002 Acts, ch 1134, §97, 115; 2010 Acts, ch 1031, §331; 2010 Acts, ch 1061, §140; 2011 Acts, ch 25, §33

Subsection 3 amended

## CHAPTER 352

### COUNTY LAND PRESERVATION AND USE COMMISSIONS

Chapter does not invalidate ordinances existing on July 1, 1982,

or require adoption of zoning ordinance;

see 82 Acts, ch 1245, §20

This chapter not enacted as a part of this title;

transferred from chapter 176B in Code 1993

#### 352.4 County inventories.

1. Each county commission shall compile a county land use inventory of the unincorporated areas of the county by July 1, 1984. The county inventories shall where adequate data is available contain at least the following:

a. The land available and used for agricultural purposes by soil suitability classifications or land capability classification, whichever is available.

b. The lands used for public facilities, which may include parks, recreation areas, schools, government buildings and historical sites.

c. The lands used for private open spaces, which may include woodlands, wetlands and water bodies.

d. The land used for each of the following uses: commercial, industrial including mineral extraction, residential and transportation.

e. The lands which have been converted from agricultural use to residential use, commercial or industrial use, or public facilities since 1960.

2. In addition to that provided under subsection 1, the county inventory shall also contain the land inside the boundaries of a city which is taxed as agricultural land.

3. The information required by subsection 1 shall be provided both in narrative and map form. The county commission shall provide a cartographic display which contrasts the county's present land use with the land use in the county in 1960 based on the best available information. The display need only show the areas in agriculture, private open spaces, public facilities, commercial, industrial, residential and transportation uses.

4. The state department of agriculture and land stewardship, department of management, department of natural resources, geological survey, state agricultural extension service, and the economic development authority shall, upon request, provide to each county commission any pertinent land use information available to assist in the compiling of the county land use inventories.

[C79, 81, §93A.4(9); 82 Acts, ch 1245, §5]

83 Acts, ch 101, §6; 83 Acts, ch 137, §26; 84 Acts, ch 1303, §22

C87, §176B.4

C93, §352.4

2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 354

### PLATTING — DIVISION AND SUBDIVISION OF LAND

Standards for land surveys and plats, see also chapter 355

#### **354.8 Review and approval by governing bodies.**

1. A proposed subdivision plat lying within the jurisdiction of a governing body shall be submitted to that governing body for review and approval prior to recording. Governing bodies shall apply reasonable standards and conditions in accordance with applicable statutes and ordinances for the review and approval of subdivisions. The governing body, within sixty days of application for final approval of the subdivision plat, shall determine whether the subdivision conforms to its comprehensive plan and shall give consideration to the possible burden on public improvements and to a balance of interests between the proprietor, future purchasers, and the public interest in the subdivision when reviewing the proposed subdivision and when requiring the installation of public improvements in conjunction with approval of a subdivision. The governing body shall not issue final approval of a subdivision plat unless the subdivision plat conforms to sections 354.6, 354.11, and 355.8.

2. If the subdivision plat and all matters related to final approval of the subdivision plat conform to the standards and conditions established by the governing body, and conform to this chapter and chapter 355, the governing body, by resolution, shall approve the plat and certify the resolution which shall be recorded with the plat. The recorder shall refuse to accept a subdivision plat presented for recording without a resolution from each applicable governing body approving the subdivision plat or waiving the right to review.

3. As used in this section, the term “*subdivision improvements*” means any fixture, structure, or other improvement to land required to be constructed or installed by the proprietor as a condition of the governing body’s approval of a subdivision plat.

4. *a.* For a city with a population equal to or greater than fifty thousand, if the proprietor or the contractor for the construction of subdivision improvements has provided the name and facsimile number or electronic mail address of the contractor, the city shall notify the contractor, either by facsimile or electronic mail, not less than forty-eight hours in advance of the date on which the city will consider the acceptance of subdivision improvements constructed by the contractor.

*b.* For a city with a population equal to or greater than twenty-five thousand but less than fifty thousand, a proprietor or the contractor for the construction of subdivision improvements may request that the city notify the contractor, either by facsimile or electronic mail, not less than forty-eight hours in advance of the date on which the city will consider the acceptance of subdivision improvements constructed by the contractor. Upon the receipt of such a request to notify the contractor, the city shall provide such notice.

*c.* A city’s failure to provide notice pursuant to paragraph “*a*” or “*b*” shall not impose any responsibility on the city for the payment of any amounts owed by a proprietor to a contractor.

5. A city may establish jurisdiction to review subdivisions or plats of survey outside its boundaries pursuant to the provisions of section 354.9. In the case of a city, the provisions of this section apply to the review by the city of both subdivision plats and plats of survey.

90 Acts, ch 1236, §22

C91, §409A.8

C93, §354.8

2002 Acts, ch 1132, §1, 2, 11; 2011 Acts, ch 64, §1

Section amended

## CHAPTER 357E

### RECREATIONAL LAKE AND WATER QUALITY DISTRICTS

#### 357E.1 Definitions.

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

1. “*Board*” means the board of supervisors of a county, or the joint boards of supervisors of two or more counties, in which a district has been incorporated and organized or is proposed to be incorporated and organized.
2. “*Book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.
3. “*District*” means a benefited recreational lake district or a water quality district or a combined district incorporated as a public entity and organized pursuant to this chapter.
4. “*Recreational facilities*” includes, but is not limited to, real and personal property, water, buildings, structures, or improvements including dams or other structures permitted or exempt from regulation under chapter 455B, and equipment useful and suitable for recreation programs, including those programs customarily identified with the term “*recreation*” such as public sports, games, pastimes, diversions, and amusement, on land or water and including community center houses, recreation grounds, recreation buildings, juvenile playgrounds, swimming pools, recreation centers, parks, lakes, and golf courses, and the acquisition of real estate for them.
5. “*Trustee*” means a member of the board of trustees of a district.
6. “*Water quality activities*” includes, but is not limited to, public information dissemination, creation or maintenance of grass waterways or wetlands, dredging, bank stabilization, water treatment, water monitoring, watershed protection, activities on lands outside the district which affect water quality within the district, and any other activity which will improve water quality of a stream, river, or lake.

88 Acts, ch 1194, §1; 2000 Acts, ch 1148, §1; 2000 Acts, ch 1181, §1, 2; 2002 Acts, ch 1119, §200, 201; 2011 Acts, ch 108, §1

Subsection 3 amended

#### 357E.9 Trustees — term and qualification.

1. *a.* At the election, the names of at least seven candidates for trustee shall be written in by the voters on blank ballots without formal nomination and the board of supervisors shall appoint seven from among the nine receiving the highest number of votes as trustees for the district. Three trustees shall be appointed to serve for one year, two for two years, and two for three years. The trustees shall give bond in the amount required by the board, the premium of which shall be paid by the district. The trustees must be residents of the district or be property owners within the district. Vacancies shall be filled by election, but if there are no candidates for a trustee office, the vacancy may be filled by appointment by the board. The terms of the succeeding trustees are for three years.

*b.* For districts in existence on July 1, 2011, the number of trustees, other than those appointed under subsection 2, shall be increased from three trustees to seven trustees. For the initial seven-member board under this paragraph, the board of supervisors shall appoint four trustees. One trustee shall be appointed to serve for one year, one for two years, and two for three years. The term of each trustee appointed under this paragraph shall expire on the same date as the term of the current trustee whose term expires during the same year.

2. If the state owns at least four hundred acres of land contiguous to a lake within the district, the natural resource commission shall appoint two members of the board of trustees in addition to the seven members provided in this section. The additional two members must be citizens of the state, not less than eighteen years of age, and property owners within the district. The two additional members have voting and other authority equal to the other members of the board and hold office at the pleasure of the natural resource commission.

88 Acts, ch 1194, §9; 91 Acts, ch 111, §7; 2001 Acts, ch 24, §48; 2011 Acts, ch 108, §2

Section amended

**357E.11 Bonds in anticipation of revenue.**

A district, other than a combined district, may anticipate the collection of taxes by the levy authorized in this chapter, and to carry out the purposes of this chapter may issue bonds payable in not more than twenty equal installments with the rate of interest not exceeding that permitted by chapter 74A. An indebtedness shall not be incurred under this section until authorized by an election. The election shall be held and notice given in the same manner as provided in section 357E.8, and the same majority vote is necessary to authorize indebtedness. Both propositions may be submitted to the voters at the same election.

88 Acts, ch 1194, §11; 2011 Acts, ch 108, §3

Section amended

**357E.11A Bonds and indebtedness — combined districts.**

1. A combined district may borrow money for its corporate purposes, but shall not become indebted in any manner or for any purpose to an amount in the aggregate exceeding five percent on the value of the taxable property within the district, to be ascertained by the last state and county tax lists previous to the incurring of the indebtedness. Indebtedness within this limit shall not include the indebtedness of any other municipal corporation located wholly or partly within the boundaries of the district.

2. A combined district shall have the same powers to issue bonds, including both general obligation and revenue bonds, that cities have under the laws of this state, including but not limited to chapter 76, section 384.4, and sections 384.23 through 384.94. The bonds shall be made payable at the place and be of the form as the board of trustees shall by resolution designate. In the application of the laws to this section, the words used in the laws referring to municipal corporations or to cities shall be held to include combined districts organized under this chapter; the words “council” or “city council” shall be held to include the board of trustees of a combined district; the words “mayor” and “clerk” shall be held to include the president and clerk of a board of trustees; and like construction shall be given to any other words in the laws where required to permit the exercise of the powers by combined districts under this section.

3. An indebtedness shall not be incurred under this section until authorized by an election. The election shall be held and notice given in the same manner as provided in section 357E.8, except that a proposition to authorize indebtedness is approved if sixty percent of those voting on the proposition vote in favor of the proposition. A proposition for the authorization of indebtedness may be submitted to the voters at the same election as the election under section 357E.8.

2011 Acts, ch 108, §4

NEW section

## CHAPTER 357H

### RURAL IMPROVEMENT ZONES

**357H.7 Board of trustees — power.**

The trustees of a rural improvement zone elected pursuant to section 357H.6 shall constitute the board of trustees of the zone and shall manage and control the affairs, property, and facilities of the zone. The board of trustees shall elect a president, a clerk, and a treasurer from its membership. The trustees may authorize construction, reconstruction, or repair of improvements following procedures set out in section 331.341. For these purposes, the trustees may purchase material, employ personnel, acquire real estate and interests in real estate, and perform all other acts necessary to properly maintain and operate the zone. The trustees are allowed necessary expenses in the discharge of their duties, but they shall not receive salaries.

97 Acts, ch 152, §7; 2011 Acts, ch 128, §22, 60

Section amended

## CHAPTER 357I

### BENEFITED SECONDARY ROAD SERVICES DISTRICTS

#### **357I.2 Petition for public hearing.**

1. The board shall, on the petition of twenty-five percent of the resident property owners in a proposed district if the assessed valuation of the property owned by the petitioners represents at least twenty-five percent of the total assessed value of the proposed district, hold a public hearing concerning the establishment of a proposed district. The petition shall include a statement containing the following information:

- a. The need for secondary road services.
- b. The district to be served.
- c. The approximate number of families in the district.
- d. A general description of the secondary road services to be provided in the district by the county.

2. The board may require a bond of the petitioners conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not established.

3. If part or all of the proposed district lies within two miles of the boundaries of a city, the board shall send a copy of the petition to each such city before scheduling the public hearing on the petition. A city that receives a copy of the petition may require that any road or street improvements and associated drainage improvements constructed within the district after establishment of the district be constructed in compliance with requirements for such improvements then in effect within the city. The city shall notify the board of the city's response to the petition within thirty days of receiving the petition. If the city wants requirements for road or street improvements and associated drainage improvements then in effect within the city to apply within the district, the requirements shall be included in the resolution of the board establishing the district and shall be incorporated into the plans and specifications for the improvements prepared by the district engineer or county engineer. The plans and specifications shall be subject to approval by the board and by the city council of each affected city, which approval must occur before commencement of construction. If costs for construction of improvements according to a city's standards exceed the costs for such construction according to county standards, the petitioners shall pay the difference in the costs.

2008 Acts, ch 1124, §22; 2011 Acts, ch 34, §88

Subsection 3 amended

## CHAPTER 358

### SANITARY DISTRICTS

#### **358.20 Rentals and charges.**

1. Any sanitary district may by ordinance establish just and equitable rates, charges, or rentals for the utilities and services furnished by the district to be paid to the district by every person, firm, or corporation whose premises are served by a connection to the utilities and services directly or indirectly. The rates, charges, or rentals, as near as may be in the judgment of the board of trustees of the district, shall be equitable and in proportion to the services rendered and the cost of the services, and taking into consideration in the case of the premises the quantity of sewage produced thereby and its concentration, strength, and pollution qualities. The board of trustees may change the rates, charges, or rentals from time to time as it may deem advisable, and by ordinance may provide for collection. The board may contract with any municipality within the district, whereby the municipality may collect or assist in collecting any of the rates, charges, or rentals, whether in conjunction with water rentals or otherwise, and the municipality may undertake the collection and render

the service. The board of trustees may also contract pursuant to chapter 28E with one or more city utilities or combined utility systems, including city utilities established pursuant to chapter 388, for joint billing or collection, or both, of combined service accounts for sanitary district services and utility services, and the contracts may provide for the discontinuance of one or more of the sanitary district services or water utility services if a delinquency occurs in the payment of any charges billed under a combined service account. The rates, charges, or rentals, if not paid when due, shall constitute a lien upon the real property served by a connection. The lien shall have equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

2. If the delinquent rates or charges were incurred prior to the date a transfer of the property or premises in fee simple is filed with the county recorder and such delinquencies were not certified to the county treasurer prior to such date, the delinquent rates or charges are not eligible to be certified to the county treasurer. If certification of such delinquent rates or charges is attempted subsequent to the date a transfer of the property or premises in fee simple is filed with the county recorder, the county treasurer shall return the certification to the sanitary district attempting certification along with a notice stating that the delinquent rates or charges cannot be made a lien against the property or premises.

3. Sewer rentals, charges, or rates may supplant or replace, in whole or in part, any monetary levy of taxes which may be, or have been, authorized by the board of trustees for any of the following purposes:

a. To meet interest and principal payments on bonds legally authorized for the financing of sanitary utilities in any manner.

b. To pay costs of the construction, maintenance, or repair of such sanitary facilities or utilities, including payments to be made under any contract between municipalities for either the joint use of sewerage or sewage facilities, or for the use by one municipality of all or a part of the sewerage or sewer system of another municipality.

4. When a sewer rental ordinance has been passed and put into effect, prior ordinances or resolutions providing for monetary levy of taxes against real and personal property for such purposes, or the portion thereof replaced, may be repealed.

[C31, 35, §6066-d7; C39, §6066.21; C46, 50, 54, 58, 62, 66, 71, 73, §358.20, 393.7; C75, 77, 79, 81, §358.20]

87 Acts, ch 197, §3; 92 Acts, ch 1047, §1; 97 Acts, ch 62, §1; 2009 Acts, ch 41, §263; 2011 Acts, ch 109, §1

Collection of taxes, see chapter 445

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4

## CHAPTER 360

### TOWNSHIP HALLS

#### 360.1 Election.

1. The trustees, on a petition of a majority of the resident freeholders of any civil township, shall request the county commissioner of elections to submit the question of building or acquiring by purchase, or acquiring by a lease with purchase option, a public hall to the electors thereof. The county commissioner shall conduct the election pursuant to the applicable provisions of chapters 39 to 53 and certify the result to the trustees.

2. The form of the proposition shall be:

Shall the proposition to levy a tax of ..... cents per thousand dollars of assessed value for the erection of a public hall be adopted?

3. Notice of the election shall be given as provided by chapter 49.

[C97, §567; C24, 27, 31, 35, 39, §5574; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §360.1]  
2011 Acts, ch 25, §34

Gifts and donations, §359.29  
Section amended

### **360.9 Reversion of real estate — payment.**

1. *a.* Any real estate, including improvements thereon, situated wholly outside of a city, owned by a township and heretofore used for township purposes and which is no longer necessary for township purposes, shall revert to the present owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time hereinafter prescribed, pay the value thereof to the township clerk. In the event the township trustees and said owner of the tract from which such real property was taken do not agree as to the value of such property and improvements thereon, the township clerk shall, on written application of either party, appoint three disinterested residents of the township to appraise such property and improvements thereon.

*b.* The township clerk shall give notice to said trustees and said owner of the time and place of making such appraisal, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court. Such appraisers shall inspect the real estate and improvements and, at the time and place designated in the notice, appraise the same in writing, which appraisal, after being duly verified, shall be filed with the township clerk.

*c.* If the present owner of the tract from which said site was taken fails to pay the amount of such appraisal to such township within twenty days after the filing of same with the township clerk, the township trustees may sell said site, including any improvements thereon, to any person at the appraised value, or may sell the same at public auction for the best bid.

2. Any real estate, including improvements thereon, situated within a city, owned by a township and heretofore used for township purposes and which is no longer necessary for township purposes, may be sold by the township trustees at public auction for the best bid.

3. The township trustees in the case of joint ownership, in conjunction with any city authorities, shall not sell such real estate including improvements thereon unless the city authorities concur in such sale. The proceeds of such sale of jointly owned real estate including improvements located thereon shall be prorated between the township and the city on the basis of their respective contribution to the acquisition and maintenance of such property.

4. *a.* Sales at public auction contemplated herein shall be made only after the township trustees advertise for bids for such property. Such advertisement shall definitely describe said property and be published by at least one insertion each week for two consecutive weeks in some newspaper having general circulation in the township.

*b.* The township trustee shall not, prior to two weeks after the said second publication, nor later than six months after said second publication, accept any bid. The township trustees may accept only the best bid received prior to acceptance. The township trustees may decline to sell if all the bids received are deemed inadequate.

5. Subject to the right of reversion to the present owner as provided in this section, the township trustees may sell, lease, exchange, give, or grant and accept any interest in real property to, with, or from any county, municipal corporation, or school district if the real property is within the jurisdiction of both the grantor and grantee and the advertising and public auction requirements of this section shall not apply to any such transaction between the aforesaid local units of government.

[C71, 73, 75, 77, 79, 81, §360.9]

2010 Acts, ch 1061, §147; 2011 Acts, ch 34, §89

Subsection 5 amended

## CHAPTER 364

### POWERS AND DUTIES OF CITIES

#### **364.3 Limitation of powers.**

The following are limitations upon the powers of a city:

1. A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. For a violation of an ordinance a city shall not provide a penalty in excess of the maximum fine and term of imprisonment for a simple misdemeanor under section 903.1, subsection 1, paragraph "a". An amount equal to ten percent of all fines collected by cities shall be deposited in the account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section 911.1 shall be added to a city fine and is not a part of the city's penalty.

3. *a.* A city may not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

*b.* A city shall not impose any fee or charge on any individual or business licensed by the board for the right to perform plumbing, HVAC, refrigeration, or hydronic systems work within the scope of the license. This paragraph does not prohibit a city from charging fees for the issuance of permits for, and inspections of, work performed in its jurisdiction.

4. A city may not levy a tax unless specifically authorized by a state law.

5. A city shall not adopt or enforce any ordinance imposing any registration or licensing system or registration or license fees for or relating to owner-occupied manufactured or mobile homes including the lots, lands, or manufactured home community or mobile home park upon or in which they are located. A city shall not adopt or enforce any ordinance imposing any registration or licensing system, or registration or license fees, or safety or sanitary standards for rental manufactured or mobile homes unless a similar registration or licensing system, or registration or license fees, or safety or sanitary standards are required for other rental properties intended for human habitation. This subsection does not preclude the investigation and abatement of a nuisance or the enforcement of a tiedown system, or the enforcement of any regulations of the state or local board of health if those regulations apply to other rental properties or to owner-occupied housing intended for human habitation.

6. A city shall not provide a civil penalty in excess of seven hundred fifty dollars for the violation of an ordinance which is classified as a municipal infraction or if the infraction is a repeat offense, a civil penalty not to exceed one thousand dollars for each repeat offense. A municipal infraction is not punishable by imprisonment.

7. A city which operates a cable communications system shall manage the right-of-way on a competitively neutral and nondiscriminatory basis. Additionally, a city-operated cable communications system shall be required to pay the same fees and charges and comply with other requirements as may be imposed by the city by ordinance or by the terms of a franchise granted by the city, or as may otherwise be imposed by the city, upon any other cable provider. This subsection does not prohibit a city from making an equitable apportionment of franchise requirements between or among cable television providers, in order to eliminate duplication. This subsection shall not be construed to prohibit a city-operated cable communications system from making transfers of surplus as otherwise allowed or from making in-kind contributions as otherwise allowed.

8. *a.* A city may adopt and enforce an ordinance requiring the construction of a storm shelter at a manufactured home community or mobile home park which is constructed after July 1, 1999. In lieu of requiring construction of a storm shelter, a city may require a community or park owner to provide a plan for the evacuation of community or park residents to a safe place of shelter in times of severe weather including tornadoes and high winds if the city determines that a safe place of shelter is available within a reasonable distance of the manufactured home community or mobile home park for use by community

or park residents. Each evacuation plan prepared pursuant to this subsection shall be filed with, and approved by, the local emergency management agency. If construction of a storm shelter is required, an ordinance adopted or enforced pursuant to this subsection shall not include any of the following requirements:

(1) That the size of the storm shelter be larger than the equivalent of seven square feet for each manufactured or mobile home space in the manufactured home community or mobile home park.

(2) That the storm shelter include a restroom if the shelter is used exclusively as a storm shelter.

(3) That the storm shelter exceed the construction specifications approved by a licensed professional engineer and presented by the owner of the manufactured home community or mobile home park.

(4) That the shelter be located any closer than one thousand three hundred twenty feet from any manufactured or mobile home in the community. However, this restriction shall not prohibit the adoption or enforcement of an ordinance that requires a minimum of one shelter to be located in a manufactured home community or mobile home park.

b. For the purposes of this subsection:

(1) “*Manufactured home community*” means the same as land-leased community defined in sections 335.30A and 414.28A.

(2) “*Mobile home park*” means a mobile home park as defined in section 562B.7.

(3) “*Storm shelter*” means a single structure or multiple structures designed to provide persons with temporary protection from a storm.

9. A city shall not adopt or enforce any ordinance imposing any limitation on the amount of rent that can be charged for leasing private residential or commercial property. This subsection does not prevent the right of a city to manage and control residential property in which the city has a property interest.

10. A city which operates a utility that furnishes gas or electricity shall manage the right-of-way on a competitively neutral and nondiscriminatory basis. Such city utility shall be required to pay the fees and charges computed in the same manner as those fees and charges which are imposed by the city upon any other provider of a similar service within the corporate boundaries of the city. Such city utility shall also comply with the terms of the franchise granted by the city to the provider of a similar service. This subsection shall not be construed to prohibit the city utility from making transfers of surplus as otherwise allowed or from making in-kind contributions as otherwise allowed. However, a city shall not require that transfers from the city utility be in excess of the franchise fee amount imposed upon the provider of a similar service unless otherwise agreed.

[R60, §1071 – 1073, 1095; C73, §482, 524; C97, §668, 680, 947; S13, §668; C24, 27, 31, 35, 39, §5663, 5714, 6720; C46, 50, §363.36, 366.1, 420.31; C54, 58, 62, §366.1, 368A.1(10), 420.31; C66, 71, 73, §366.1, 368.2, 368A.1(10), 420.31; C75, 77, 79, 81, §364.3]

83 Acts, ch 123, §171, 209; 84 Acts, ch 1219, §31; 85 Acts, ch 195, §44; 86 Acts, ch 1202, §1; 86 Acts, ch 1245, §1118; 94 Acts, ch 1074, §4; 98 Acts, ch 1144, §3; 99 Acts, ch 33, §1; 99 Acts, ch 153, §9; 99 Acts, ch 186, §2; 2000 Acts, ch 1083, §2; 2000 Acts, ch 1203, §20; 2001 Acts, ch 153, §10; 2003 Acts, ch 178, §23; 2004 Acts, ch 1111, §2; 2008 Acts, ch 1191, §61; 2009 Acts, ch 21, §5; 2009 Acts, ch 179, §229, 231; 2011 Acts, ch 100, §14, 15

Subsection 3 amended

### **364.4 Property and services outside of city — lease-purchase — insurance.**

A city may:

1. a. Acquire, hold, and dispose of property outside the city in the same manner as within. However, the power of a city to acquire property outside the city does not include the power to acquire property outside the city by eminent domain, except for the following, subject to the provisions of chapters 6A and 6B:

(1) The operation of a city utility as defined in section 362.2.

(2) The operation of a city franchise conferred the authority to condemn private property under section 364.2.

(3) The operation of a combined utility system as defined in section 384.80.

- (4) The operation of a municipal airport.
- (5) The operation of a landfill or other solid waste disposal or processing site.
- (6) The use of property for public streets and highways.
- (7) The operation of a multistate entity, of which the city is a participating member, created to provide drinking water that has received or is receiving federal funds, but only if such property is to be acquired for water transmission and service lines, pump stations, water storage tanks, meter houses and vaults, related appurtenances, or supporting utilities.

b. The exceptions provided in paragraph "a", subparagraphs (1) through (3), apply only to the extent the city had this power prior to July 1, 2006.

2. By contract, extend services to persons outside the city.

3. Enact and enforce ordinances relating to city property and city-extended services outside the city.

4. Enter into leases or lease-purchase contracts for real or personal property in accordance with the following terms and procedures:

a. A city shall lease or lease-purchase property only for a term which does not exceed the economic life of the property, as determined by the governing body.

b. A lease or lease-purchase contract entered into by a city may contain provisions similar to those sometimes found in leases between private parties, including, but not limited to, the obligation of the lessee to pay any of the costs of operation or ownership of the leased property and the right to purchase the leased property.

c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A city utility or city enterprise is a separate entity under this subsection whether it is governed by the governing body of the city or another governing body.

d. The governing body must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a lease or a lease-purchase contract made payable from the debt service fund.

e. The governing body may authorize a lease or lease-purchase contract which is payable from the general fund if the contract would not cause the total of annual lease or lease-purchase payments due from the general fund of the city in any single future fiscal year for all lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The governing body must follow substantially the authorization procedures of section 384.25 to authorize a lease or lease-purchase contract for personal property which is payable from the general fund. The governing body must follow substantially the authorization procedures of section 384.25 to authorize the lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease-purchase contract does not exceed the following limits:

(a) Four hundred thousand dollars in a city having a population of five thousand or less.

(b) Seven hundred thousand dollars in a city having a population of more than five thousand but not more than seventy-five thousand.

(c) One million dollars in a city having a population of more than seventy-five thousand.

(2) The governing body must follow the following procedures to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits set forth in subparagraph (1):

(a) The governing body must institute proceedings to enter into a lease or lease-purchase contract payable from the general fund by causing a notice of the meeting to discuss entering into the lease or lease-purchase contract, including a statement of the principal amount and purpose of the lease or lease-purchase contract and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting

shall the governing body hold a meeting at which it is proposed to take action to enter into the lease or lease-purchase contract.

(b) (i) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the lease or lease-purchase contract, a petition is filed with the clerk of the city in the manner provided by section 362.4, asking that the question of entering into the lease or lease-purchase contract be submitted to the registered voters of the city, the governing body shall either by resolution declare the proposal to enter into the lease or lease-purchase contract to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the lease or lease-purchase contract. However, for purposes of this subparagraph, the petition shall not require signatures in excess of one thousand persons.

(ii) The question to be placed on the ballot shall be stated affirmatively in substantially the following manner:

Shall the city of ..... enter into a lease or lease-purchase contract in amount of \$..... for the purpose of .....

(iii) Notice of the election and its conduct shall be in the manner provided in section 384.26, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into the lease or lease-purchase contract is approved at an election, the governing body may proceed and enter into the lease or lease-purchase contract.

f. The governing body may authorize a lease or lease-purchase contract payable from the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise by following the authorization procedures of section 384.83.

g. A lease or lease-purchase contract to which a city is a party or in which a city has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

h. Property that is lease-purchased by a city is exempt under section 427.1, subsection 2.

i. A contract for construction by a private party of property to be leased or lease-purchased by a city is not a contract for a public improvement under section 26.2, subsection 3, except for purposes of section 26.12. However, if a lease-purchase contract is funded in advance by means of the lessor depositing moneys to be administered by a city, with the city's obligations to make rent payments commencing with its receipt of moneys, a contract for construction of the property in question awarded by the city is subject to chapter 26.

5. Enter into insurance agreements obligating the city to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the city against tort liability, loss of property, or any other risk associated with the operation of the city. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

[SS15, §741-d, 741-g; C24, 27, 31, 35, 39, §5773; C46, §368.41, 368.42; C50, §368.42, 368.56; C54, 58, 62, 66, 71, 73, §368.18; C75, 77, 79, 81, §364.4]

85 Acts, ch 156, §3; 86 Acts, ch 1211, §22; 92 Acts, ch 1138, §4; 95 Acts, ch 67, §53; 2006 Acts, ch 1017, §35, 42, 43; 2006 Acts, 1st Ex, ch 1001, §32, 49; 2009 Acts, ch 100, §12, 21; 2011 Acts, ch 25, §35

Subsection 4, paragraph e, subparagraph (2), subparagraph division (b) amended

**364.5 Joint action — Iowa league of cities — penalty.**

A city or a board established to administer a city utility, in the exercise of any of its powers, may act jointly with any public or private agency as provided in chapter 28E.

The financial condition and the transactions of the Iowa league of cities shall be audited as provided in section 11.6.

It is unlawful for the Iowa league of cities to provide any form of aid to a political party or to the campaign of a candidate for political or public office. Any person violating or being an accessory to a violation of this section is guilty of a simple misdemeanor.

A city may enter into an agreement with the federal government acting through any of its authorized agencies, and may carry out provisions of the agreement as necessary to meet federal requirements to obtain the funds or cooperation of the federal government or its agencies for the planning, construction, rehabilitation, or extension of a public improvement.

[S13, §694-c; C24, 27, 31, 35, 39, §5684; C46, 50, §363.62; C54, 58, 62, 66, 71, 73, §363.43; C75, 77, 79, 81, §364.5]

89 Acts, ch 264, §8; 95 Acts, ch 3, §4; 2011 Acts, ch 75, §40  
Unnumbered paragraph 2 amended

## CHAPTER 368

### CITY DEVELOPMENT

#### DIVISION III

#### CITY DEVELOPMENT BOARD

##### **368.9 Board created.**

1. A city development board is created. The economic development authority shall provide office space and staff assistance, and shall budget funds to cover expenses of the board and committees. The board consists of five members appointed by the governor subject to confirmation by the senate. The appointments must be for four-year staggered terms beginning and ending as provided by section 69.19, or to fill an unexpired term in case of a vacancy. Members are eligible for reappointment.

2. The board shall be composed of the following members:

a. One member appointed from a city with a population of more than forty-five thousand, according to the most recent certified federal census.

b. One member appointed from a city with a population of forty-five thousand or less, according to the most recent certified federal census.

c. One member appointed from a county with a population of more than fifty thousand, according to the most recent certified federal census.

d. One member appointed from a county with a population of fifty thousand or less, according to the most recent certified federal census.

e. One member appointed to represent the general public.

3. Each member is entitled to receive from the state actual and necessary expenses in performance of board duties and may also be eligible to receive compensation as provided in section 7E.6.

[C75, 77, 79, 81, §368.9]

86 Acts, ch 1245, §847; 91 Acts, ch 250, §5; 2010 Acts, ch 1038, §1 – 3; 2011 Acts, ch 118, §85, 89

Confirmation, see §2.32

2010 amendment to subsection 1 takes effect March 10, 2010, and applies to appointments to the city development board made on or after that date due to an expired term; 2010 Acts, ch 1038, §2, 3

Code editor directive applied

## CHAPTER 384

### CITY FINANCE

#### DIVISION IV

#### SPECIAL ASSESSMENTS

##### **384.56 State lands.**

1. Cities may assess the cost of a public improvement which extends through, abuts upon, or is adjacent to lands owned by the state, and payment for the assessable portion of the cost of the improvement through or along the lands as provided shall be subject to authorization by the executive council and payable in the manner provided in section 307.45 for property owned by the state and not under the jurisdiction and control of the state department of transportation.

2. When a state park or institutional road abutting on or adjacent to state lands on one side of the road is improved by paving, the state shall pay one-half the total assessed cost of the portion of the improvement abutting, or adjacent to state lands, lots, or portions thereof, but for any other type of improvement so constructed and located, the state shall pay, as provided in section 307.45, the portion of the cost which would be assessable against state lands if they were privately owned.

3. When any portion of the cost of a public improvement is to be paid by the state under this section, the clerk shall, at the time of publication of the notice required by section 384.50, mail a copy of the notice to the secretary of the executive council.

4. Cities in which state buildings are located shall permit sewers for such buildings to be constructed through or under the streets of the city, and connections to be made to the sewer system of the city under the same regulations as for sewer connections to private property.

5. Subsections 1 and 3 of this section do not apply to lands under the jurisdiction and control of the department of transportation.

[C97, §794; C24, 27, 31, 35, 39, §5988; C46, §391.15; C50, §391.15, 391A.18; C54, 58, 62, §391.15, 391A.21; C66, 71, 73, §390A.22, 391.15, 391A.21; C75, 77, 79, 81, §384.56]

86 Acts, ch 1241, §11; 2011 Acts, ch 131, §34, 158

Subsection 1 amended

#### DIVISION V

#### REVENUE FINANCING

##### **384.84 Rates and charges — billing and collection — contracts.**

1. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may establish, impose, adjust, and provide for the collection of rates and charges to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise. When revenue bonds or pledge orders are issued and outstanding pursuant to this division, the governing body shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise, and to leave a balance of net revenues sufficient to pay the principal of and interest on the revenue bonds and pledge orders as they become due and to maintain a reasonable reserve for the payment of principal and interest, and a sufficient portion of net revenues must be pledged for that purpose. Rates must be established by ordinance of the council or by resolution of the trustees, published in the same manner as an ordinance.

2. The governing body of a city water or wastewater utility may enter into an agreement with a qualified entity to use proceeds from revenue bonds for a water resource restoration

project if the rate imposed is no greater than if there was not a water resource restoration project agreement. For purposes of this subsection, “*qualified entity*” is an entity created pursuant to chapter 28E or two entities that have entered into an agreement pursuant to chapter 28E, whose purpose is to undertake a watershed project that has been approved for water quality improvements in the watershed.

3. a. A city utility or enterprise service to a property or premises, including services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these services, may be discontinued if the account for the service becomes delinquent. Gas or electric service provided by a city utility or enterprise shall be discontinued only as provided by section 476.20, and discontinuance of those services are subject to rules adopted by the utilities board of the department of commerce.

b. If more than one city utility or enterprise service is billed to a property or premises as a combined service account, all of the services may be discontinued if the account becomes delinquent.

c. A city utility or enterprise service to a property or premises shall not be discontinued unless prior written notice is sent, by ordinary mail, to the account holder in whose name the delinquent rates or charges were incurred, informing the account holder of the nature of the delinquency and affording the account holder the opportunity for a hearing prior to discontinuance of service. If the account holder is a tenant, and if the owner or landlord of the property or premises has made a written request for notice, the notice shall also be given to the owner or landlord.

d. (1) If a delinquent amount is owed by an account holder for a utility service associated with a prior property or premises, a city utility, city enterprise, or combined city enterprise may withhold service from the same account holder at any new property or premises until such time as the account holder pays the delinquent amount owing on the account associated with the prior property or premises. A city utility, city enterprise, or combined city enterprise shall not withhold service from, or discontinue service to, a subsequent owner who obtains fee simple title of the prior property or premises unless such delinquent amount has been certified in a timely manner to the county treasurer as provided in subsection 4, paragraph “a”, subparagraphs (1) and (2).

(2) Delinquent amounts that have not been certified in a timely manner to the county treasurer are not collectible against any subsequent owner of the property or premises.

4. a. (1) Except as provided in paragraph “d”, all rates or charges for the services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these services, if not paid as provided by ordinance of the council or resolution of the trustees, are a lien upon the property or premises served by any of these services upon certification to the county treasurer that the rates or charges are due. The governing body of a city utility may, by resolution, delegate to a designee named in the resolution the city utility’s authority to certify unpaid rates or charges to the county treasurer. The city council of a city that is contracting with a city utility for joint billing or collection or both pursuant to chapter 28E may, by ordinance, delegate to such city utility, or the city utility’s designee, the city’s authority to certify unpaid rates or charges to the county treasurer.

(2) If the delinquent rates or charges were incurred prior to the date a transfer of the property or premises in fee simple is filed with the county recorder and such delinquencies were not certified to the county treasurer prior to such date, the delinquent rates or charges are not eligible to be certified to the county treasurer. If certification of such delinquent rates or charges is attempted subsequent to the date a transfer of the property or premises in fee simple is filed with the county recorder, the county treasurer shall return the certification to the city utility, city enterprise, or combined city enterprise attempting certification along with a notice stating that the delinquent rates or charges cannot be made a lien against the property or premises.

(3) If the city utility, city enterprise, or combined city enterprise is prohibited under subparagraph (2) from certifying delinquent rates or charges against the property or premises served by the services described in subparagraph (1), the city utility, city enterprise, or combined city enterprise may certify the delinquent rates or charges against any other

property or premises located in this state and owned by the account holder in whose name the rates or charges were incurred.

b. The lien under paragraph “a” may be imposed upon a property or premises even if a city utility or enterprise service to the property or premises has been or may be discontinued as provided in this section.

c. A lien for a city utility or enterprise service under paragraph “a” shall not be certified to the county treasurer for collection unless prior written notice of intent to certify a lien is given to the account holder in whose name the delinquent rates or charges were incurred at least thirty days prior to certification. If the account holder is a tenant, and if the owner or landlord of the property or premises has made a written request for notice, the notice shall also be given to the owner or landlord. The notice shall be sent to the appropriate persons by ordinary mail not less than thirty days prior to certification of the lien to the county treasurer.

d. Residential rental property where a charge for water service is separately metered and paid directly to the city utility or enterprise by the tenant is exempt from a lien for delinquent rates or charges associated with such water service if the landlord gives written notice to the city utility or enterprise that the property is residential rental property and that the tenant is liable for the rates or charges. A city utility or enterprise may require a deposit not exceeding the usual cost of ninety days of water service to be paid to the utility or enterprise. Upon receipt, the utility or enterprise shall acknowledge the notice and deposit. A written notice shall contain the name of the tenant responsible for charges, address of the residential rental property that the tenant is to occupy, and the date that the occupancy begins. A change in tenant shall require a new written notice to be given to the city utility or enterprise within thirty business days of the change in tenant. When the tenant moves from the rental property, the city utility or enterprise shall return the deposit if the water service charges are paid in full. A change in the ownership of the residential rental property shall require written notice of such change to be given to the city utility or enterprise within ten business days of the completion of the change of ownership. The lien exemption for rental property does not apply to charges for repairs to a water service if the repair charges become delinquent.

5. A lien shall not be imposed pursuant to this section for a delinquent charge of less than five dollars. The governing body of the city utility or enterprise may charge up to five dollars, and the county treasurer may charge up to five dollars, as an administrative expense of certifying and filing this lien, which amounts shall be added to the amount of the lien to be collected at the time of payment of the assessment from the payor. Administrative expenses collected by the county treasurer on behalf of the city utility or enterprise shall be paid to the governing body of the city utility or enterprise, and those collected by the county treasurer on behalf of the county shall be credited to the county general fund. The lien has equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

6. A governing body may declare all or a certain portion of a city as a storm water drainage system district for the purpose of establishing, imposing, adjusting, and providing for the collection of rates as provided in this section. The ordinance provisions for collection of rates of a storm water drainage system may prescribe a formula for determination of the rates which may include criteria and standards by which benefits have been previously determined for special assessments for storm water public improvement projects under this chapter.

7. a. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may:

(1) By ordinance of the council or by resolution of the trustees published in the same manner as an ordinance, establish, impose, adjust, and provide for the collection of charges for connection to a city utility or combined utility system.

(2) Contract for the use of or services provided by a city utility, combined utility system, city enterprise, or combined city enterprise with persons whose type or quantity of use or service is unusual.

(3) Lease for a period not to exceed fifteen years all or part of a city enterprise or combined city enterprise, if the lease will not reduce the net revenues to be produced by the city enterprise or combined city enterprise.

(4) Contract for a period not to exceed forty years with other governmental bodies for the

use of or the services provided by the city utility, combined utility system, city enterprise, or combined city enterprise on a wholesale basis.

(5) Contract for a period not to exceed forty years with persons and other governmental bodies for the purchase or sale of water, gas, or electric power and energy on a wholesale basis.

b. Two or more city utilities, combined utility systems, city enterprises, or combined city enterprises, including city utilities established pursuant to chapter 388, may contract pursuant to chapter 28E for joint billing or collection, or both, of combined service accounts for utility or enterprise services, or both. The contracts may provide for the discontinuance of one or more of the city utility or enterprise services if a delinquency occurs in the payment of any charges billed under a combined service account.

c. One or more city utilities or combined utility systems, including city utilities established pursuant to chapter 388, may contract pursuant to chapter 28E with one or more sanitary districts established pursuant to chapter 358 for joint billing or collection, or both, of combined service accounts from utility services and sanitary district services. The contracts may provide for the discontinuance of one or more of the city water utility services or sanitary district services if a delinquency occurs in the payment of any charges billed under a combined service account.

8. The portion of cost attributable to the agreement or arbitration awarded under section 357A.21 may be apportioned in whole or in part among water customers within an annexed area.

9. For the purposes of this section, “premises” includes a mobile home, modular home, or manufactured home as defined in section 435.1, when the mobile home, modular home, or manufactured home is taxed as real estate.

10. Notwithstanding subsection 4, a lien shall not be filed against the land if the premises are located on leased land. If the premises are located on leased land, a lien may be filed against the premises only.

[C73, §471, 473, 475; C97, §720, 725, 749; S13, §720, 724, 725, 766-c; C24, 27, 31, §5892, 5898, 6130, 6142, 6143, 6159; C35, §5892, 5898, 5903-f3, 5903-f6, 6066-f5, 6066-f8, 6130, 6142, 6143, 6159; C39, §5892, 5898, 5903.14, 5903.17, 6066.28, 6066.32, 6130, 6142, 6143, 6159; C46, 50, 54, §381.19, 382.5, 385.3, 385.6, 390.4, 390.5, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C58, §381.19, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C62, §381.15, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 392.11, 394.5, 394.9, 397.4, 397.27, 397.28; C66, §368.24, 381.19, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 392.11, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C71, 73, §368.24, 378A.7 – 378A.9, 381.19, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 392.11, 393.14, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C75, 77, 79, 81, §384.84; 81 Acts, ch 128, §1]

83 Acts, ch 90, §27; 84 Acts, ch 1221, §1; 87 Acts, ch 109, §4; 88 Acts, ch 1246, §6; 90 Acts, ch 1206, §2; 90 Acts, ch 1211, §1; 93 Acts, ch 73, §4; 94 Acts, ch 1056, §2; 95 Acts, ch 49, §11; 95 Acts, ch 57, §9; 95 Acts, ch 67, §31; 97 Acts, ch 62, §3; 98 Acts, ch 1107, §15; 99 Acts, ch 149, §1, 2; 2000 Acts, ch 1085, §4; 2003 Acts, 1st Ex, ch 2, §19, 209; 2008 Acts, ch 1090, §1, 2; 2009 Acts, ch 72, §6; 2009 Acts, ch 133, §131, 132; 2011 Acts, ch 53, §1

Collection of taxes, see chapter 445

Subsection 4, paragraph a, subparagraph (1) amended

## CHAPTER 390

### JOINT ELECTRICAL UTILITIES

#### SUBCHAPTER II

#### ELECTRIC POWER AGENCIES

##### **390.12 Issuance of public bonds or obligations — purposes — limitations.**

1. An electric power agency may from time to time issue its public bonds or obligations in such principal amounts as the electric power agency deems necessary to provide sufficient funds to carry out any of its purposes and powers, including but not limited to any of the following:

*a.* The acquisition or construction of any project to be owned or leased by the electric power agency, or the acquisition of any interest in such project or any right to the capacity of such project, including the acquisition, construction, or acquisition of any interest in an electric power generating plant to be constructed in this state, or the acquisition, construction, or acquisition of any interest in a transmission line or system.

*b.* The funding or refunding of the principal of, or interest or redemption premiums on, any public bonds or obligations issued by the electric power agency whether or not the public bonds or obligations or interest to be funded or refunded have become due.

*c.* The establishment or increase of reserves to secure or to pay the public bonds or obligations or interest on the public bonds or obligations.

*d.* The payment of all other costs or expenses of the electric power agency incident to and necessary to carry out its purposes and powers.

2. Notwithstanding anything in this subchapter or chapter 28F to the contrary, a facility shall not be financed with the proceeds of public bonds or obligations, the interest on which is exempt from federal income tax, unless the public issuer of such public bonds or obligations covenants that the issuer shall comply with the requirements or limitations imposed by the Internal Revenue Code or other applicable federal law to preserve the tax exemption of interest payable on the bonds or obligations.

3. *a.* Notwithstanding anything in this subchapter or chapter 28F to the contrary, an electric power generating facility shall not be financed under this subchapter unless all of the following conditions are satisfied:

(1) The portion of the electric power generating facility financed by the electric power agency is not designed to serve the electric power requirements of retail customers of members that are municipal electric utilities established in the state after January 1, 2001.

(2) The electric power agency annually files with the utilities board, in a manner to be determined by the utilities board, information regarding sales from the electric power generating facility in sufficient detail to determine compliance with these provisions.

*b.* The utilities board shall report to the general assembly if any of the provisions are being violated.

2001 Acts, 1st Ex, ch 4, §20, 36

CS2001, §476A.23

2003 Acts, ch 44, §78, 79; 2010 Acts, ch 1018, §10

C2011, §390.12

2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 400

### CIVIL SERVICE

#### 400.2 Qualifications — prohibited contracts.

1. The commissioners must be citizens of Iowa, eligible electors as defined in chapter 39, and residents of the city preceding their appointment, and shall serve without compensation. A person, while on the commission, shall not hold or be a candidate for any office of public trust. However, when a human rights commission has been established by a city, the director of the commission shall ex officio be a member, without vote, of the civil service commission.

2. Civil service commissioners, with respect to the city in which they are commissioners, shall not do any of the following:

a. Sell, or in any manner become parties, directly or indirectly, to any contract to furnish supplies, material, or labor to the city unless the sale is made or the contract is awarded by competitive bid in writing, publicly invited and opened.

b. Have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the city unless the contract or job is awarded by competitive bid in writing, publicly invited and opened.

3. A contract entered into in violation of subsection 2 is void.

4. A violation of the provisions contained in subsection 2 is a simple misdemeanor.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §5690; C46, 50, 54, 58, 62, 66, 71, 73, §365.2; C75, 77, 79, 81, §400.2]

86 Acts, ch 1138, §1; 89 Acts, ch 21, §1; 2009 Acts, ch 111, §2; 2010 Acts, ch 1019, §1; 2011 Acts, ch 25, §36

Subsection 2, paragraph a amended

## CHAPTER 403

### URBAN RENEWAL

#### 403.11 Exemptions from legal process.

1. All property of a municipality, including funds, owned or held by it for the purposes of this chapter shall be exempt from levy and sale by virtue of an execution. Execution or other judicial process shall not issue against the property and a judgment against a municipality shall not be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants or revenues from urban renewal projects.

2. The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof. However, such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.11]

2011 Acts, ch 34, §90

Section amended

#### 403.19 Division of revenue from taxation — tax increment financing.

A municipality may provide by ordinance that taxes levied on taxable property in an urban renewal area each year by or for the benefit of the state, city, county, school district, or other taxing district, shall be divided as follows:

1. a. Unless otherwise provided in this section, that portion of the taxes which would be

produced by the rate at which the tax is levied each year by or for each of the taxing districts upon the total sum of the assessed value of the taxable property in the urban renewal area, as shown on the assessment roll as of January 1 of the calendar year preceding the first calendar year in which the municipality certifies to the county auditor the amount of loans, advances, indebtedness, or bonds payable from the division of property tax revenue, or on the assessment roll last equalized prior to the date of initial adoption of the urban renewal plan if the plan was adopted prior to July 1, 1972, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for the taxing district into which all other property taxes are paid. However, the municipality may choose to divide that portion of the taxes which would be produced by levying the municipality's portion of the total tax rate levied by or for the municipality upon the total sum of the assessed value of the taxable property in the urban renewal area, as shown on the assessment roll as of January 1 of the calendar year preceding the effective date of the ordinance and if the municipality so chooses, an affected taxing entity may allow a municipality to divide that portion of the taxes which would be produced by levying the affected taxing district's portion of the total tax rate levied by or for the affected taxing entity upon the total sum of the assessed value of the taxable property in the urban renewal area, as shown on the assessment roll as of January 1 of the calendar year preceding the effective date of the ordinance. This choice to divide a portion of the taxes shall not be construed to change the effective date of the division of property tax revenue with respect to an urban renewal plan in existence on July 1, 1994.

b. For the purpose of allocating taxes levied by or for any taxing district which did not include the territory in an urban renewal area on the effective date of the ordinance or initial adoption of the plan, but to which the territory has been annexed or otherwise included after the effective date, the assessment roll applicable to property in the annexed territory as of January 1 of the calendar year preceding the effective date of the ordinance, which amends the plan to include the annexed area, shall be used in determining the assessed valuation of the taxable property in the annexed area.

c. For the purposes of dividing taxes under section 260E.4, the applicable assessment roll for purposes of paragraph "a" shall be the assessment roll as of January 1 of the calendar year preceding the first written agreement providing that all or a portion of program costs are to be paid for by incremental property taxes. The community college shall file a copy of the agreement with the appropriate assessor. The assessor may, within fourteen days of such filing, physically inspect the applicable taxable business property. If upon such inspection the assessor determines that there has been a change in the value of the property from the value as shown on the assessment roll as of January 1 of the calendar year preceding the filing of the agreement and such change in value is due to new construction, additions or improvements to existing structures, or remodeling of existing structures for which a building permit was required, the assessor shall promptly determine the value of the property as of the inspection in the manner provided in chapter 441 and that value shall be included for purposes of the jobs training project in the assessed value of the employer's taxable business property as shown on the assessment roll as of January 1 of the calendar year preceding the filing of the agreement. The assessor, within thirty days of such filing, shall notify the community college and the employer or business of that valuation which shall be included in the assessed valuation for purposes of this subsection and section 260E.4. The value determined by the assessor shall reflect the change in value due solely to new construction, additions or improvements to existing structures, or remodeling of existing structures for which a building permit was required.

2. That portion of the taxes each year in excess of such amount shall be allocated to and when collected be paid into a special fund of the municipality to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, including bonds issued under the authority of section 403.9, subsection 1, incurred by the municipality to finance or refinance, in whole or in part, an urban renewal project within the area, and to provide assistance for low and moderate income family housing as provided in section 403.22, except that taxes for the regular and voter-approved physical plant and equipment levy of a school district imposed pursuant to section 298.2 and taxes for the payment of bonds and interest of each taxing district must be collected against

all taxable property within the taxing district without limitation by the provisions of this subsection. However, all or a portion of the taxes for the physical plant and equipment levy shall be paid by the school district to the municipality if the auditor certifies to the school district by July 1 the amount of such levy that is necessary to pay the principal and interest on bonds issued by the municipality to finance an urban renewal project, which bonds were issued before July 1, 2001. Indebtedness incurred to refund bonds issued prior to July 1, 2001, shall not be included in the certification. Such school district shall pay over the amount certified by November 1 and May 1 of the fiscal year following certification to the school district. Unless and until the total assessed valuation of the taxable property in an urban renewal area exceeds the total assessed value of the taxable property in such area as shown by the last equalized assessment roll referred to in subsection 1, all of the taxes levied and collected upon the taxable property in the urban renewal area shall be paid into the funds for the respective taxing districts as taxes by or for the taxing districts in the same manner as all other property taxes. When such loans, advances, indebtedness, and bonds, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such urban renewal area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property. In those instances where a school district has entered into an agreement pursuant to section 279.64 for sharing of school district taxes levied and collected from valuation described in this subsection and released to the school district, the school district shall transfer the taxes as provided in the agreement.

3. The portion of taxes mentioned in subsection 2 and the special fund into which they shall be paid, may be irrevocably pledged by a municipality for the payment of the principal and interest on loans, advances, bonds issued under the authority of section 403.9, subsection 1, or indebtedness incurred by a municipality to finance or refinance, in whole or in part, the urban renewal project within the area.

4. As used in this section the word "taxes" includes, but is not limited to, all levies on an ad valorem basis upon land or real property.

5. An ordinance adopted under this section providing for a division of revenue shall be filed in the office of the county auditor of each county where the property that is subject to the ordinance is located.

6. a. (1) A municipality shall certify to the county auditor on or before December 1 the amount of loans, advances, indebtedness, or bonds which qualify for payment from the special fund referred to in subsection 2, for each urban renewal area in the municipality, and the filing of the certificate shall make it a duty of the auditor to provide for the division of taxes in each subsequent year without further certification, except as provided in paragraphs "b" and "c", until the amount of the loans, advances, indebtedness, or bonds is paid to the special fund. If any loans, advances, indebtedness, or bonds are issued which qualify for payment from the special fund and which are in addition to amounts already certified, the municipality shall certify the amount of the additional obligations on or before December 1 of the year such obligations were issued, and the filing of the certificate shall make it a duty of the auditor to provide for the division of taxes in each subsequent year without further certification, except as provided in paragraphs "b" and "c", until the amount of the loans, advances, indebtedness, or bonds is paid to the special fund. Any subsequent certifications under this subsection shall not include amounts previously certified.

(2) A certification made under this paragraph "a" shall include the date that the individual loans, advances, indebtedness, or bonds were initially approved by the governing body of the municipality.

b. If the amount certified in paragraph "a" is reduced by payment from sources other than the division of taxes, by a refunding or refinancing of the obligation which results in lowered principal and interest on the amount of the obligation, or for any other reason, the municipality on or before December 1 of the year the action was taken which resulted in the reduction shall certify the amount of the reduction to the county auditor.

c. In any year, the county auditor shall, upon receipt of a certified request from a municipality filed on or before December 1, increase the amount to be allocated under subsection 1 in order to reduce the amount to be allocated in the following fiscal year to the special fund, to the extent that the municipality does not request allocation to the special

fund of the full portion of taxes which could be collected. Upon receipt of a certificate from a municipality, the auditor shall mail a copy of the certificate to each affected taxing district.

7. Tax collections within each taxing district may be allocated to the entire taxing district including the taxes on the valuations determined under subsection 1 and to the special fund created under subsection 2 in the proportion of their taxable valuations determined as provided in this section.

8. For any fiscal year, a municipality may certify to the county auditor for physical plant and equipment revenue necessary for payment of principal and interest on bonds issued prior to July 1, 2001, only if the municipality certified for such revenue for the fiscal year beginning July 1, 2000. A municipality shall not certify to the county auditor for a school district more than the amount the municipality certified for the fiscal year beginning July 1, 2000. If for any fiscal year a municipality fails to certify to the county auditor for a school district by July 1 the amount of physical plant and equipment revenue necessary for payment of principal and interest on such bonds, as provided in subsection 2, the school district is not required to pay over the revenue to the municipality. If a school district and a municipality are unable to agree on the amount of physical plant and equipment revenue certified by the municipality for the fiscal year beginning July 1, 2001, either party may request that the state appeal board review and finally pass upon the amount that may be certified. Such appeals must be presented in writing to the state appeal board no later than July 31 following certification. The burden shall be on the municipality to prove that the physical plant and equipment levy revenue is necessary to pay principal and interest on bonds issued prior to July 1, 2001. A final decision must be issued by the state appeal board no later than the following October 1.

[C71, 73, 75, 77, 79, 81, §403.19]

85 Acts, ch 240, §3 – 5; 88 Acts, ch 1144, §2, 3; 91 Acts, ch 214, §4; 94 Acts, ch 1182, §10 – 12; 96 Acts, ch 1047, §1; 96 Acts, ch 1180, §16; 96 Acts, ch 1204, §22, 23; 2000 Acts, ch 1054, §2, 3; 2001 Acts, ch 176, §40, 41, 47; 2006 Acts, ch 1131, §1; 2006 Acts, ch 1156, §2; 2010 Acts, ch 1061, §180; 2011 Acts, ch 50, §1

NEW subsection 5 and former subsections 5 – 7 renumbered as 6 – 8

#### **403.19A Withholding agreement — tax credit.**

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

a. “*Business*” means any professional services, or industrial enterprise, including medical treatment facilities, manufacturing facilities, corporate headquarters, and research facilities. “*Business*” does not include a retail operation or a business which closes or substantially reduces its operation in one area of this state and relocates substantially the same operation to another area of this state.

b. “*Employee*” means the individual employed in a targeted job that is subject to a withholding agreement.

c. “*Employer*” means a business creating or retaining targeted jobs in an urban renewal area of a pilot project city pursuant to a withholding agreement.

d. “*Pilot project city*” means a city that has applied and been approved as a pilot project city pursuant to subsection 2.

e. “*Qualifying investment*” means a capital investment in real property including the purchase price of land and existing buildings, site preparation, building construction, and long-term lease costs. “*Qualifying investment*” also means a capital investment in depreciable assets.

f. “*Targeted job*” means a job in a business which is or will be located in an urban renewal area of a pilot project city that pays a wage at least equal to the countywide average wage. “*Targeted job*” includes new or retained jobs from Iowa business expansions or retentions within the city limits of the pilot project city and those jobs resulting from established out-of-state businesses, as defined by the economic development authority, moving to or expanding in Iowa.

g. “*Withholding agreement*” means the agreement between a pilot project city and an employer concerning the targeted jobs withholding credit authorized in subsection 3.

2. a. An eligible city may apply for designation as a pilot project city pursuant to this

subsection. An eligible city is a city that contains three or more census tracts and is located in a county meeting one of the following requirements:

- (1) A county that borders Nebraska.
- (2) A county that borders South Dakota.
- (3) A county that borders a state other than Nebraska or South Dakota.

b. (1) The department of economic development shall approve four eligible cities as pilot project cities, one pursuant to paragraph “a”, subparagraph (1), one pursuant to paragraph “a”, subparagraph (2), and two pursuant to paragraph “a”, subparagraph (3). If two eligible cities are approved which are located in the same county and the county has a population of less than forty-five thousand, the two approved eligible cities shall be considered one pilot project city. If more than two cities meeting the requirements of paragraph “a”, subparagraph (3), apply to be designated as a pilot project city, the department of economic development shall determine which two cities hold the most potential to create new jobs or generate the greatest capital within their areas. Applications from eligible cities filed on or after October 1, 2006, shall not be considered.

(2) If a pilot project city does not enter into a withholding agreement within one year of its approval as a pilot project city, the city shall lose its status as a pilot project city. If two pilot project cities are located in the same county, the loss of status by one pilot project city shall not cause the second pilot project city in the county to lose its status as a pilot project city. Upon such occurrence, the department of economic development shall take applications from other eligible cities to replace that city. Another city shall be designated within six months.

(3) On July 1, 2011, the economic development authority shall assume responsibility for the administration of this subsection.

3. a. A pilot project city may provide by ordinance for the deposit into a designated account in the special fund described in section 403.19, subsection 2, of the targeted jobs withholding credit described in this section. The targeted jobs withholding credit shall be based upon the wages paid to employees pursuant to a withholding agreement.

b. An amount equal to three percent of the gross wages paid by an employer to each employee under a withholding agreement shall be credited from the payment made by the employer pursuant to section 422.16. If the amount of the withholding by the employer is less than three percent of the gross wages paid to the employees covered by the withholding agreement, the employer shall receive a credit against other withholding taxes due by the employer or may carry the credit forward for up to ten years or until depleted, whichever is the earlier. The employer shall remit the amount of the credit quarterly, in the same manner as withholding payments are reported to the department of revenue, to the pilot project city to be allocated to and when collected paid into a designated account in the special fund for the urban renewal area in which the targeted jobs are located. All amounts so deposited shall be used or pledged by the pilot project city for an urban renewal project related to the employer pursuant to the withholding agreement.

c. (1) The pilot project city shall enter into a withholding agreement with each employer concerning the targeted jobs withholding credit. The withholding agreement shall provide for the total amount of withholding credits awarded. An agreement shall not provide for an amount of withholding credits that exceeds the amount of the qualifying investment made in the project. An agreement shall not be entered into by a pilot project city with a business currently located in this state unless the business either creates or retains ten new jobs or makes a qualifying investment of at least five hundred thousand dollars within the urban renewal area. The withholding agreement may have a term of up to ten years. An employer shall not be obligated to enter into a withholding agreement. An agreement shall not be entered into with an employer not already located in a pilot project city when another Iowa community is competing for the same project and both the pilot project city and the other Iowa community are seeking assistance from the authority.

(2) The pilot project city shall not enter into a withholding agreement after June 30, 2013.

(3) The pilot project city shall provide on an annual basis to the economic development authority information documenting the total amount of payments and receipts under a withholding agreement, including all agreements with an employer to suspend, abate, exempt, rebate, refund, or reimburse property taxes, to provide a grant for property taxes

paid or a grant not related to property taxes, or to make a direct payment of taxes, with moneys in the special fund. The economic development authority shall verify the information provided by the pilot project city.

(4) The authority shall have the authority to approve or deny a withholding agreement and shall only deny an agreement if the agreement fails to meet the requirements of this paragraph “c” or the local match requirements in paragraph “j”, or if an employer is not in good standing as to prior or existing agreements with the economic development authority. The authority may suggest changes to an agreement.

d. A withholding agreement shall be disclosed to the public and shall contain but is not limited to all of the following:

(1) A copy of the adopted development agreement plan of the employer.

(2) A list of any other amounts of incentives or assistance the employer may be receiving from other economic development programs, including grants, loans, forgivable loans, and tax credits.

(3) The approval of local participating authorities.

(4) The amount of local incentives or assistance received for each project of the employer.

e. (1) The employer shall certify to the department of revenue that the targeted jobs withholding credit is in accordance with the withholding agreement and shall provide other information the department may require. Notice of any withholding agreement shall be provided promptly to the department of revenue following execution of the agreement by the pilot project city and the employer.

(2) Following termination of the withholding agreement, the employer credits shall cease and any money received by the pilot project city after termination shall be remitted to the treasurer of state to be deposited into the general fund of the state. Notice shall be provided promptly to the department of revenue following termination.

f. If the employer ceases to meet the requirements of the withholding agreement, the agreement shall be terminated and any withholding credits for the benefit of the employer shall cease. However, in regard to the number of jobs that are to be created or retained, if the employer has met the number of jobs to be created or retained pursuant to the withholding agreement and subsequently the number of jobs falls below the required level, the employer shall not be considered as not meeting the job requirement until eighteen months after the date of the decrease in the number of jobs created or retained.

g. A pilot project city shall certify to the department of revenue the amount of the targeted jobs withholding credit an employer has remitted to the city and shall provide other information the department may require.

h. An employee whose wages are subject to a withholding agreement shall receive full credit for the amount withheld as provided in section 422.16.

i. An employer may participate in a new jobs credit from withholding under section 260E.5, or a supplemental new jobs credit from withholding under section 15E.197 or under section 15.331, Code 2005, at the same time as the employer is participating in the withholding credit under this section. Notwithstanding any other provision in this section, the new jobs credit from withholding under section 260E.5, and the supplemental new jobs credit from withholding under section 15E.197 or under section 15.331, Code 2005, shall be collected and disbursed prior to the withholding credit under this section.

j. (1) A pilot project city entering into a withholding agreement shall arrange for matching local financial support for the project. The local match required under this paragraph “j” shall be in an amount equal to one dollar for every dollar of withholding credit received by the pilot project city.

(2) For purposes of this paragraph “j”, “local financial support” means cash or in-kind contributions to the project from a private donor, a business, or the pilot project city.

(3) If the project, when completed, will increase the amount of an employer’s taxable capital investment by an amount equal to at least ten percent of the amount of withholding credit dollars received by the pilot project city, then the pilot project city shall itself contribute at least ten percent of the local match amount computed under subparagraph (1).

(4) If the project, when completed, will not increase the amount of an employer’s taxable capital investment by an amount at least equal to ten percent of the amount of withholding

credit dollars received by the pilot project city, then the pilot project city shall not be required to make a contribution to the local match.

(5) A pilot project city's contribution, if any, to the local match may include the dollar value of any tax abatement provided by the city to the business for new construction.

*k.* At the time of submitting its budget to the department of management, the pilot project city shall submit to the department of management and the economic development authority a description of the activities involving the use of withholding agreements. The description shall include but is not limited to the following:

(1) The total number of targeted jobs and a breakdown as to those that are Iowa business expansions or retentions within the city limits of the pilot project city and those that are jobs resulting from established out-of-state businesses moving to or expanding in Iowa.

(2) The number of withholding agreements and the amount of withholding credits involved.

(3) The types of businesses that entered into agreements, and the types of businesses that declined the city's proposal to enter into an agreement.

*l.* The economic development authority in consultation with the department of revenue shall coordinate the pilot project program with the pilot project cities under this section. The economic development authority is authorized to adopt, amend, and repeal rules to implement the pilot project program under this section.

2006 Acts, ch 1141, §1; 2007 Acts, ch 2, §1, 2; 2007 Acts, ch 126, §63; 2008 Acts, ch 1122, §15; 2009 Acts, ch 103, §1, 2; 2011 Acts, ch 25, §37, 38; 2011 Acts, ch 118, §81, 85, 89; 2011 Acts, ch 131, §126 – 129

2007 amendment to subsection 2, paragraph b applies retroactively to July 1, 2006, for pilot project city applications received prior to October 1, 2006; 2007 Acts, ch 2, §2

Amendments by 2011 Acts, ch 131, §126 – 128 take effect July 27, 2011, and apply retroactively to July 1, 2006, for agreements entered into on or after that date; 2011 Acts, ch 131, §129

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 1, paragraphs c and f amended

Subsection 2 amended

Subsection 3, paragraph c, subparagraph (1) amended

Subsection 3, paragraph f amended

#### **403.21 Communication and cooperation regarding new jobs training projects.**

1. In order to promote communication and cooperation among cities, counties, and community colleges with respect to the allocation and division of taxes, no jobs training projects as defined in chapter 260E or 260F shall be undertaken within the area of operation of a municipality after July 1, 1995, unless the municipality and the community college have entered into an agreement or have jointly adopted a plan relating to a community college's new jobs training program which shall provide for a procedure for advance notification to each affected municipality, for exchange of information, for mutual consultation, and for procedural guidelines for all such new jobs training projects, including related project financing to be undertaken within the area of operation of the municipality. The joint agreement or the plan shall state its precise duration and shall be binding on the community college and the municipality with respect to all new jobs training projects, including related project financing undertaken during its existence. The joint agreement or plan shall be effective upon adoption and shall be placed on file in the office of the secretary of the board of directors of the community college and such other location as may be stated in the joint agreement or plan. The joint agreement or plan shall also be sent to each school district which levied or certified for levy a property tax on any portion of the taxable property located in the area of operation of the municipality in the fiscal year beginning prior to the calendar year in which the plan is adopted or the agreement is reached. If no such agreement is reached or plan adopted, the community college shall not use incremental property tax revenues to fund jobs training projects within the area of operation of the municipality. Agreements entered into between a community college and a city or county pursuant to chapter 28E shall not apply.

2. The community college shall send a copy of the final agreement prepared pursuant to section 260E.3 to the economic development authority. For each year in which incremental property taxes are used to pay job training certificates issued for a project creating new jobs,

the community college shall provide to the economic development authority a report of the incremental property taxes and new jobs credits from withholding generated for that year, a specific description of the training conducted, the number of employees provided program services under the project, the median wage of employees in the new jobs in the project, and the administrative costs directly attributable to the project.

3. The community college shall send a copy of the final agreement prepared pursuant to section 260F.3 to the economic development authority. For each year in which incremental property taxes are used to retire debt service on a jobs training advance issued for a project creating new jobs, the community college shall provide to the economic development authority a report of the incremental property taxes and new jobs credits from withholding generated for that year, a specific description of the training conducted, the number of employees provided program services under the project, and the median wage of employees in the new jobs in the project, and the administrative costs directly attributable to the project.

94 Acts, ch 1182, §13, 15; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **403.22 Public improvements related to housing and residential development — low income assistance requirements.**

1. With respect to any urban renewal area established upon the determination that the area is an economic development area, a division of revenue as provided in section 403.19 shall not be allowed for the purpose of providing or aiding in the provision of public improvements related to housing and residential development, unless the municipality assures that the project will include assistance for low and moderate income family housing.

a. For a municipality with a population over fifteen thousand, the amount to be provided for low and moderate income family housing for such projects shall be either equal to or greater than the percentage of the original project cost that is equal to the percentage of low and moderate income residents for the county in which the urban renewal area is located as determined by the United States department of housing and urban development using section 8 guidelines or by providing such other amount as set out in a plan adopted by the municipality and approved by the economic development authority if the municipality can show that it cannot undertake the project if it has to meet the low and moderate income assistance requirements. However, the amount provided for low and moderate income family housing for such projects shall not be less than an amount equal to ten percent of the original project cost.

b. For a municipality with a population of fifteen thousand or less, the amount to be provided for low and moderate income family housing shall be the same as for a municipality of over fifteen thousand in population, except that a municipality of fifteen thousand or less in population is not subject to the requirement to provide not less than an amount equal to ten percent of the original project cost for low and moderate income family housing.

c. For a municipality with a population of five thousand or less, the municipality need not provide any low and moderate income family housing assistance if the municipality has completed a housing needs assessment meeting the standards set out by the economic development authority, which shows no low and moderate income housing need, and the economic development authority agrees that no low and moderate income family housing assistance is needed.

2. The assistance to low and moderate income housing may be in, but is not limited to, any of the following forms:

a. Lots for low and moderate income housing within or outside the urban renewal area.

b. Construction of low and moderate income housing within or outside the urban renewal area.

c. Grants, credits or other direct assistance to low and moderate income families living within or outside the urban renewal area, but within the area of operation of the municipality.

d. Payments to a low and moderate income housing fund established by the municipality to be expended for one or more of the above purposes, including matching funds for any state or federal moneys used for such purposes.

3. Sources for low and moderate income family housing assistance may include the following:

- a. Proceeds from loans, advances, bonds or indebtedness incurred.
  - b. Annual distributions from the division of revenues pursuant to section 403.19 related to the urban renewal area.
  - c. Lump sum or periodic direct payments from developers or other private parties under an agreement for development or redevelopment between the municipality and a developer.
  - d. Any other sources which are legally available for this purpose.
4. The assistance to low and moderate income family housing may be expended outside the boundaries of the urban renewal area.
5. Except for a municipality with a population under fifteen thousand, the division of the revenue under section 403.19 for each project under this section shall be limited to tax collections for ten fiscal years beginning with the second fiscal year after the year in which the municipality first certifies to the county auditor the amount of any loans, advances, indebtedness, or bonds which qualify for payment from the division of the revenue in connection with the project. A municipality with a population under fifteen thousand may, with the approval of the governing bodies of all other affected taxing districts, extend the division of revenue under section 403.19 for up to five years if necessary to adequately fund the project. The portion of the urban renewal area which is involved in a project under this section shall not be subject to any subsequent division of revenue under section 403.19.

6. A municipality shall not prohibit or restrict the construction of manufactured homes in any project for which public improvements were finalized under this section. As used in this subsection, “*manufactured home*” means the same as under section 435.1, subsection 3.

96 Acts, ch 1204, §24; 97 Acts, ch 214, §9; 98 Acts, ch 1100, §56; 2010 Acts, ch 1061, §180; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 403A

### MUNICIPAL HOUSING PROJECTS

#### 403A.2 Definitions.

The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

1. “*Agency*” or “*municipal housing agency*” shall mean a public agency created under the provisions of section 403A.5.

2. An “*agreement*” of any municipality authorized by this chapter with respect to a housing project, means a resolution or resolutions of the governing body of such municipality setting forth the action to be taken or the matter determined. Such resolutions shall be deemed to be agreements made for the benefit of the holders of bonds then outstanding or thereafter issued in connection with such project and for the benefit of any person, firm, corporation, state public body or the federal government which has agreed or thereafter agrees to make a grant or annual contribution for or in aid of such project.

3. “*Area of operation*” includes all of a municipality and any area adjacent to and within one mile of such municipality, provided that the governing body of such adjacent area approves and consents.

4. “*Bonds*” means any bonds, notes, interim certificates, debentures or other obligations issued by a municipality pursuant to this chapter.

5. “*Clerk*” means the clerk of the municipality or the officer charged with the duties customarily imposed on such clerk.

6. a. “*Families of low income*” means families who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe and sanitary dwellings for their use.

b. “*Lower-income families*” means families whose incomes do not exceed eighty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

c. “*Very low-income families*” means families whose incomes do not exceed fifty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

d. “*Families*” includes, but is not limited to, families consisting of a single person in the case of any of the following:

- (1) A person who is at least sixty-two years of age.
- (2) A person with a disability.
- (3) A displaced person.
- (4) The remaining member of a tenant family.

e. “*Families*” includes two or more persons living together, who are at least sixty-two years of age, are persons with a disability, or one or more such individuals living with another person who is essential to such individual’s care or well-being.

f. “*Disability*” means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or having a physical or mental impairment which is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions.

g. “*Displaced*” means displaced by governmental action, or having one’s dwelling extensively damaged or destroyed as a result of a disaster.

h. The municipality, by resolution, or the agency by rule shall establish further definitions applicable to this subsection as necessary to assure eligibility for funds available under federal housing laws.

7. “*Federal government*” includes the United States of America, the Public Housing Administration, or any other agency or instrumentality, corporate or otherwise of the United States of America.

8. a. “*Housing project*” or “*project*” means any work or undertaking to do any of the following:

- (1) To demolish, clear or remove buildings from any slum areas.
- (2) To provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for families of low income, lower-income families, or very low-income families.
- (3) To accomplish a combination of the foregoing.

b. Such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, utilities, parks, site preparation, landscaping, administrative, community, health, recreational, welfare or other purposes.

c. The term “*housing project*” or “*project*” also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, or repair of the improvements and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

9. “*Local governing body*” shall mean the council or other legislative body charged with governing the municipality.

10. “*Major disaster*” means any flood, drought, fire, hurricane, earthquake, storm or other catastrophe which, in the determination of the governing body, is of sufficient severity and magnitude to warrant the use of available resources of the federal, state and local governments to alleviate the damage, hardship or suffering caused thereby.

11. “*Mayor*” means the mayor of the municipality or the officer thereof charged with the duties customarily imposed on the mayor or executive head of a municipality.

12. “*Municipality*” shall mean any city or county in the state.

13. “*Obligee*” includes any bondholder, agent or trustee for any bondholder, or lessor demising to a municipality, property used in connection with a project, or any assignee or

assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality in respect to a housing project.

14. "*Persons engaged in national defense activities*" means persons in the armed forces of the United States; employees of the department of defense; and workers engaged or to be engaged in activities connected with national defense. The term also includes the families of the persons, employees and workers who reside with them.

15. "*Real property*" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.

16. "*Slum*" means any area where dwellings predominate which by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

17. "*State public body*" means any city, county, township, municipal corporation, commission, district or other subdivision or public body of the state.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.2]

96 Acts, ch 1129, §87; 2011 Acts, ch 34, §91

Subsection 8 amended

#### **403A.21 Cooperation in undertaking housing projects.**

1. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

a. Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses or any other rights or privileges therein to any municipality, or to the federal government.

b. Cause parks, playgrounds, recreational community, educational, water, sewer or drainage facilities or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects.

c. Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake.

d. Cause services to be furnished for housing projects of the character which such state public body is otherwise empowered to furnish.

e. Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, elimination or closing of unsafe, insanitary or unfit dwellings.

f. Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects.

g. Incur the entire expense of any public improvements made by such state public body in exercising the powers granted in this chapter.

h. Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with any municipality respecting action to be taken by such state public body pursuant to any of the powers granted by this chapter. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or administration of municipal housing or slum clearance projects, including any agency or instrumentality of the United States of America, the provisions of such agreements shall inure to the benefit of and may be enforced by such public body or governmental agency.

2. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease, or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement, or public bidding.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.21]

2011 Acts, ch 25, §39

Section amended

## CHAPTER 404A

### PROPERTY REHABILITATION TAX CREDIT

#### **404A.1 Historic preservation and cultural and entertainment district tax credit — definitions.**

1. *a.* A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, is granted against the tax imposed under chapter 422, division II, III, or V, or chapter 432, for the substantial rehabilitation of eligible property located in this state as provided in this chapter.

*b.* Tax credits in excess of tax liabilities shall be refunded or credited as provided in section 404A.4, subsection 3.

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

*a.* “*Eligible property*” means property for which a taxpayer may receive the historic preservation and cultural and entertainment district tax credit computed under this chapter and includes all of the following:

- (1) Property listed on the national register of historic places or eligible for such listing.
- (2) Property designated as of historic significance to a district listed in the national register of historic places or eligible for such designation.
- (3) Property or district designated a local landmark by a city or county ordinance.
- (4) A barn constructed prior to 1937.

*b.* “*Placed in service*” means the same as used in section 47 of the Internal Revenue Code.

*c.* “*Qualified rehabilitation costs*” means expenditures made for the rehabilitation of eligible property and includes qualified rehabilitation expenditures as defined in section 47 of the Internal Revenue Code.

(1) Qualified rehabilitation costs include amounts if they are properly includable in computing the basis for tax purposes of the eligible property.

(2) Amounts treated as an expense and deducted in the tax year in which they are paid or incurred and amounts that are otherwise not added to the basis for tax purposes of the eligible property are not qualified rehabilitation costs.

(3) Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis for tax purposes of the eligible property.

(4) Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs.

*d.* “*Rehabilitation period*” means the period of time during which an eligible property is rehabilitated commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. A project’s rehabilitation period may include dates that precede approval of a project under section 404A.3, but any costs incurred prior to such approval must be qualified rehabilitation costs.

*e.* “*Substantial rehabilitation*” means qualified rehabilitation costs that meet or exceed the following:

(1) In the case of commercial property, costs totaling at least fifty percent of the assessed value of the property, excluding the land, prior to the rehabilitation.

(2) In the case of residential property or barns, costs totaling at least twenty-five thousand dollars or twenty-five percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

2000 Acts, ch 1194, §3, 20; 2002 Acts, ch 1003, §1, 5; 2005 Acts, ch 150, §20, 21; 2007 Acts, ch 165, §1, 9; 2011 Acts, ch 99, §1, 6; 2011 Acts, ch 130, §30, 35

2007 amendment to subsection 1 applies to historic preservation and cultural and entertainment district tax credits applied for or reserved prior to July 1, 2007; 2007 Acts, ch 165, §9

2011 amendments to this section apply retroactively to July 1, 2009, for projects approved and tax credits reserved on or after that date; 2011 Acts, ch 99, §6; 2011 Acts, ch 130, §35

Section amended

#### **404A.2 Amount of credit.**

1. The amount of the credit equals twenty-five percent of the qualified rehabilitation costs incurred for the substantial rehabilitation of eligible property.

2. For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the rehabilitated property that would otherwise result from the qualified rehabilitation costs shall be reduced by the amount of the credit computed under this chapter.

2000 Acts, ch 1194, §4, 20; 2002 Acts, ch 1003, §2, 5; 2004 Acts, ch 1175, §250, 287; 2009 Acts, ch 98, §1; 2011 Acts, ch 99, §2, 6

2011 amendment applies retroactively to July 1, 2009, for projects approved and tax credits reserved on or after that date; 2011 Acts, ch 99, §6

Section amended

#### **404A.3 Approval of rehabilitation project.**

1. *a.* In order for costs of a rehabilitation project to qualify for a tax credit, the rehabilitation project must receive approval from the state historic preservation office of the department of cultural affairs.

*b.* Applications for approvals from the state historic preservation office of the department of cultural affairs shall be on forms approved by the state historic preservation office and shall contain information as required by the state historic preservation office. The information shall at least include the approximate date of the start of rehabilitation, the approximate date of completion, as well as the cost.

*c.* The approval process shall not exceed ninety days beginning from the date on which a completed application is received by the state historic preservation office. After the ninety-day limit, the rehabilitation project is deemed to be approved unless the state historic preservation office has denied the application or contacted the applicant for further information regarding the application.

2. The state historic preservation office shall establish selection criteria and standards for rehabilitation projects involving eligible property. The main emphasis of the standards shall be to ensure that a rehabilitation project maintains the integrity of the eligible property. To the extent applicable, the standards shall be consistent with the standards of the United States secretary of the interior for rehabilitation of eligible property.

3. *a.* A rehabilitation project for which the state historic preservation office has reserved tax credits pursuant to section 404A.4 shall begin rehabilitation of the property before the end of the fiscal year in which the project application was approved and for which the tax credits were reserved.

*b.* The eligible property shall be placed in service within sixty months of the date on which the project application was approved under this section.

*c.* A rehabilitation project for which a project application was approved and tax credits reserved prior to July 1, 2009, shall complete the project and place the building in service on or before June 30, 2011, notwithstanding the time period specified in paragraph “*b*”.

4. A rehabilitation project that does not meet the requirements of subsection 3 is subject to revocation, repayment, or recapture of tax credits reserved or approved pursuant to this chapter.

2000 Acts, ch 1194, §5, 20; 2002 Acts, ch 1119, §162; 2005 Acts, ch 150, §22; 2009 Acts, ch 98, §2; 2011 Acts, ch 99, §3, 6

2011 amendment to subsection 3, paragraph b, applies retroactively to July 1, 2009, for projects approved and tax credits reserved on or after that date; 2011 Acts, ch 99, §6

Subsection 3, paragraph b amended

#### **404A.4 Project completion and tax credit certification — credit refund or carryforward.**

1. Upon completion of the rehabilitation project, a certification of completion must be obtained from the state historic preservation office of the department of cultural affairs. A completion certificate shall identify the person claiming the tax credit under this chapter and the qualified rehabilitation costs incurred during the rehabilitation period.

2. After verifying the eligibility for the tax credit, the state historic preservation office shall issue a historic preservation and cultural and entertainment district tax credit certificate to be attached to the person’s tax return. The tax credit certificate shall contain the taxpayer’s

name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred. Of the amount of tax credits that may be approved in a fiscal year pursuant to subsection 4, paragraph “a”:

a. For the fiscal year beginning July 1, 2009, the office shall reserve not more than twenty million dollars worth of tax credits for a taxable year beginning on or after January 1, 2009, and not more than thirty million dollars worth of tax credits for a taxable year beginning on or after January 1, 2010.

b. For the fiscal year beginning July 1, 2010, the office shall reserve not more than twenty million dollars worth of tax credits for a taxable year beginning on or after January 1, 2010, and not more than thirty million dollars worth of tax credits for a taxable year beginning on or after January 1, 2011.

c. For the fiscal year beginning July 1, 2011, the office shall reserve not more than twenty million dollars worth of tax credits for a taxable year beginning on or after January 1, 2011, and not more than thirty million dollars worth of tax credits for a taxable year beginning on or after January 1, 2012.

d. For the fiscal year beginning July 1, 2012, and for each fiscal year thereafter, the office shall reserve not more than forty-five million dollars worth of tax credits for any one taxable year.

3. A person receiving a historic preservation and cultural and entertainment district tax credit under this chapter which is in excess of the person’s tax liability for the tax year is entitled to a refund. Any credit in excess of the tax liability shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer’s final, completed return credited to the tax liability for the following year.

4. a. The total amount of tax credits that may be approved for a fiscal year prior to the fiscal year beginning July 1, 2012, under this chapter shall not exceed fifty million dollars. The total amount of tax credits that may be approved for a fiscal year beginning on or after July 1, 2012, shall not exceed forty-five million dollars.

b. Of the tax credits approved for a fiscal year under this chapter, the amount of the tax credits shall be allocated as follows:

(1) Ten percent of the dollar amount of tax credits shall be allocated for purposes of new projects with final qualified rehabilitation costs of five hundred thousand dollars or less.

(2) Thirty percent of the dollar amount of tax credits shall be allocated for purposes of new projects located in cultural and entertainment districts certified pursuant to section 303.3B or identified in Iowa great places agreements developed pursuant to section 303.3C.

(3) Twenty percent of the dollar amount of tax credits shall be allocated for disaster recovery projects. For purposes of this subparagraph, “*disaster recovery project*” means a property meeting the requirements of an eligible property as described in section 404A.1, subsection 2, which is located in an area declared a disaster area by the governor or by a federal official and which has been physically impacted as a result of a natural disaster.

(4) Twenty percent of the dollar amount of the tax credits shall be allocated for projects that involve the creation of more than five hundred new permanent jobs. A taxpayer receiving a tax credit certificate for a project under this allocation shall provide information documenting the creation of the jobs to the state historic preservation office and to the economic development authority. The jobs shall be created within two years of the date a tax credit certificate is issued. The economic development authority shall verify the creation of the jobs. The amount of any tax credits received is subject to recapture by the department of revenue if the jobs are not created within two years. The state historic preservation office and the economic development authority may adopt rules for the implementation of this subparagraph. The rules shall provide for a method or form that allows a city or county to track the number of jobs created in the construction industry by the project.

(5) Twenty percent of the dollar amount of the tax credits shall be allocated for any eligible project.

c. (1) If, in any fiscal year, an amount of tax credits allocated pursuant to paragraph “b”,

subparagraph (2) or (4), goes unclaimed, the amount of the unclaimed tax credits shall, during the same fiscal year, be reallocated to disaster recovery projects as described in paragraph “b”, subparagraph (3).

(2) If, in any fiscal year, an amount of tax credits reallocated pursuant to subparagraph (1) of this paragraph “c” goes unclaimed, the tax credits shall, during the same fiscal year, be reallocated to the projects described in paragraph “b”, subparagraph (5).

d. The departments of cultural affairs and revenue shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are available.

e. With the exception of tax credits issued pursuant to contracts entered into prior to July 1, 2007, tax credits shall not be reserved for more than three years.

5. a. Tax credit certificates issued under this chapter may be transferred to any person or entity.

b. Within ninety days of transfer, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee’s name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue.

c. Within thirty days of receiving the transferred tax credit certificate and the transferee’s statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement certificate must contain the information required under subsection 2 and must have the same expiration date that appeared in the transferred tax credit certificate.

d. Tax credit certificate amounts of less than the minimum amount established by rule of the department of revenue shall not be transferable.

e. A tax credit shall not be claimed by a transferee under this chapter until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

f. The transferee may use the amount of the tax credit transferred against the taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

2000 Acts, ch 1194, §6, 20; 2003 Acts, ch 133, §2 – 4; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §90, 209; 2004 Acts, ch 1001, §1; 2004 Acts, ch 1175, §395; 2005 Acts, ch 150, §23 – 25; 2006 Acts, ch 1158, §6; 2007 Acts, ch 165, §2, 3, 9; 2009 Acts, ch 98, §3; 2010 Acts, ch 1069, §50, 51; 2010 Acts, ch 1138, §29, 30; 2011 Acts, ch 34, §92; 2011 Acts, ch 99, §4 – 6; 2011 Acts, ch 118, §85, 89

2007 amendments to subsections 3 and 4 apply to historic preservation and cultural and entertainment district tax credits applied for or reserved prior to July 1, 2007; 2007 Acts, ch 165, §9

For provisions relating to reissuance of certain historic preservation and cultural and entertainment district tax credit certificates and modification of reservation date of reserved credits, see 2007 Acts, ch 165, §8, 9

2011 amendments to subsection 1 and subsection 2, paragraph d apply retroactively to July 1, 2009, for projects approved and tax credits reserved on or after that date; 2011 Acts, ch 99, §6

See Code editor’s note on simple harmonization

Code editor directive applied

Subsection 1 amended

Subsection 2, paragraph d amended

## CHAPTER 405

### ASSESSMENT OF PROPERTY FOR HOUSING DEVELOPMENT

#### 405.1 Housing development — tax status — limitation.

1. a. The board of supervisors of a county may adopt an ordinance providing that property acquired and subdivided for development of housing on or after January 1, 2011,

shall continue to be assessed for taxation in the manner that it was prior to the acquisition for housing. Each lot shall continue to be taxed in the manner it was prior to its acquisition for housing until the lot is sold for construction or occupancy of housing or five years from the date of subdivision, whichever is shorter. Upon the sale or the expiration of the five-year period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

b. Ordinances adopted under this section, to the extent such ordinances affect the assessment of property subdivided for development of housing on or after January 1, 2004, but before January 1, 2011, shall remain in effect or otherwise be made effective and such ordinances adopted under section 405.1, subsection 1, Code 2011, shall be extended to apply the ordinances to the period of time ending ten years from the date of subdivision, and ordinances adopted under section 405.1, subsection 2, Code 2011, shall be extended to apply the ordinances to the period of time ending eight years from the date of subdivision.

2. On or after July 27, 2011, the board of supervisors of a county may amend an ordinance adopted or otherwise made effective under subsection 1 to extend the period of time established under subsection 1 to apply the ordinance to a period of time not to exceed five years beyond the end of the period of time established under subsection 1. An extension of an ordinance under this subsection may apply to all or a portion of the property that was subject to the original ordinance.

3. A city council may adopt an ordinance affecting that portion of the applicable property located within the incorporated area of the city, effectuating an extension of a county ordinance otherwise eligible to be extended under subsection 2 and not previously extended by the board of supervisors. An ordinance by a city council providing for an extension under this subsection shall be subject to the limitations of subsection 2.

96 Acts, ch 1204, §37; 2011 Acts, ch 131, §154, 157

2011 amendments to this section take effect July 27, 2011, and apply to assessment years beginning on or after January 1, 2012; amendments do not require refund or modification of property taxes attributable to, or the adjustment of property assessments for, assessments years beginning before January 1, 2012; 2011 Acts, ch 131, §156, 157

Section amended

## CHAPTER 411

### RETIREMENT SYSTEM FOR POLICE OFFICERS AND FIRE FIGHTERS

Applicable to all cities creating retirement systems for police officers  
and fire fighters appointed after March 2, 1934  
Participation of port authority peace officers, §28J.7

#### 411.7 Management of fund.

1. The board of trustees is the trustee of the fire and police retirement fund created in section 411.8 and shall annually establish an investment policy to govern the investment and reinvestment of the moneys in the fund, subject to the terms, conditions, limitations, and restrictions imposed by subsection 2 and chapters 12F and 12H. Subject to like terms, conditions, limitations, and restrictions the system has full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which the fund has been invested, as well as of the proceeds of the investments and any moneys belonging to the fund.

2. The secretary of the board of trustees shall invest, in accordance with the investment policy established by the board of trustees, the portion of the fund established in section 411.8 which in the judgment of the board is not needed for current payment of benefits under this chapter in investments authorized in section 97B.7A for moneys in the Iowa public employees' retirement fund.

3. The secretary of the board of trustees is the custodian of the fire and police retirement fund. All payments from the fund shall be made by the secretary only upon vouchers signed by two persons designated by the board of trustees. The system may select master custodian banks to provide custody of the assets of the retirement system.

4. A member or employee of the board of trustees shall not have any direct interest in the gains or profits of any investment made by the board of trustees, other than as a member of the system. A trustee shall not receive any pay or emolument for the trustee's services except as secretary. A member or employee of the board of trustees shall not directly or indirectly for the trustee or employee or as an agent in any manner use the assets of the retirement system except to make current and necessary payments as authorized by the board of trustees, nor shall any trustee or employee of the system become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the system.

5. Except as otherwise provided in section 411.36, a member, employee, and the secretary of the board of trustees shall not be personally liable for a loss to the fire and police retirement fund, the loss shall be assessed against the fire and police retirement fund, and moneys are hereby appropriated from the fund in an amount sufficient to cover the losses.

[C35, §6326-f7; C39, §6326.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.7; 82 Acts, ch 1261, §40]

86 Acts, ch 1203, §4; 90 Acts, ch 1240, §68; 91 Acts, ch 52, §1; 2001 Acts, ch 68, §17, 24; 2007 Acts, ch 39, §12; 2011 Acts, ch 82, §12

Subsection 1 amended

#### **411.38 Obligations of participating cities.**

1. Upon the establishment of the statewide system, each city participating in the statewide fire and police retirement system shall do all of the following:

a. Pay to the statewide system the normal contribution rate provided pursuant to section 411.8.

b. (1) Transfer from each terminated city fire or police retirement system to the statewide system amounts sufficient to cover the accrued liabilities of that terminated system as determined by the actuary of the statewide system. The actuary of the statewide system shall redetermine the accrued liabilities of the terminated systems as necessary to take into account additional amounts payable by the city which are attributable to errors or omissions which occurred prior to January 1, 1992, or to matters pending as of January 1, 1992. If the actuary of the statewide system determines that the assets transferred by a terminated system are insufficient to fully fund the accrued liabilities of the terminated system as determined by the actuary as of January 1, 1992, the participating city shall pay to the statewide system an amount equal to the unfunded liability plus interest for the period beginning January 1, 1992, and ending with the date of payment or the date of entry into an amortization agreement pursuant to this section. Interest on the unfunded liability shall be computed at a rate equal to the greater of the actuarial interest rate assumption on investments of the moneys in the fund or the actual investment earnings of the fund for the applicable calendar year. The participating city may enter into an agreement with the statewide system to make additional annual contributions sufficient to amortize the unfunded accrued liability of the terminated system. The terms of an amortization agreement shall be based upon the recommendation of the actuary of the statewide system, and the agreement shall do each of the following:

(a) Allow the city to make additional annual contributions over a period not to exceed thirty years from January 1, 1992.

(b) Provide that the city shall pay a rate of return on the amortized amount that is at least equal to the estimated rate of return on the investments of the statewide system for the years covered by the amortization agreement.

(c) Contain other terms and conditions as are approved by the board of trustees for the statewide system.

(2) In the alternative, a city may treat the city's accrued unfunded liability for the terminated system as legal indebtedness to the statewide system for the purposes of section 384.24, subsection 3, paragraph "f".

c. Contribute additional amounts necessary to ensure sufficient financial support for the statewide fire and police retirement system, as determined by the board of trustees based on information provided by the actuary of the statewide system.

2. It is the intent of the general assembly that a terminated city fire or police retirement system shall not subsidize any portion of any other system's unfunded liabilities in

connection with the transition to the statewide system. The actuary of the statewide system shall determine if the assets of a terminated city fire or police retirement system would exceed the amount sufficient to cover the accrued liabilities of that terminated system as of January 1, 1992, using the alternative assumptions and the proposed assumptions.

3. As used in this section, unless the context otherwise requires, “*alternative assumptions*” means that the interest rate earned on investments of moneys in the fire and police retirement fund would be seven percent and that the state would not contribute to the fund under section 411.8 and section 411.20, Code 2009, after January 1, 1992, and “*proposed assumptions*” means that the interest rate earned on investments of moneys in the fire and police retirement fund would be seven and one-half percent and the state will pay contributions as provided pursuant to section 411.8 and section 411.20, Code 2009, after January 1, 1992. These assumptions are to be used solely for the purposes of this section, and shall not impact upon decisions of the board of trustees concerning the assumption of the interest rate earned on investments, or the contributions by the state as provided for in section 411.8 and section 411.20, Code 2009.

4. If the determination by the actuary using the alternative assumptions reflects that the assets of the terminated system exceed the amount sufficient to cover the accrued liabilities as of January 1, 1992, all excess funds as determined utilizing the alternative assumptions and the interest and earnings from those excess funds shall be used only as approved by the city council of the participating city. The city council may approve use of the excess funds to reduce only the city’s contribution to the statewide system, or the city council may approve use of the excess funds to reduce the city’s contribution and the members’ contributions to the statewide system. If the city council approves use of the excess funds to reduce both the city’s and the members’ contributions, the members shall not withdraw the portion of the members’ contributions paid from excess funds, as would otherwise be authorized in accordance with section 411.23.

5. If the determination by the actuary using the alternative assumptions reflects that the assets of the terminated system do not exceed the amount sufficient to cover the accrued liabilities as of January 1, 1992, but a determination by the actuary using the proposed assumptions reflects that the assets of the terminated system do exceed the amount sufficient to cover the accrued liabilities as of January 1, 1992, all excess funds as determined utilizing the proposed assumptions and the interest and earnings from those excess funds shall be used only to reduce the city’s contribution rate to the statewide system. The participating city shall determine what portion of the excess funds shall be applied to reduce the city’s contribution rate for a given year.

90 Acts, ch 1240, §88; 92 Acts, ch 1197, §1, 2, 4; 92 Acts, ch 1201, §71; 96 Acts, ch 1187, §107; 2010 Acts, ch 1069, §137; 2011 Acts, ch 34, §93

Subsection 3 amended

## CHAPTER 419

### MUNICIPAL SUPPORT OF PROJECTS

#### **419.11 Tax equivalent to be paid — assessment procedure — appeal.**

1. *a.* Any municipality acquiring, purchasing, constructing, reconstructing, improving, or extending any industrial buildings, buildings used as headquarters facilities or pollution control facilities, as provided in this chapter, shall annually pay out of the revenue from such industrial buildings, buildings used as headquarters facilities or pollution control facilities to the state of Iowa and to the city, school district, and any other political subdivision, authorized to levy taxes, a sum equal to the amount of tax, determined by applying the tax rate of the taxing district to the assessed value of the property, which the state, county, city, school district, or other political subdivision would receive if the property were owned by any private person or corporation, any other statute to the contrary notwithstanding.

b. For purposes of arriving at such tax equivalent, the property shall be valued and assessed by the assessor in whose jurisdiction the property is located, in accordance with chapter 441, but the municipality, the lessee on behalf of the municipality, and such other persons as are authorized by chapter 441 shall be entitled to protest any assessment and take appeals in the same manner as any taxpayer. Such valuations shall be included in any summation of valuations in the taxing district for all purposes known to the law. Income from this source shall be considered under the provisions of section 384.16, subsection 1, paragraph “a”, subparagraph (2).

2. If and to the extent the proceedings under which the bonds authorized to be issued under the provisions of this chapter so provide, the municipality may agree to cooperate with the lessee of a project in connection with any administrative or judicial proceedings for determining the validity or amount of any such payments and may agree to appoint or designate and reserve the right in and for such lessee to take all action which the municipality may lawfully take in respect of such payments and all matters relating thereto, provided, however, that such lessee shall bear and pay all costs and expenses of the municipality thereby incurred at the request of such lessee or by reason of any such action taken by such lessee in behalf of the municipality. Any lessee of a project which has paid, as rentals additional to those required to be paid pursuant to section 419.5, the amounts required by subsection 1, paragraph “a”, to be paid by the municipality shall not be required to pay any such taxes to the state or to any such county, city, school district or other political subdivision, any other statute to the contrary notwithstanding. To the extent that any lessee or contracting party pays taxes on a project or part thereof, the municipality shall not be required to pay the tax equivalent herein provided, and to such extent the lessee or contracting party shall not be required to pay amounts to the municipality for such purpose.

3. This section shall not be applicable to any municipality acquiring, purchasing, constructing, reconstructing, improving, or extending any buildings for the purpose of establishing, maintaining, or assisting any private or state of Iowa college or university, nor to any municipality in connection with any project for the benefit of a voluntary nonprofit hospital, clinic, or health care facility, the property of which is otherwise exempt under the provisions of chapter 427. The payment, collection, and apportionment of the tax equivalent shall be subject to the provisions of chapters 445, 446 and 447.

[C66, 71, 73, 75, 77, 79, 81, §419.11]

2010 Acts, ch 1069, §145; 2011 Acts, ch 34, §94

Section amended

## CHAPTER 420

### SPECIAL CHARTER CITIES

Chapter 404 applies to all cities including special charter cities;  
79 Acts, ch 84, §12

#### **420.207 Taxation in general.**

Sections 426A.11 through 426A.15, 427.1, 427.8 to 427.11, 428.4, 428.20, 428.22, 428.23, 437.1, 437.3, 441.21, 443.1 to 443.3, 444.2 through 444.4, and 447.9 to 447.13, so far as applicable, apply to cities acting under special charters.

[S13, §1322-3a; C24, 27, 31, 35, §7007; C39, §6867.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §420.207; 81 Acts, ch 117, §1082]

89 Acts, ch 296, §40; 99 Acts, ch 114, §24; 2002 Acts, ch 1150, §3; 2011 Acts, ch 34, §95

Section amended

#### **420.241 Deed — when executed.**

Immediately after the expiration of ninety days from the date of service of the notice, as prescribed by sections 447.9 through 447.14 and section 448.1, the treasurer, collector, or person authorized to act as collector of taxes, shall make out a deed for each lot or parcel of

land sold and remaining unredeemed and deliver the same to the purchaser upon the return of the certificate of purchase.

[C97, §1019; C24, 27, 31, 35, 39, §6890; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.241]

2011 Acts, ch 34, §96

Section amended

## CHAPTER 421

### DEPARTMENT OF REVENUE

Deposit, accounting, and payment of school surtaxes, §298.14

#### **421.1 State board of tax review.**

1. There is hereby established within the department of revenue for administrative and budgetary purposes a state board of tax review for the state of Iowa. The state board of tax review, hereinafter called the state board, shall consist of three members who shall be registered voters of the state and shall hold no other elective or appointive public office.

a. Members of the state board shall serve for six-year staggered terms beginning and ending as provided by section 69.19. A member who is appointed for a six-year term shall not be permitted a successive term.

b. Members shall be appointed by the governor subject to confirmation by the senate. Appointments to the board shall be bipartisan.

c. The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. A vacancy on the board shall be filled by appointment by the governor in the same manner as the original appointment.

d. The members of the state board shall be allowed their necessary travel and expenses while engaged in their official duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The members shall organize the board and select one of their members as chairperson.

2. The place of office of the state board shall be in the office of the tax department in the capitol of the state.

3. The state board shall meet as deemed necessary by the chairperson. Special meetings of the state board may be called by the chairperson on five days' notice given to each member. All meetings shall be held at the office of the tax department unless a different place within the state is designated by the state board or in the notice of the meeting.

4. It shall be the responsibility of the state board to exercise the following general powers and duties:

a. Determine and adopt such policies as are authorized by law and are necessary for the more efficient operation of any phase of tax review.

b. Perform such duties prescribed by law as it may find necessary for the improvement of the state system of taxation in carrying out the purposes and objectives of the tax laws.

c. Employ, pursuant to the Iowa merit system provisions in chapter 8A, subchapter IV, adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

d. Advise and counsel with the director of revenue concerning the tax laws and the rules adopted pursuant to the law and conduct hearings and hear appeals in the manner provided in subsection 5.

e. Adopt a long-range program for the state system of tax reform based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the director of revenue.

f. Constitute a continuing research commission as to tax matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the general assembly for its consideration.

5. *a.* Upon its own motion or upon appeal by any affected taxpayer, the state board shall review the record evidence and the decisions of, and any orders or directive issued by, the director of revenue for the identification of taxable property, classification of property as real or personal, or for assessment and collection of taxes by the department or an order to reassess or to raise assessments to any local assessor, and shall affirm, modify, reverse, or remand them within sixty days from the date the case is submitted to the board for decision. For an appeal to the board to be valid, written notice must be given to the department within thirty days of the rendering of the decision, order, or directive from which the appeal is taken. The director shall certify to the board the record, documents, reports, audits, and all other information pertinent to the decision, order, or directive from which the appeal is taken.

*b.* The affected taxpayer and the department shall be given at least fifteen days' written notice by the board of the date the appeal shall be heard and both parties may be present at such hearing if they desire. The board shall adopt and promulgate, pursuant to chapter 17A, rules for the conduct of appeals by the board. The record and all documents, reports, audits and all other information certified to the board by the director, and hearings held by the board pursuant to the appeal and the decision of the board thereon shall be open to the public notwithstanding the provisions of section 422.72, subsection 1, and section 422.20; except that the board upon the application of the affected taxpayer may order the record and all documents, reports, audits, and all other information certified to it by the director, or so much thereof as it deems necessary, held confidential, if the public disclosure of same would reveal trade secrets or any other confidential information that would give the affected taxpayer's competitor a competitive advantage. Any deliberation of the board in reaching a decision on any appeal shall be confidential.

*c.* Judicial review of the decisions or orders of the board resulting from the review of decisions or orders of the director of revenue for assessment and collection of taxes by the department may be sought by the taxpayer or the director of revenue in accordance with the terms of chapter 17A.

*d.* All of the provisions of section 422.70 shall also be applicable to the state board of tax review.

[C51, §481, 482; R60, §742; C73, §834; C97, §1378; S13, §1378; C24, 27, 31, 35, 39, §7140; C46, 50, 54, 58, §422.15; C62, 66, §441.46; C71, 73, 75, 77, 79, 81, §421.1]

86 Acts, ch 1245, §418; 87 Acts, ch 82, §1; 88 Acts, ch 1251, §1; 95 Acts, ch 49, §12; 99 Acts, ch 151, §1, 89; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §3; 2006 Acts, ch 1010, §99; 2011 Acts, ch 25, §143

Confirmation, see §2.32

Code editor directive applied

#### **421.17B Administrative wage assignment cooperative agreement.**

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

*a.* “*Employer*” means any person or entity that pays an obligor to do a specific task. “*Employer*” only includes such a person or entity in an employer-employee relationship and does not include an obligor acting as a contractor, distributor, agent, or in any representative capacity in which the obligor receives any form of consideration.

*b.* “*Employment*” means the performance of personal services for another. “*Employment*” only includes parties in an employer-employee relationship and does not include one acting as a self-employer, contractor, distributor, agent, or in any representative capacity.

*c.* “*Facility*” means the centralized debt collection facility of the department of revenue established pursuant to section 421.17, subsection 27.

*d.* “*Obligor*” means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

*e.* “*Wage*” means any form of compensation due to an obligor. “*Wage*” includes, but is not limited to, wages, salary, bonus, commission, or other payment directly or indirectly related to employment. If a wage is assigned to the facility, wage only includes a payment in the form of money.

2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for the execution, attachment, garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the facility or being collected by the facility provided all administrative remedies have been waived or exhausted by the obligor. Any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section. Administrative wage assignment under this section is the equivalent of condemning funds under chapter 642. It is expressly provided that these remedies shall be cumulative and that no action taken by the director or the attorney general shall be construed to be an election on the part of the state or any of its officers or representatives to pursue any other remedy provided by law.

b. An obligor is subject to this section if the obligor's debt is being collected by the facility.

c. Any amount forwarded to the facility by an employer under this section shall not exceed the delinquent or accrued amount of the obligor's debt being collected by the facility.

3. *Notice of intent to the obligor.*

a. (1) The facility may proceed under this section only if twenty days' notice has been provided by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. If the facility determines that collection of the debt may be in jeopardy, the facility may request that the employer deliver notice of the wage assignment simultaneously with the remainder of or in lieu of the obligor's compensation due from the employer.

(2) The facility may obtain one or more wage assignments of an obligor who is subject to this section. If the obligor has more than one employer, the facility may receive wage assignments from one or more of the employers until the full debt obligation of the obligor is satisfied. If an obligor has more than one employer, the facility shall give notice to all employers from whom an assignment is sought.

b. The notice from the facility to the obligor shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have employment with the stated employer.

(3) A statement that pursuant to the provisions of this section, the obligor's wages will be assigned to the facility for payment of the specified debts and that the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frames the employer must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) The telephone number of the agent for the facility initiating the action.

4. *Verification of employment and immunity from liability.*

a. The facility may contact an employer to obtain verification of employment, and any specific information from the employer that the facility needs to initiate, effectuate, or maintain collection of the obligation. Contact with an employer may be by telephone, fax, or by written communication. The employer may require proof of authority from the person from the facility and the telephone number of the authorized person from the facility before releasing an obligor's employment information by telephone.

b. The employer is immune from any civil or criminal liability for information released by the employer to the facility pursuant to this section.

5. *Costs.* The facility is not liable for any costs incurred or imposed for initiating, effectuating, or maintaining an administrative wage assignment under this section. Such costs will be the sole responsibility of the obligor and will be added to the amount to be collected by the facility.

6. *Administrative wage assignment — notice to the employer.*

a. If an obligor is subject to this section, the facility may initiate an administrative wage

assignment to have compensation due the obligor to be assigned by the employer to the facility up to the amount of the full debt to be collected by the facility.

b. The facility shall send a notice to the employer within fourteen days of sending notice of the wage assignment to the obligor. The notice shall inform the employer of the amount to be assigned to the facility from each wage, salary, or payment period that is due the obligor. The facility may receive assignment of up to one hundred percent of the obligor's disposable income, salary, or payment for any given period until the full obligation to the facility is paid in full.

c. The notice to the employer shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to be employed by the employer.

(3) A statement that pursuant to the provisions of this section, the obligor's wages are subject to assignment and the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frame the employer must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) The telephone number of the agent for the facility initiating the action.

7. *Responsibilities of employer.* Upon receipt of the notice of wage assignment from the facility, the employer shall do all of the following:

a. Immediately give effect to the wage assignment and hold compensation which the obligor has owing to the extent of the debt indicated in the notice from the facility.

b. No sooner than ten days, and no later than twenty days from the date the employer receives the notice of wage assignment, unless notified by the facility of a challenge of the wage assignment by the obligor, the employer shall begin forwarding the obligor's compensation, to the extent required in the notice, to the facility with the obligor's name and social security number, the facility's account number for the obligor, and any other information required in the notice.

c. The employer may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the facility from the obligor. If insufficient moneys are available from the obligor's compensation to cover the fee and the amount in the notice, the employer may deduct the fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the facility shall be reduced by the fee amount. However, if the employer can present evidence to the facility that the employer's costs were in excess of twenty-five dollars and that such costs were necessary and reasonable, then the employer may impose a fee in excess of the twenty-five dollar fee limit.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor. An administrative wage assignment only occurs after the obligor has waived or exhausted administrative remedies. Reviews by the facility of a challenge to an administrative wage assignment are not subject to chapter 17A.

b. The obligor challenging the administrative wage assignment shall submit a written challenge to the person identified as the agent for the facility in the notice, within ten days of the date of the notice of initiation of the assignment.

c. The facility, upon receipt of a written challenge, shall review the facts of the administrative wage assignment with the obligor within ten days of receipt of the challenge. If the obligor is not available for the review on the scheduled date, the review shall take place without the obligor being present. Information in favor of the obligor shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the facility shall be considered as a reason to dismiss or modify the administrative wage assignment.

d. If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued amount being collected by or owed to the facility, the facility shall notify the employer that the administrative wage assignment has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the facility is less than the amount indicated in the notice, the facility shall provide a notice to the employer of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the employer shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative wage assignment.

(3) Any moneys received by the facility in excess of the amount owed to or to be collected by the facility shall be returned to the obligor.

e. If the facility finds no mistake of fact, the facility shall provide a notice to that effect to the obligor by regular mail and notify the employer to forward the moneys pursuant to the administrative wage assignment.

f. The obligor shall have the right to file an action for wrongful assignment in district court within thirty days of the date of the notice to the obligor, either in the county where the obligor is located or in Polk county where the facility is located. Actions under this section are in equity and not actions at law.

g. Recovery under this subsection is limited to restitution of the amount that has been wrongfully encumbered or obtained by the department.

h. A challenge to an administrative action under this subsection cannot be used to extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax. Only issues involving the assignment can be raised in a challenge to an administrative action under this subsection.

9. *Validity and duration of a wage assignment notice.*

a. A notice of wage assignment given to the obligor is effective without the serving of another notice until the earliest of either of the following:

(1) The debt owed to the facility is paid in full.

(2) The obligor receives notice that the wage assignment shall cease.

b. Cessation of the wage assignment does not affect the obligor's duties and liabilities respecting the wages already withheld pursuant to the wage assignment.

2002 Acts, ch 1151, §2; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §11 – 16; 2011 Acts, ch 25, §143

Code editor directive applied

**421.47 Tax agreements with Indian tribes.**

1. "Indian country" means the Indian country as defined in 18 U.S.C. § 1151, and includes trust land as defined by the United States secretary of the interior.

2. a. The department and the governing body of an Indian tribe may enter into an agreement to provide for the collection and distribution or refund by the department within Indian country of any tax or fee imposed by the state and administered by the department.

b. An agreement may also provide for the collection and distribution by the department of any tribal tax or fee imposed by tribal ordinance. The agreement may provide for the retention of an administrative fee by the department which fee shall be an agreed-upon percentage of the gross revenue of the tribal tax or fee collected.

3. An Act of Congress regulating the collection of state taxes and their remittance to the states shall preempt an agreement between the department and the governing body of an Indian tribe under this section to the extent such federal Act regulates the collection and remittance of a tax covered by the agreement.

4. An agreement between the department and the governing body of an Indian tribe under this section shall not preclude the negotiation of an amendment to such agreement, which

conforms to an Act of Congress regulating the collection of state taxes and their remittance to the states.

2002 Acts, ch 1151, §4; 2011 Acts, ch 25, §143

Code editor directive applied

#### **421.60 Tax procedures and practices.**

1. *Short title.* This section shall be known and may be cited as the “*Tax Procedures and Practices Act*”.

2. *Procedures and practices.*

a. (1) The department shall prepare a statement which sets forth in simple and nontechnical terms all of the following:

(a) The rights of a taxpayer and the obligations of the department during an audit.

(b) The procedures by which a taxpayer may appeal an adverse decision of the department, including administrative and judicial appeals.

(c) The procedures which the department may use in enforcing the tax laws, including notices of assessment and jeopardy assessment and the filing and enforcement of liens.

(2) The statement prepared in accordance with this paragraph shall be distributed by the department to all taxpayers at the first contact by the department with respect to the determination or collection of any tax, except in the case of simply providing tax forms.

b. The department shall furnish to the taxpayer, before or at the time of issuing a notice of assessment or denial of a refund claim, an explanation of the reasons for the assessment or refund denial. An inadequate explanation shall not invalidate the notice. For purposes of this section, an explanation by the department shall be sufficient where the amount of tax, interest, and penalty is stated together with an attachment setting forth the computation of the tax by the department.

c. (1) If the notice of assessment or denial of a claim for refund relates to a tax return filed pursuant to section 422.14 or chapter 450, 450A, or 451, by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to that return, or if a power of attorney has been filed with the department by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to any tax that is included in the notice of assessment or denial of a claim for refund, a copy of the notice together with any additional information required to be sent to the taxpayer shall be sent to the authorized representative as well.

(2) If the department fails to mail a notice of assessment to the last known address of a taxpayer or fails to personally deliver such notice to a taxpayer, interest for the month such mailing or personal delivery fails to occur through the month of the correct mailing or personal delivery is waived.

(3) If the department fails to mail a notice of assessment or denial of a claim for refund to the taxpayer’s last known address or fails to personally deliver such notice to a taxpayer and, if applicable, to the taxpayer’s authorized representative, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered, or in any event, for a period not to exceed one year, whichever is the lesser period.

(4) Collection activities, except where a jeopardy situation exists, shall be suspended and the statute of limitations for assessment or collection of the tax shall be tolled during the period in which interest is waived.

d. A taxpayer is permitted to designate in writing the type of tax and tax periods to which any voluntary payment relates, provided that separate written instructions accompany the payment. This paragraph does not apply to jeopardy assessments and does not apply if the department has to enforce collection of the payment.

e. Unless otherwise provided by law, all Iowa taxes which are administered by the department and which result in a refund shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest.

f. A taxpayer may appeal a refund claim to the director if a claim for refund has been filed and not denied by the department within six months of the filing of the claim. The filing of

an appeal by a taxpayer shall not affect the ability of the department to examine and inspect a taxpayer's records.

*g.* A taxpayer may request in writing that a contested case proceeding be commenced by the department after a period of six months from the filing of a proper appeal by the taxpayer. The department shall file an answer within thirty days of receipt of the request and a contested case proceeding shall be commenced. In the case of an appeal of an assessment, failure to answer within the thirty-day time period and after a request has been made shall result in the suspension of interest from the time that the department was required to answer until the date that the department files its answer. In the case of an appeal of a denial of a refund, failure to answer within the thirty-day time period, and after a request has been made, shall result in the accrual of interest payable to the taxpayer at double the rate in effect under section 421.7 from the time the department was required to answer until the date that the department files its answer.

*h.* A taxpayer who has failed to appeal a notice of assessment to the department within the time provided by law may contest the assessment by paying the tax, interest, and penalty, which in the case of divisible taxes might not be the entire liability and by filing a refund claim within the time period provided for filing such claim. The filing of a refund claim allows the time period for which the refund is claimed to be open to examination and to be open to offset, to zero, based upon any issue associated with the type of tax for which the refund is claimed and which has not up to that time been resolved between the taxpayer and the department, irrespective of whether the period of limitations to issue a notice of assessment has expired. The department may make this offset at any time until the department grants or denies the refund.

*i.* The director may, at any time, abate any unpaid portion of assessed tax, interest, or penalties which the director determines is erroneous, illegal, or excessive. The director shall prepare quarterly reports summarizing each case in which abatement of tax, interest, or penalties was made. However, the report shall not disclose the identity of the taxpayer.

*j.* The director shall adopt rules for setting times and places for taxpayer interviews and to permit any taxpayer to record the interviews.

*k.* If the determination that a return is incorrect is the result of an audit of the books and records of the taxpayer, the tax or additional tax, if any, shall be assessed and the notice of assessment to the taxpayer shall be given by the department within one year after the completion of the examination of the books and records.

*l.* The department shall annually report to the general assembly all areas of recurrent taxpayer noncompliance with rules or guidelines issued by the department and shall make recommendations concerning the noncompliance in the report.

*m.* (1) The director may abate unpaid state sales and use taxes and local sales and services taxes owed by a retailer in the event that the retailer failed to collect tax from the purchaser as a result of erroneous written advice issued by the department that was specially directed to the retailer by the department and the retailer is unable to collect the tax, interest, or penalties from the purchaser. Before the tax, interest, and penalties shall be abated on the basis of erroneous written advice, the retailer must present a copy of the retailer's request for written advice to the department and a copy of the department's reply. The department shall not maintain a position against the retailer that is inconsistent with the erroneous written advice, except on the basis of subsequent written advice sent by the department to that retailer, or a change in state or federal law, a reported court case to the contrary, a contrary rule adopted by the department, a change in material facts or circumstances relating to the retailer, or the retailer's misrepresentation or incomplete or inadequate representation of material facts and circumstances in requesting the written advice.

(2) (a) The director shall abate the unpaid state sales and use taxes and any local sales and services taxes owed by a retailer where the retailer failed to collect the tax from the purchaser on the charges paid for access to on-line computer services as a result of erroneous written advice issued by the department regarding the taxability of charges paid for access to on-line computer services. To qualify for the abatement under this subparagraph, the erroneous written advice shall have been issued by the department prior to July 1, 1999, and shall have been specially directed to the retailer by the department.

(b) If an abatement of unpaid state sales and use taxes and any local sales and services taxes is granted to the retailer by the director pursuant to this subparagraph, the department is precluded from collecting from the purchaser any unpaid state sales and use taxes and any local sales and services taxes which were abated.

(3) The director shall prepare quarterly reports summarizing each case in which abatement of tax, interest, or penalties was made. However, the report shall not disclose the identity of the taxpayer. An abatement authorized by this paragraph to a retailer shall not preclude the department from proceeding to collect the liability from a purchaser, except as provided in subparagraph (2).

3. *Installment payments.* The department may permit the payment of a delinquent tax on a deferred basis where the equities indicate that a deferred payment agreement would be in the interest of the state and that without a deferred payment agreement the taxpayer would experience extreme financial hardship. A deferred payment agreement shall include applicable penalty and interest at the rate in effect under section 421.7 on the unpaid balance of the liability.

4. *Costs.*

a. A prevailing taxpayer in an administrative hearing or a court proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded reasonable litigation costs by the department, state board of tax review, or a court, incurred subsequent to the issuance of the notice of assessment or denial of claim for refund in the proceeding, based upon the following:

(1) The reasonable expenses of expert witnesses.

(2) The reasonable costs of studies, reports, and tests.

(3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer.

(4) An award for reasonable litigation costs shall not exceed twenty-five thousand dollars per case.

b. An award under paragraph "a" shall not be made with respect to a portion of the proceedings during which the prevailing taxpayer has unreasonably protracted the proceedings.

c. For purposes of this section, "*prevailing taxpayer*" means a taxpayer who establishes that the position of the state was not substantially justified and who has substantially prevailed with respect to the amount in controversy or has substantially prevailed with respect to the most significant issue or set of issues presented. The determination of whether a taxpayer is a prevailing taxpayer is to be determined in accordance with chapter 17A.

d. An award for reasonable litigation costs shall be paid to the taxpayer from the general fund of the state. For purposes of this subsection, there is appropriated from the general fund of the state an amount sufficient to pay each taxpayer entitled to an award under this subsection.

e. This subsection does not apply to the tax imposed by chapter 453B if the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies.

5. *Damages.* Notwithstanding section 669.14, subsection 2, if the director or an employee of the department recklessly or intentionally disregards any tax law or rule in the collection of any tax, or if the director or an employee of the department knowingly or negligently fails to release a lien against or bond on a taxpayer's property, the taxpayer may file a claim in accordance with the Iowa tort claims Act, chapter 669, for damages against the state. However, the damages shall be limited to the actual direct economic damages suffered by the taxpayer as a proximate result of the actions of the director or employee, plus costs, reduced by the amount of such damages and costs as could reasonably have been mitigated by the taxpayer. The Iowa tort claims Act shall be the exclusive remedy for recovering damages resulting from such actions. This subsection does not apply to the tax imposed by chapter 453B.

6. *Burden of proof.* The burden of proof with respect to assessments or denial of refunds in contested case proceedings shall be allocated as follows:

a. With respect to the issue of fraud with intent to evade tax, the burden of proof is upon the department. The burden of proof must be carried by clear and convincing evidence.

b. In a case where the assessment was not made within six years after the return became due, excluding any extension of time for filing, the burden of proof shall be upon the department. However, the burden of proof shall be upon the taxpayer where the determination of the department is the result of the final disposition of a matter between the taxpayer and the internal revenue service or where the taxpayer and the department have signed a waiver of the statute of limitations.

c. In all other cases, the burden of proof shall be upon the taxpayer who challenges the assessment or refund denial, except that, with respect to any new matter or affirmative defense, the burden of proof shall be upon the department. For purposes of this provision, “*new matter*” means an adjustment not set forth in the computation of the tax in the assessment or refund denial as distinguished from a new reason for the assessment or refund denial. “*Affirmative defense*” is one resting on facts not necessary to support the taxpayer’s case.

7. *Employee evaluations.* It is unlawful to base a performance evaluation for an employee of the department on the total amount of assessments issued by that employee.

8. *Refund of untimely assessed taxes.* Notwithstanding any other refund statute, if it appears that an amount of tax, penalty, or interest has been paid to the department after the expiration of the statute of limitations for the department to determine and assess or collect the amount of such tax due, then the amount paid shall be credited against another tax liability of the taxpayer which is outstanding, if the statute of limitations for assessment or collection of that other tax has not expired or the amount paid shall be refunded to the person or, with the person’s approval, credited to tax to become due. An application for refund or credit under this subsection must be filed within one year of payment. This subsection shall not be construed to prohibit the department from offsetting the refund claim against any tax due, if the statute of limitations for that other tax has not expired. However, any tax, penalty, or interest due for which a notice of assessment was not issued by the department but which was voluntarily paid by a taxpayer after the expiration of the statute of limitations for assessment shall not be refunded.

9. *No applicability to real property.* The provisions of this section do not apply to the assessment and taxation of real property.

10. *Illegal tax.* A tax shall not be collected by the department if it is prohibited under the Constitution of the United States or laws of the United States, or under the Constitution of the State of Iowa.

94 Acts, ch 1133, §1, 16; 95 Acts, ch 83, §2; 2000 Acts, ch 1189, §28, 34; 2002 Acts, ch 1122, §2, 4; 2008 Acts, ch 1119, §6; 2008 Acts, ch 1184, §53; 2010 Acts, ch 1138, §52; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 421B

### CIGARETTE SALES

This chapter not enacted as a part of this title;  
transferred from chapter 551A in Code 1993

#### 421B.2 Definitions.

When used in any part of this chapter, the following words, terms and phrases shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

1. “*Basic cost of cigarettes*” shall mean whichever of one of the two following amounts is lower, less, in either case, all trade discounts and customary discounts for cash, plus one-half of the full face value of any stamps which may be required by any cigarette tax act of this state:

a. The true invoice cost of cigarettes to the wholesaler or retailer, as the case may be.

b. The lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased.

2. “Cigarettes” shall mean and include any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

3. a. “Cost to the retailer” shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in this chapter.

b. The cost of doing business by the retailer is presumed to be eight percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

c. If any retailer in connection with the retailer’s purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business, the sum of the cost of doing business by the retailer and, to the extent that the retailer shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as hereinabove defined in subsection 4, paragraph “b”.

4. a. “Cost to wholesaler” shall mean the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in this chapter.

b. The cost of doing business by the wholesaler is presumed to be four percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost, which includes cartage to the retail outlet, plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

5. “Person” shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

6. “Retailer” means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail. For purposes of this chapter, a person who does not meet the definition of retailer or wholesaler but who is engaged in the business of selling cigarettes in this state to a retailer or final consumer shall be considered a retailer and subject to the minimum pricing requirements of this chapter.

7. “Sale” and “sell” shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

8. “Sell at retail”, “sale at retail” and “retail sales” shall mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller’s business.

9. “Sell at wholesale”, “sale at wholesale”, and “wholesale sales” shall mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler’s business to a retailer for the purpose of resale.

10. “Wholesaler” means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed under this chapter, and where at all times a stock of cigarettes is available to retailers for resale.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.2]

83 Acts, ch 165, §3 – 5

C93, §421B.2

2001 Acts, ch 116, §5; 2007 Acts, ch 17, §1, 2, 12; 2011 Acts, ch 34, §165

Subsections 1 and 6 amended

## CHAPTER 421C

## STATE DEBT COLLECTIONS

Future repeal of chapter; see §421C.5

**421C.3 Debt settlement program.**

1. As used in this section, “*eligible debt*” means all delinquent court debt obligations defined pursuant to section 602.8107 and owed the state, except as provided in subsection 3. “*Eligible debt*” includes any interest and penalties assessed against such debt obligations.

2. The state debt coordinator, in consultation with the other branches of state government, shall establish a debt settlement program.

3. The following debt obligations are ineligible for the program:

a. Delinquent debt obligations that were imposed less than four years prior to the date of the application.

b. Victim restitution as defined in section 910.1.

c. Civil penalties assessed pursuant to section 321.218A, 321A.32A, or 321J.17.

d. Jail fees charged pursuant to section 356.7.

4. The following persons are ineligible for the program:

a. A person whose income level exceeds two hundred percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

(1) The coordinator may determine that a person whose income is at or below two hundred percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, is ineligible for the program if the debt coordinator determines the person is able to pay the full amount of the delinquent debt.

(2) In making the determination of a person’s ability to pay the full amount of the delinquent debt, the state debt coordinator shall consider not only the person’s income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the eligible debt.

b. A person who is in jail, prison, or who is under supervision during the period of incarceration or supervision.

c. A person who has previously participated in the program.

5. A person paying a delinquent court debt obligation through an established payment plan with the clerk of the district court, with the centralized collection unit of the department of revenue or its designee, with a county attorney or the county attorney’s designee, or with a private collection designee, is eligible for the debt settlement program if the person and debt are eligible and if the collecting entity is a debt settlement collection designee as provided in section 421C.4. The distribution of any moneys collected by the debt settlement collection designee shall be as provided in section 421C.4.

6. Under the program the state debt coordinator is authorized to forgive not more than fifty percent of all eligible debt obligations due.

7. Payment to the state debt coordinator under the program shall be provided in a lump sum.

8. The program shall provide that upon written application and payment of the agreed upon percentage of eligible debt obligation due to the state, the state shall forgive any remaining balance of eligible debt obligation due and shall not seek any contempt or civil action or criminal prosecution against the person related to the eligible debt obligation forgiven under the program. Upon the forgiveness of the remaining balance of the eligible debt pursuant to the program, the eligible debt shall be considered by the state as paid in full.

9. The written application shall contain all case numbers associated with the eligible debt obligation due and a general description of such debt.

10. Failure to pay the amount agreed upon by the date specified shall bar the person’s participation in the program for life.

11. A person who participates in the program shall relinquish all administrative and

judicial rights to challenge the imposition and the amount of the eligible debt obligation owed.

12. If a driver's license is reinstated as a result of participating in the program, the person shall be required to pay a reinstatement fee as provided in section 321.191, any civil penalty assessed pursuant to section 321.218A, 321A.32A, or 321J.17, and provide proof of financial responsibility pursuant to section 321A.17, if otherwise required by law.

13. Upon paying the amount required under subsection 6, the state debt coordinator shall provide the person with a certified document detailing the case numbers paid in full under the program. Any state department, agency, or branch shall, upon the filing of a certified document detailing the cases paid in full under the program, indicate in the records of the department, agency, or branch that the case is in fact paid in full with respect to the eligible debt obligations paid under the program.

14. The coordinator shall prepare and make available debt settlement application forms which contain requirements for approval of an application. The coordinator may deny an application that is inconsistent with this section.

15. Any department, agency, or branch shall cooperate with the state debt coordinator in administering the program.

16. *a.* The director of revenue shall establish an account and shall deposit in the account all receipts received under the program established by the state debt coordinator. Not later than the fifteenth day of each month, the director shall deposit amounts received with the treasurer of state for deposit in the general fund of the state.

*b.* Of the amount of debt actually collected pursuant to the program, the department of revenue shall retain an amount, not to exceed the amount collected, that is sufficient to pay for salaries, support, maintenance, services, advertising, and other costs incurred by the coordinator relating to the program. Revenues retained by the office pursuant to this lettered paragraph shall be considered repayment receipts as defined in section 8.2.

17. The state debt coordinator shall submit an annual report by January 1 to the chairpersons and ranking members of the joint appropriations subcommittee on justice systems and the legislative services agency, detailing the amount of debt obligations settled under the program, including the classification of the debt settled and the county of residence of persons who had debt settled under the program or with a debt settlement designee as provided in section 421C.4.

2010 Acts, ch 1146, §11, 26; 2010 Acts, ch 1193, §125, 141; 2011 Acts, ch 34, §160

2010 enactment of this section takes effect January 1, 2011; 2010 Acts, ch 1146, §26; 2010 Acts, ch 1193, §141; 2011 Acts, ch 34, §160  
Section not amended; section history and footnote updated

## CHAPTER 422

### INDIVIDUAL INCOME, CORPORATE, AND FRANCHISE TAXES

#### DIVISION I

#### INTRODUCTORY PROVISIONS

##### **422.1 Classification of chapter.**

The provisions of this chapter are herein classified and designated as follows:

- |                 |   |
|-----------------|---|
| 1. Division I   | Introductory provisions.  |
| 2. Division II  | Personal net income tax.  |
| 3. Division III | Business tax on corporations.   |
| 4. Division IV  | Repealed by 2003 Acts,<br>1st Ex., ch. 2, § 151, 205;<br>see chapter 423. |
| 5. Division V   | Taxation of financial   |

- institutions.
  - 6. Division VI Administration.
  - 7. Division VII Estimated taxes by corporations and financial institutions.
  - 8. Division VIII Allocation of revenues.
  - 9. Division IX Fuel tax credit.
  - 10. Division X Repealed by 2009 Acts, ch. 179, § 152, 153.
- [C35, §6943-f1; C39, §6943.033; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.1]  
 2006 Acts, ch 1010, §100; 2011 Acts, ch 34, §97  
 Section amended

**422.3 Definitions controlling chapter.**

For the purpose of this chapter and unless otherwise required by the context:

1. “Book”, “list”, “record”, or “schedule” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.
2. “Court” means the district court in the county of the taxpayer’s residence.
3. “Department” means the department of revenue.
4. “Director” means the director of revenue.
5. “Internal Revenue Code” means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2011.

6. The word “taxpayer” includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

[C35, §6943-f3; C39, §6943.035; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.3]  
 84 Acts, ch 1305, §25; 85 Acts, ch 230, §3; 86 Acts, ch 1213, §8; 86 Acts, ch 1245, §439; 88 Acts, ch 1028, §1; 89 Acts, ch 285, §2; 90 Acts, ch 1171, §1; 91 Acts, ch 215, §1; 92 Acts, ch 1219, §1; 93 Acts, ch 113, §1; 94 Acts, ch 1166, §1; 95 Acts, ch 152, §2; 96 Acts, ch 1166, §2, 4; 97 Acts, ch 135, §3, 9; 98 Acts, ch 1078, §3, 10; 99 Acts, ch 95, §3, 12, 13; 2000 Acts, ch 1146, §3, 9, 11; 2000 Acts, ch 1148, §1; 2001 Acts, ch 127, §3, 9, 10; 2002 Acts, ch 1069, §3, 10, 14; 2002 Acts, ch 1119, §200, 201; 2003 Acts, ch 139, §3; 2003 Acts, ch 145, §286; 2004 Acts, 1st Ex, ch 1001, §37, 41, 42; 2005 Acts, ch 24, §3, 10, 11; 2006 Acts, ch 1140, §3, 10, 11; 2007 Acts, ch 12, §3, 7, 8; 2008 Acts, ch 1011, §3, 9; 2011 Acts, ch 41, §1, 5, 6

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

2011 amendment to subsection 5 takes effect April 12, 2011, and applies retroactively to January 1, 2010, for tax years beginning on or after that date; 2011 Acts, ch 41, §5, 6

Subsection 5 amended

DIVISION II

PERSONAL NET INCOME TAX

**422.5 Tax imposed — exclusions — alternative minimum tax.**

1. A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

- a. On all taxable income from zero through one thousand dollars, thirty-six hundredths of one percent.
- b. On all taxable income exceeding one thousand dollars but not exceeding two thousand dollars, seventy-two hundredths of one percent.
- c. On all taxable income exceeding two thousand dollars but not exceeding four thousand dollars, two and forty-three hundredths percent.
- d. On all taxable income exceeding four thousand dollars but not exceeding nine thousand dollars, four and one-half percent.

e. On all taxable income exceeding nine thousand dollars but not exceeding fifteen thousand dollars, six and twelve hundredths percent.

f. On all taxable income exceeding fifteen thousand dollars but not exceeding twenty thousand dollars, six and forty-eight hundredths percent.

g. On all taxable income exceeding twenty thousand dollars but not exceeding thirty thousand dollars, six and eight-tenths percent.

h. On all taxable income exceeding thirty thousand dollars but not exceeding forty-five thousand dollars, seven and ninety-two hundredths percent.

i. On all taxable income exceeding forty-five thousand dollars, eight and ninety-eight hundredths percent.

j. (1) The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraphs "a" through "i" by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident's net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph "a", is the numerator and the nonresident's total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

(2) (a) The tax imposed upon the taxable income of a resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state may be computed by reducing the amount determined pursuant to paragraphs "a" through "i" by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the resident's net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph "b", is the numerator and the resident's total net income computed under section 422.7 is the denominator. If a resident shareholder has elected to take advantage of this subparagraph (2), and for the next tax year elects not to take advantage of this subparagraph, the resident shareholder shall not reelect to take advantage of this subparagraph for the three tax years immediately following the first tax year for which the shareholder elected not to take advantage of this subparagraph, unless the director consents to the reelection. This subparagraph also applies to individuals who are residents of Iowa for less than the entire tax year.

(b) This subparagraph (2) shall not affect the amount of the taxpayer's checkoffs under this division, the credits from tax provided under this division, and the allocation of these credits between spouses if the taxpayers filed separate returns or separately on combined returns.

2. a. There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in subsection 1, paragraphs "a" through "j", or the state alternative minimum tax equal to seventy-five percent of the maximum state individual income tax rate for the tax year, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer as computed under this subsection.

b. The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income, as computed with the deductions in section 422.9, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(iii), and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. To the extent that any preference or adjustment is determined by an individual's federal adjusted gross income, the individual's federal adjusted gross income is computed in accordance with section 422.7, subsections 39, 39A, 39B, and 53. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

- (b) Twenty-six thousand dollars for a single person or a head of household.
  - (c) Thirty-five thousand dollars for a married couple which files a joint return.
  - (d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph (2), exceeds the following:
    - (i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph division (a).
    - (ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph division (b).
    - (iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph division (c).
- (3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.
- c. The state alternative minimum tax of a taxpayer whose net capital gain deduction includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure, where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange, shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.
  - d. In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection 2. In the case of a resident or part-year resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state, a nonresident, including a nonresident estate or trust, or an individual, estate, or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection 2, reduced by the applicable credits in sections 422.10 through 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, paragraph "a" or "b" as applicable, plus tax preference items, adjustments, and losses under subparagraph (1) attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 plus all tax preference items, adjustments, and losses under subparagraph (1). In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse's respective preference items, adjustments, and losses under subparagraph (1) bear to the combined preference items, adjustments, and losses under subparagraph (1) of both spouses.
3. a. The tax shall not be imposed on a resident or nonresident whose net income, as defined in section 422.7, is thirteen thousand five hundred dollars or less in the case of married persons filing jointly or filing separately on a combined return, heads of household, and surviving spouses or nine thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirteen thousand five hundred dollars or nine thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirteen thousand five hundred dollars or nine thousand dollars as applicable. The

preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds thirteen thousand five hundred dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirteen thousand five hundred dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable.

*b.* In lieu of the computation in subsection 1, 2, or 3, if the married persons', filing jointly or filing separately on a combined return, head of household's, or surviving spouse's net income exceeds thirteen thousand five hundred dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirteen thousand five hundred dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

3A. Reserved.

3B. *a.* The tax shall not be imposed on a resident or nonresident who is at least sixty-five years old on December 31 of the tax year and whose net income, as defined in section 422.7, is thirty-two thousand dollars or less in the case of married persons filing jointly or filing separately on a combined return, heads of household, and surviving spouses or twenty-four thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirty-two thousand dollars or twenty-four thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirty-two thousand dollars or twenty-four thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds thirty-two thousand dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirty-two thousand dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding thirty-two thousand dollars or twenty-four thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding thirty-two thousand dollars or twenty-four thousand dollars as applicable.

*b.* In lieu of the computation in subsection 1, 2, or 3, if the married persons', filing jointly or filing separately on a combined return, head of household's, or surviving spouse's net income exceeds thirty-two thousand dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirty-two thousand dollars or the regular tax liability computed without regard to

this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

c. This subsection applies even though one spouse has not attained the age of sixty-five, if the other spouse is at least sixty-five at the end of the tax year.

4. The tax herein levied shall be computed and collected as hereinafter provided.

5. The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

6. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in subsection 1, paragraphs “a” through “i” by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

7. The state income tax of a taxpayer whose net income includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer’s assets exceeds the taxpayer’s liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered in determining if the fair market value of the taxpayer’s assets exceed the taxpayer’s liabilities.

8. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allocable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under subsections 3 and 3B, as applicable.

9. In the case of income derived from the sale or exchange of livestock which qualifies under section 451(e) of the Internal Revenue Code because of drought, the taxpayer may elect to include the income in the taxpayer’s net income in the tax year following the year of the sale or exchange in accordance with rules prescribed by the director.

10. If an individual’s federal income tax was forgiven for a tax year under section 692 of the Internal Revenue Code, because the individual was killed while serving in an area designated by the president of the United States or the United States Congress as a combat zone, the individual was missing in action and presumed dead, or the individual was killed outside the United States in a terroristic or military action while the individual was a military or civilian employee of the United States, the individual’s Iowa income tax is also forgiven for the same tax year.

11. If a taxpayer repays in the current tax year certain amounts of income that were subject to tax under this division in a prior year and a tax benefit would be allowed under similar circumstances under section 1341 of the Internal Revenue Code, a tax benefit shall be allowed on the Iowa return. The tax benefit shall be the reduced tax for the current tax year due to the deduction for the repaid income or the reduction in tax for the prior year or years due to exclusion of the repaid income. The reduction in tax shall qualify as a refundable tax credit on the return for the current year pursuant to rules prescribed by the director.

[C35, §6943-f5; C39, §6943.037; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.5; 81 Acts, ch 132, §3; 82 Acts, ch 1023, §2, 31, ch 1064, §1, 2, ch 1226, §1, 2, 6]

83 Acts, ch 101, §86; 83 Acts, ch 179, §3, 20, 22; 85 Acts, ch 243, §1, 2; 86 Acts, ch 1213, §9; 86 Acts, ch 1232, §1; 86 Acts, ch 1236, §3, 4; 87 Acts, ch 214, §2; 87 Acts, 1st Ex, ch 1, §2; 87 Acts, 2nd Ex, ch 1, §2, 3; 88 Acts, ch 1028, §5 – 11; 89 Acts, ch 228, §4, 5; 89 Acts, ch 251, §11; 89 Acts, ch 268, §2, 3; 89 Acts, ch 296, §41; 91 Acts, ch 159, §7; 91 Acts, ch 196, §1; 92 Acts,

2nd Ex, ch 1001, §217, 218, 224; 96 Acts, ch 1166, §3, 4; 96 Acts, ch 1197, §14, 15, 18; 96 Acts, ch 1219, §27; 97 Acts, ch 8, §1, 2; 97 Acts, ch 111, §2 – 4, 7, 8; 97 Acts, ch 158, §11, 49; 99 Acts, ch 151, §4, 89; 2003 Acts, ch 139, §4; 2006 Acts, ch 1112, §1 – 3, 5; 2006 Acts, ch 1158, §8 – 10; 2007 Acts, ch 126, §65, 112, 116; 2009 Acts, ch 41, §263; 2009 Acts, ch 133, §135; 2011 Acts, ch 41, §17, 23, 24

Subsection 3B takes effect January 1, 2009, and applies to tax years beginning on or after that date; 2006 Acts, ch 1112, §5; 2007 Acts, ch 126, §116

2011 amendment to subsection 2, paragraph b, subparagraph (1), takes effect April 12, 2011, and applies retroactively to January 1, 2008, for tax years ending on or after that date; 2011 Acts, ch 41, §23, 24

Subsection 2, paragraph b, subparagraph (1) amended

#### **422.7 “Net income” — how computed.**

The term “*net income*” means the adjusted gross income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.
2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code.
3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.
4. Subtract payments received by a beneficiary under an annuity which was purchased under an employee’s pension or retirement plan when the commuted value of the installments has been included as a part of the decedent employee’s estate for Iowa inheritance tax purposes.
5. Individual taxpayers and married taxpayers who file a joint federal income tax return and who elect to file a joint return, separate returns, or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the disability income exclusion and shall compute the amount of the disability income exclusion subject to the limitations for joint federal income tax return filers provided by section 105(d) of the Internal Revenue Code. The disability income exclusion provided in section 105(d) of the Internal Revenue Code, as amended up to and including December 31, 1982, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1984.
6. Reserved.
7. Married taxpayers who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the expensing of business assets and capital loss provisions of sections 179(a) and 1211(b) respectively of the Internal Revenue Code and shall compute the amount of expensing of business assets and capital loss subject to the limitations for joint federal income tax return filers provided by sections 179(b) and 1211(b) respectively of the Internal Revenue Code.
8. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.
9. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.
10. Notwithstanding the method for computing the amount of travel expenses that may be deducted under section 162(h) of the Internal Revenue Code, for tax years beginning on or after January 1, 1987, a member of the general assembly whose place of residence within the legislative district is greater than fifty miles from the capitol building of the state may deduct the total amount per day determined under section 162(h)(1)(B) of the Internal Revenue Code

and a member of the general assembly whose place of residence within the legislative district is fifty or fewer miles from the capitol building of the state may deduct fifty dollars per day. This subsection does not apply to a member of the general assembly who elects to itemize for state tax purposes the member's travel expenses.

11. Add the amounts deducted and subtract the amounts included as income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property included in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

12. *a.* If the adjusted gross income includes income or loss from a small business operated by the taxpayer, an additional deduction shall be allowed in computing the income or loss from the small business if the small business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year any of the following:

(1) An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:

(a) Has a physical or mental impairment which substantially limits one or more major life activities.

(b) Has a record of that impairment.

(c) Is regarded as having that impairment.

(2) An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(a) Has been convicted of a felony in this or any other state or the District of Columbia.

(b) Is on parole pursuant to chapter 906.

(c) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(d) Is in a work release program pursuant to chapter 904, division IX.

(3) An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

*b.* (1) The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraph "a", subparagraphs (1), (2), and (3) who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

(2) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the department of workforce development, the additional deduction shall be allowed.

(3) A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

*c.* For purposes of this subsection:

(1) "*Physical or mental impairment*" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

(2) (a) “*Small business*” means a profit or nonprofit business, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which the following apply:

(i) It is not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) It has twenty or fewer full-time equivalent positions and not more than the equivalent of three million dollars in annual gross revenues as computed for the preceding fiscal year or as the average of the three preceding fiscal years.

(iii) It does not include the practice of a profession.

(b) “*Small business*” includes an employee-owned business which has been an employee-owned business for less than three years or which meets the conditions of subparagraph division (a), subparagraph subdivisions (i) through (iii).

(c) For purposes of this definition, “*dominant in its field of operation*” means having more than twenty full-time equivalent positions and more than three million dollars in annual gross revenues, and “*affiliate or subsidiary of a business dominant in its field of operation*” means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalents, of a business dominant in that field of operation.

12A. If the adjusted gross income includes income or loss from a business operated by the taxpayer, and if the business does not qualify for the adjustment under subsection 12, an additional deduction shall be allowed in computing the income or loss from the business if the business hired for employment in the state during its annual accounting period ending with or during the taxpayer’s tax year either of the following:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs “a” and “b” who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual’s employment as determined by the department of workforce development, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer’s pro rata share of the profits or losses from the partnership or subchapter S corporation.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs “a” and “b”.

13. a. Subtract, to the extent included, the amount of additional social security benefits taxable under the Internal Revenue Code for tax years beginning on or after January 1, 1994, but before January 1, 2014. The amount of social security benefits taxable as provided in section 86 of the Internal Revenue Code, as amended up to and including January 1, 1993,

continues to apply for state income tax purposes for tax years beginning on or after January 1, 1994, but before January 1, 2014.

b. (1) For tax years beginning in the 2007 calendar year, subtract, to the extent included, thirty-two percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(2) For tax years beginning in the 2008 calendar year, subtract, to the extent included, thirty-two percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(3) For tax years beginning in the 2009 calendar year, subtract, to the extent included, forty-three percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(4) For tax years beginning in the 2010 calendar year, subtract, to the extent included, fifty-five percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(5) For tax years beginning in the 2011 calendar year, subtract, to the extent included, sixty-seven percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(6) For tax years beginning in the 2012 calendar year, subtract, to the extent included, seventy-seven percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(7) For tax years beginning in the 2013 calendar year, subtract, to the extent included, eighty-nine percent of taxable social security benefits remaining after the subtraction in paragraph "a".

c. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or who elect separate filing on a combined return for state income tax purposes, shall allocate between the spouses the amount of benefits subtracted under paragraphs "a" and "b" from net income in the ratio of the social security benefits received by each spouse to the total of these benefits received by both spouses.

d. For tax years beginning on or after January 1, 2014, subtract, to the extent included, the amount of social security benefits taxable under section 86 of the Internal Revenue Code.

14. Add the amount of intangible drilling and development costs optionally deducted in the year paid or incurred as described in section 57(a)(2) of the Internal Revenue Code. This amount may be recovered through cost depletion or depreciation, as appropriate under rules prescribed by the director.

15. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well as described in section 57(a)(1) of the Internal Revenue Code.

16. Subtract the income resulting from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure if all of the following conditions are met:

a. The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

b. Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt to asset ratio exceeded ninety percent as computed under generally accepted accounting practices.

c. The taxpayer's net worth at the end of the tax year is less than seventy-five thousand dollars. In determining a taxpayer's net worth at the end of the tax year a taxpayer shall include any asset transferred within one hundred twenty days prior to the end of the tax year without adequate and full consideration in money or money's worth. In determining the taxpayer's debt to asset ratio, the taxpayer shall include any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange without adequate and full consideration in money or money's worth. For purposes of this subsection, actual notice of foreclosure includes, but is not limited to, bankruptcy or written notice from a creditor of the creditor's intent to foreclose where there is a reasonable belief that the creditor can force a sale of the asset. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during

the tax year, the assets and liabilities of both spouses shall be considered for purposes of determining the taxpayer's net worth or the taxpayer's debt to asset ratio.

17. Add interest and dividends from regulated investment companies exempt from federal income tax under the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

18. Reserved.

19. Subtract interest earned on bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

20. Subtract, to the extent included, the proceeds received pursuant to a judgment in or settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide. This subsection applies to proceeds received by a taxpayer who is a disabled veteran or who is a beneficiary of a disabled veteran.

For purposes of this subsection:

a. "Vietnam herbicide" means a herbicide, defoliant or other causative agent containing dioxin, including, but not limited to, Agent Orange, used in the Vietnam Conflict beginning December 22, 1961, and ending May 7, 1975, inclusive.

b. "Agent Orange" means the herbicide composed of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid and the contaminant dioxin (TCDD).

21. Subtract the net capital gain from the following:

a. (1) Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 423.1, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

However, where the business is sold to individuals who are all lineal descendants of the taxpayer, the taxpayer does not have to have materially participated in the business in order for the net capital gain from the sale to be excluded from taxation.

However, in lieu of the net capital gain deduction in this paragraph and paragraphs "b", "c", and "d", where the business is sold to individuals who are all lineal descendants of the taxpayer, the amount of capital gain from each capital asset may be subtracted in determining net income.

(2) For purposes of this paragraph, "lineal descendant" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

b. Net capital gain from the sale of cattle or horses held by the taxpayer for breeding, draft, dairy, or sporting purposes for a period of twenty-four months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

c. Net capital gain from the sale of breeding livestock, other than cattle or horses, if the livestock is held by the taxpayer for a period of twelve months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

d. Net capital gain from the sale of timber as defined in section 631(a) of the Internal Revenue Code.

However, to the extent otherwise allowed, the deduction provided in this subsection is not allowed for purposes of computation of a net operating loss in section 422.9, subsection 3, and in computing the income for the taxable year or years for which a net operating loss is deducted.

For purposes of this subsection, the term "held" shall be determined with reference to the holding period provisions of section 1223 of the Internal Revenue Code and the federal regulations adopted pursuant thereto.

22. Subtract, to the extent included, the amounts paid to an eligible individual under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383, Tit. I, as satisfaction

for a claim against the United States arising out of the confinement, holding in custody, relocation, or other deprivation of liberty or property of an individual of Japanese ancestry.

23. Subtract, to the extent included, the amount of federal Segal AmeriCorps education award payments.

24. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for services performed on or after August 2, 1990, pursuant to military orders related to the Persian Gulf Conflict.

25. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after November 21, 1995, pursuant to military orders related to peacekeeping in Bosnia-Herzegovina.

26. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property under the accelerated cost recovery system of the Internal Revenue Code during the period during which it is owned by the for-profit entity and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the for-profit entity, subsidiary of the for-profit entity, or majority owners of the for-profit entity, for other than as a speculative shell building, as defined in section 427.1, subsection 27.

27. Subtract, to the extent included, payments received by an individual providing unskilled in-home health-related care services pursuant to section 249.3, subsection 2, paragraph "a", subparagraph (2), to a member of the individual caregiver's family. For purposes of this subsection, a member of the individual caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor, or lineal descendant, and such persons by marriage or adoption. A health care professional licensed by an examination board designated in section 147.13, subsections 1 through 10, is not eligible for the exemption authorized in this subsection.

28. If the taxpayer is owner of an individual development account certified under chapter 541A at any time during the tax year, deductions of all of the following shall be allowed:

a. Contributions made to the account by persons and entities, other than the taxpayer, as authorized in chapter 541A.

b. The amount of any state match payments authorized under section 541A.3, subsection 1.

c. Earnings from the account.

29. Subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts paid by the taxpayer for the purchase of health benefits coverage or insurance for the taxpayer or taxpayer's spouse or dependent.

30. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted gross income.

31. For a person who is disabled, or is fifty-five years of age or older, or is the surviving spouse of an individual or a survivor having an insurable interest in an individual who would have qualified for the exemption under this subsection for the tax year, subtract, to the extent included, the total amount of a governmental or other pension or retirement pay, including, but not limited to, defined benefit or defined contribution plans, annuities, individual retirement accounts, plans maintained or contributed to by an employer, or maintained or contributed to by a self-employed person as an employer, and deferred compensation plans or any earnings attributable to the deferred compensation plans, up to a maximum of six thousand dollars for a person, other than a husband or wife, who files a separate state income tax return and up to a maximum of twelve thousand dollars for a husband and wife who file a joint state income tax return. However, a surviving spouse who is not disabled or fifty-five years of age or older can only exclude the amount of pension or retirement pay received as a result of the death of the other spouse. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined maximum exclusion under this subsection of up to twelve thousand dollars. The twelve thousand dollar exclusion shall be allocated to the husband or wife in the proportion

that each spouse's respective pension and retirement pay received bears to total combined pension and retirement pay received.

32. *a.* Subtract the maximum contribution that may be deducted for Iowa income tax purposes as a participant in the Iowa educational savings plan trust pursuant to section 12D.3, subsection 1, paragraph "a".

*b.* Add the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Iowa educational savings plan trust to the extent previously deducted as a contribution to the trust.

*c.* Add the amount resulting from a withdrawal made by a taxpayer from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses to the extent previously deducted as a contribution to the trust.

33. Subtract, to the extent included, income from interest and earnings received from the Iowa educational savings plan trust created in chapter 12D.

34. Reserved.

35. Subtract, to the extent included, the following:

*a.* Payments made to the taxpayer because of the taxpayer's status as a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or as an heir of such victim.

*b.* Items of income attributable to, derived from, or in any way related to assets stolen from, hidden from, or otherwise lost to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime immediately prior to, during, and immediately after World War II, including, but not limited to, interest on the proceeds receivable as insurance under policies issued to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime by European insurance companies immediately prior to and during World War II. However, income from assets acquired with such assets or with the proceeds from the sale of such assets shall not be subtracted. This paragraph shall only apply to a taxpayer who was the first recipient of such assets after recovery of the assets and who is a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or is an heir of such victim.

36. Add, to the extent not already included, income from the sale of obligations of the state and its political subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state individual income tax.

37. Notwithstanding the method for computing income from an installment sale under section 453 of the Internal Revenue Code, as defined in section 422.3, the method to be used in computing income from an installment sale shall be the method under section 453 of the Internal Revenue Code, as amended up to and including January 1, 2000. A taxpayer affected by this subsection shall make adjustments in the adjusted gross income pursuant to rules adopted by the director.

The adjustment to net income provided in this subsection is repealed for tax years beginning on or after January 1, 2002. However, to the extent that a taxpayer using the accrual method of accounting reported the entire capital gain from the sale or exchange of property on the Iowa return for the tax year beginning in the 2001 calendar year and the capital gain was reported on the installment method on the federal income tax return, any additional installment from the capital gain reported for federal income tax purposes is not to be included in net income in tax years beginning on or after January 1, 2002.

38. Subtract, to the extent not otherwise excluded, the amount of withdrawals from qualified retirement plan accounts made during the tax year if the taxpayer or taxpayer's spouse is a member of the Iowa national guard or reserve forces of the United States who is ordered to state military service or federal service or duty. In addition, a penalty for such withdrawals shall not be assessed by the state.

39. *a.* The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, § 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing federal adjusted gross income, the following adjustments shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

b. A taxpayer may elect to apply the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No. 108-27, in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005. If the taxpayer elects to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the deduction may be taken on amended state tax returns, if necessary. If the taxpayer does not elect to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the following adjustment shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k)(4) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k)(4).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

39A. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 110-185, § 103, Pub. L. No. 111-5, § 1201, Pub. L. No. 111-240, § 2022, and Pub. L. No. 111-312, § 401, does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal adjusted gross income, then the taxpayer shall make the following adjustments to federal adjusted gross income when computing net income for state tax purposes:

a. Add the total amount of depreciation taken under section 168(k) of the Internal Revenue Code for the tax year.

b. Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(k).

c. Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs "a" and "b". The director shall adopt rules for the administration of this paragraph.

39B. The additional first-year depreciation allowance authorized in section 168(n) of the Internal Revenue Code, as enacted by Pub. L. No. 110-343, § 710, does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal adjusted gross income, then the taxpayer shall make the following adjustments to federal adjusted gross income when computing net income for state tax purposes:

a. Add the total amount of depreciation taken under section 168(n) of the Internal Revenue Code for the tax year.

b. Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(n).

c. Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs "a" and "b". The director shall adopt rules for the administration of this paragraph.

40. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after January 1, 2003, pursuant to military orders related to Operation Iraqi Freedom, Operation New Dawn, Operation Noble Eagle, and Operation Enduring Freedom.

41. Reserved.

42. Subtract, to the extent included, military student loan repayments received by the taxpayer serving on active duty in the national guard or armed forces military reserve or on active duty status in the armed forces.

42A. Subtract, to the extent included, all pay received by the taxpayer from the federal government for military service performed while on active duty status in the armed forces, the armed forces military reserve, or the national guard.

43. A taxpayer may elect not to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 108-27, § 202, in computing adjusted gross income for state tax purposes. If the taxpayer does not take the increased expensing allowance under section 179 of the Internal Revenue Code for state tax purposes, the following adjustments shall be made:

a. Add the total amount of expense deduction taken on section 179 property for federal tax purposes under section 179 of the Internal Revenue Code.

b. Subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code prior to enactment of Pub. L. No. 108-27, § 202.

c. Any other adjustments to gains and losses to the adjustments made in paragraphs "a" and "b" pursuant to rules adopted by the director.

44. a. If the taxpayer, while living, donates one or more of the taxpayer's human organs to another human being for immediate human organ transplantation during the tax year, subtract, to the extent not otherwise excluded, the following unreimbursed expenses incurred by the taxpayer and related to the taxpayer's organ donation:

- (1) Travel expenses.
- (2) Lodging expenses.
- (3) Lost wages.

b. The maximum amount that may be deducted under paragraph "a" is ten thousand dollars. A taxpayer shall only take the deduction under this subsection once. If a deduction is taken under this subsection, the amount of expenses shall not be considered medical care expenses under section 213 of the Internal Revenue Code for state tax purposes.

c. For purposes of this subsection, "human organ" means all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow.

45. Subtract, to the extent not otherwise deducted, the amount of two thousand dollars for the cost of a clean fuel motor vehicle if the taxpayer was eligible for the alternative motor vehicle credit under section 30B of the Internal Revenue Code for such motor vehicle.

46. Subtract, to the extent included, the amount of any grant provided pursuant to the injured veterans grant program pursuant to section 35A.14.

46A. Subtract, to the extent included, amounts received from the veterans trust fund for any of the following items:

a. Travel expenses pursuant to section 35A.13, subsection 6, paragraph "a".

b. Unemployment assistance pursuant to section 35A.13, subsection 6, paragraph "c".

47. Subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts paid by the taxpayer to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in section 35A.14. Amounts subtracted under this subsection shall not be used by the taxpayer in computing the amount of charitable contributions as defined by section 170 of the Internal Revenue Code.

48. Subtract, to the extent included, income from interest and earnings received from the bonds issued under section 12.91.

49. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as

provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

50. Subtract, to the extent included, the amount of victim compensation awards paid under the victim compensation program, victim restitution payments received pursuant to chapter 910 or 915, and any damages awarded by a court, and received by the taxpayer, in a civil action filed by the victim against the offender, during the tax year.

51. Subtract, to the extent included, the amount of any Vietnam Conflict veterans bonus provided pursuant to section 35A.8, subsection 5, and section 35A.8A.\*

52. Subtract, to the extent included, an amount equal to any income received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under section 15.393 which meets the criteria of a qualified expenditure under section 15.393, subsection 2, paragraph "a", subparagraph (2).

53. A taxpayer is not allowed to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 111-5, § 1202, in computing adjusted gross income for state tax purposes.

54. Subtract, to the extent included, the amount of any biodiesel production refund provided pursuant to section 423.4.

55. A taxpayer is allowed to take the deduction for certain expenses of elementary and secondary school teachers allowed under section 62(a)(2)(D) of the Internal Revenue Code, as amended by the federal Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, in computing net income for state tax purposes.

56. A taxpayer is allowed to take the deduction for qualified tuition and related expenses allowed under section 222 of the Internal Revenue Code, as amended by the federal Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, in computing net income for state tax purposes.

[C35, §6943-f7; C39, §6943.039; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.7; 81 Acts, ch 132, §4 – 6, 9 – 11; 82 Acts, ch 1023, §3 – 8, 25, 30, 31, ch 1203, §2]

83 Acts, ch 174, §1, 3; 83 Acts, ch 179, §5, 6, 21, 24; 84 Acts, ch 1305, §29, 30; 85 Acts, ch 230, §4; 86 Acts, ch 1232, §2; 86 Acts, ch 1236, §5; 86 Acts, ch 1238, §18; 86 Acts, ch 1241, §14; 86 Acts, ch 1243, §33; 87 Acts, 1st Ex, ch 1, §3; 87 Acts, 2nd Ex, ch 1, §4 – 6; 88 Acts, ch 1028, §13 – 15; 89 Acts, ch 175, §2; 89 Acts, ch 225, §18, 19; 89 Acts, ch 228, §6, 7, 11; 89 Acts, ch 249, §2; 89 Acts, ch 251, §13; 89 Acts, ch 268, §4; 89 Acts, ch 285, §3; 90 Acts, ch 1171, §2; 90 Acts, ch 1195, §1; 90 Acts, ch 1251, §52; 90 Acts, ch 1271, §1901, 1903; 91 Acts, ch 196, §2; 91 Acts, ch 210, §1; 92 Acts, ch 1225, §1, 5; 92 Acts, ch 1247, §30, 31, 39; 93 Acts, ch 97, §14, 20; 94 Acts, ch 1165, §12, 46; 94 Acts, ch 1166, §2, 3, 12; 94 Acts, ch 1183, §77 – 79, 97; 95 Acts, ch 5, §1, 14; 95 Acts, ch 152, §3, 7; 95 Acts, ch 206, §1, 4; 96 Acts, ch 1106, §7; 96 Acts, ch 1129, §113; 96 Acts, ch 1186, §23; 97 Acts, ch 133, §1; 97 Acts, ch 135, §4, 9; 98 Acts, ch 1100, §57; 98 Acts, ch 1172, §12, 14; 98 Acts, ch 1174, §5, 6; 98 Acts, ch 1177, §1 – 6; 2000 Acts, ch 1103, §2, 3; 2000 Acts, ch 1163, §5, 6; 2000 Acts, ch 1194, §8, 21; 2001 Acts, ch 15, §1, 2; 2001 Acts, ch 116, §6, 28; 2001 Acts, ch 127, §4, 5, 9, 10; 2001 Acts, 2nd Ex, ch 6, §21, 22, 25, 26, 37; 2002 Acts, ch 1069, §4, 11, 14; 2002 Acts, ch 1150, §4; 2002 Acts, ch 1151, §5, 36; 2003 Acts, ch 139, §5, 11, 12; 2003 Acts, ch 142, §5, 6, 11; 2003 Acts, 1st Ex, ch 2, §184, 205; 2004 Acts, ch 1086, §66; 2004 Acts, 1st Ex, ch 1001, §38, 41, 42; 2005 Acts, ch 2, §1, 2, 6; 2005 Acts, ch 19, §53; 2005 Acts, ch 24, §4, 10, 11; 2005 Acts, ch 127, §1, 2; 2006 Acts, ch 1013, §1, 2; 2006 Acts, ch 1106, §2, 4; 2006 Acts, ch 1112, §4, 5; 2006 Acts, ch 1140, §4, 10, 11; 2006 Acts, ch 1158, §12; 2006 Acts, ch 1179, §71; 2006 Acts, 1st Ex, ch 1001, §41, 49; 2007 Acts, ch 27, §2, 11; 2007 Acts, ch 54, §35; 2007 Acts, ch 162, §4, 13; 2007 Acts, ch 176, §2, 4; 2007 Acts, ch 186, §8; 2008 Acts, ch 1011, §4, 9; 2008 Acts, ch 1131, §2 – 4; 2008 Acts, ch 1178, §8, 17; 2009 Acts, ch 118, §6, 12; 2009 Acts, ch 133, §136 – 139; 2009 Acts, ch 161, §3, 4; 2010 Acts, ch 1107, §1, 2; 2011 Acts, ch 41, §2, 5, 7, 18, 19, 23 – 25; 2011 Acts, ch 105, §1 – 3; 2011 Acts, ch 113, §57, 60; 2011 Acts, ch 131, §137, 139, 140, 142

2008 amendment to subsection 28, paragraph b, takes effect April 29, 2008, and applies retroactively to January 1, 2008, for the tax year beginning on that date; 2008 Acts, ch 1178, §17

2008 amendment to subsection 51 takes effect May 5, 2008, and applies retroactively to January 1, 2008, for tax years beginning on or after that date; 2008 Acts, ch 1131, §4

Subsection 53 takes effect March 11, 2008, and applies retroactively to January 1, 2008, for tax years beginning on or after that date; 2008 Acts, ch 1011, §9

Subsection 23 takes effect January 1, 2010, and applies on or after that date; 2009 Acts, ch 161, §4

Subsection 46A applies retroactively to January 1, 2010, for tax years beginning on or after that date; 2010 Acts, ch 1107, §2  
 \*§35A.8A repealed effective June 30, 2011; corrective legislation is pending  
 2011 strike of former subsection 29A takes effect April 12, 2011, and applies retroactively to tax years beginning on or after January 1, 2011; 2011 Acts, ch 41, §5, 7  
 Subsections 39A and 39B take effect April 12, 2011, and apply retroactively to January 1, 2008, for tax years ending on or after that date; 2011 Acts, ch 41, §23, 24  
 2011 amendment to subsection 40 takes effect May 11, 2011, and applies retroactively to January 1, 2010, for tax years beginning on or after that date; 2011 Acts, ch 105, §3  
 Subsection 42A takes effect May 11, 2011, and applies retroactively to January 1, 2011, for tax years beginning on or after that date; 2011 Acts, ch 105, §3  
 2011 amendment to subsection 53 takes effect April 12, 2011, and applies retroactively to January 1, 2009, for tax years beginning on or after that date and before January 1, 2010; 2011 Acts, ch 41, §23, 25  
 Subsection 54 takes effect January 1, 2012; 2011 Acts, ch 113, §60  
 Subsection 55 takes effect July 27, 2011, and applies retroactively to January 1, 2008, for tax years beginning on or after that date and before January 1, 2009; refunds limited to amounts paid in excess of tax liability; special filing provisions; 2011 Acts, ch 131, §138, 139, 143  
 Subsection 56 takes effect July 27, 2011, and applies retroactively to January 1, 2008, for tax years beginning on or after that date and before January 1, 2009; refunds limited to amounts paid in excess of tax liability; special filing provisions; 2011 Acts, ch 131, §141, 142, 143  
 Subsection 29A stricken  
 NEW subsections 39A and 39B  
 Subsection 40 amended  
 NEW subsection 42A  
 Subsection 53 amended  
 NEW subsections 54 - 56

#### **422.8 Allocation of income earned in Iowa and other states.**

Under rules prescribed by the director, net income of individuals, estates, and trusts shall be allocated as follows:

1. The amount of income tax paid to another state or foreign country by a resident taxpayer of this state on income derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this chapter, except that the credit shall not exceed what the amount of the Iowa tax would have been on the same income which was taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: Income earned outside of Iowa and taxed by another state or foreign country shall be divided by the total income of the resident taxpayer of Iowa. This quotient multiplied times the net Iowa tax as determined on the total income of the taxpayer as if entirely earned in Iowa shall be the maximum tax credit against the Iowa net tax.

2. *a.* Nonresident's net income allocated to Iowa is the net income, or portion of net income, which is derived from a business, trade, profession, or occupation carried on within this state or income from any property, trust, estate, or other source within Iowa. However, income derived from a business, trade, profession, or occupation carried on within this state and income from any property, trust, estate, or other source within Iowa shall not include distributions from pensions, including defined benefit or defined contribution plans, annuities, individual retirement accounts, and deferred compensation plans or any earnings attributable thereto so long as the distribution is directly related to an individual's documented retirement and received while the individual is a nonresident of this state. If a business, trade, profession, or occupation is carried on partly within and partly without the state, only the portion of the net income which is fairly and equitably attributable to that part of the business, trade, profession, or occupation carried on within the state is allocated to Iowa for purposes of section 422.5, subsection 1, paragraph "j", and section 422.13 and income from any property, trust, estate, or other source partly within and partly without the state is allocated to Iowa in the same manner, except that annuities, interest on bank deposits and interest-bearing obligations, and dividends are allocated to Iowa only to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state.

*b.* A resident's income allocable to Iowa is the income determined under section 422.7 reduced by items of income and expenses from an S corporation that carries on business within and without the state when those items of income and expenses pass directly to the shareholders under provisions of the Internal Revenue Code. These items of income and expenses are increased by the greater of the following:

(1) The net income or loss of the corporation which is fairly and equitably attributable to this state under section 422.33, subsections 2 and 3.

(2) Any cash or the value of property distributions which are made only to the extent that they are paid from income upon which Iowa income tax has not been paid, as determined

under rules of the director, reduced by the amount of any of these distributions that are made to enable the shareholder to pay federal income tax on items of income, loss, and expenses from the corporation.

3. Taxable income of resident and nonresident estates and trusts shall be allocated in the same manner as individuals.

4. The amount of minimum tax paid to another state or foreign country by a resident taxpayer of this state from preference items derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this division except that the credit shall not exceed what the amount of state alternative minimum tax would have been on the same preference items which were taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: The total of preference items earned outside of Iowa and taxed by another state or foreign country shall be divided by the total of preference items of the resident taxpayer of Iowa. In computing this quotient, those items excludable under section 422.5, subsection 2, paragraph “b”, subparagraph (1), shall not be used in computing the preference items. This quotient multiplied times the net state alternative minimum tax as determined in section 422.5, subsection 2, on the total of preference items as if entirely earned in Iowa shall be the maximum tax credit against the Iowa alternative minimum tax. However, the maximum tax credit will not be allowed to the extent that the minimum tax imposed by the other state or foreign country is less than the maximum tax credit computed above.

5. a. The director may, in accordance with the provisions of this subsection, and when cost-efficient, administratively feasible, and of mutual benefit to both states, enter into reciprocal agreements with tax administration agencies of other states to further tax administration and eliminate duplicate withholding by exempting from Iowa taxation income earned from personal services in Iowa by residents of another state, if the other state provides a tax exemption for the same type of income earned from personal services by Iowa residents in the other state. For purposes of this subsection, “*income earned from personal services*” means wages, salaries, commissions, and tips, and earned income from other sources. This subsection does not authorize the department to withhold taxes on deferred compensation payments, pension distributions, and annuity payments when paid to a nonresident of the state of Iowa. All the terms of the agreements shall be described in the rules adopted by the department.

b. A reciprocal agreement entered into on or after April 4, 2002, with a tax administration agency of another state shall not take effect until such agreement has been authorized by a constitutional majority of each house of the general assembly and approved by the governor. A reciprocal agreement in effect on or after January 1, 2002, shall not be terminated by the state of Iowa unless the termination has been authorized by a constitutional majority of each house of the general assembly and approved by the governor. An amendment to an existing reciprocal agreement does not constitute a new agreement.

6. If the resident or part-year resident is a shareholder of an S corporation which has in effect an election under subchapter S of the Internal Revenue Code, subsections 1 and 3 do not apply to any income taxes paid to another state or foreign country on the income from the corporation which has in effect an election under subchapter S of the Internal Revenue Code.

[C35, §6943-f8; C39, §6943.037, 6943.040, 6943.050; C46, 50, 54, 58, §422.5, 422.8, 422.18; C62, 66, 71, 73, 75, 77, 79, 81, §422.5, 422.8; 82 Acts, ch 1226, §3, 6]

83 Acts, ch 16, §1, 2; 85 Acts, ch 243, §3; 88 Acts, ch 1028, §16; 92 Acts, ch 1224, §1, 2, 4; 94 Acts, ch 1149, §1, 2; 96 Acts, ch 1197, §16 – 18; 97 Acts, ch 111, §5, 6, 8; 2002 Acts, ch 1005, §10, 11; 2002 Acts, ch 1069, §5, 12, 14; 2009 Acts, ch 133, §242; 2011 Acts, ch 25, §143

Code editor directive applied

#### **422.9 Deductions from net income.**

In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

1. An optional standard deduction, after deduction of federal income tax, equal to one thousand two hundred thirty dollars for a married person who files separately or a single

person or equal to three thousand thirty dollars for a husband and wife who file a joint return, a surviving spouse, or a head of household. The optional standard deduction shall not exceed the amount remaining after deduction of the federal income tax. The amount of federal income tax deducted shall be computed as provided in subsection 2, paragraph “b”.

2. The total of contributions, interest, taxes, medical expense, nonbusiness losses, and miscellaneous expenses deductible for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

a. Subtract the deduction for Iowa income taxes.

b. Add the amount of federal income taxes paid or accrued, as the case may be, during the tax year and subtract any federal income tax refunds received during the tax year. Where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion of the total paid or accrued, as the case may be, by each. Federal income taxes paid for a tax year in which an Iowa return was not required to be filed shall not be added and federal income tax refunds received from a tax year in which an Iowa return was not required to be filed shall not be subtracted.

c. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the biological mother which are incident to the child’s birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by a child-placing agency licensed under chapter 238 or by a person making an independent placement according to the provisions of chapter 600.

d. Add an additional deduction for mileage incurred by the taxpayer in voluntary work for a charitable organization consisting of the excess of the state employee mileage reimbursement over the amount deductible for federal income tax purposes. The deduction shall be proven by the keeping of a contemporaneous diary by the person throughout the period of the voluntary work in the tax year.

e. Add the amount, not to exceed five thousand dollars, of expenses not otherwise deductible under this section actually incurred in the home of the taxpayer for the care of a person who is the grandchild, child, parent, or grandparent of the taxpayer or the taxpayer’s spouse and who is unable, by reason of physical or mental disability, to live independently and is receiving, or would be eligible to receive if living in a health care facility licensed under chapter 135C, medical assistance benefits under chapter 249A. In the event that the person being cared for is receiving assistance benefits under chapter 239B, the expenses not otherwise deductible shall be the net difference between the expenses actually incurred in caring for the person and the assistance benefits received under chapter 239B.

f. Add the amount of the mortgage interest credit allowable for the tax year under section 25 of the Internal Revenue Code to the extent the credit decreased the amount of interest deductible under section 163(g) of the Internal Revenue Code.

g. If the taxpayer has a deduction for medical care expenses under section 213 of the Internal Revenue Code, the taxpayer shall recompute for the purposes of this subsection the amount of the deduction under section 213 by excluding from medical care, as defined in section 213, the amount subtracted under section 422.7, subsection 29.

h. For purposes of calculating the deductions in this subsection that are authorized under the Internal Revenue Code, and to the extent that any of such deductions is determined by an individual’s federal adjusted gross income, the individual’s federal adjusted gross income is computed in accordance with section 422.7, subsections 39, 39A, 39B, and 53.

i. The deduction for state sales and use taxes is allowable only if the taxpayer elected to deduct the state sales and use taxes in lieu of state income taxes under section 164 of the Internal Revenue Code. A deduction for state sales and use taxes is not allowed if the taxpayer has taken the deduction for state income taxes or claimed the standard deduction under section 63 of the Internal Revenue Code. This paragraph applies to taxable years beginning after December 31, 2003, and before January 1, 2008, and to taxable years beginning after December 31, 2009, and before January 1, 2012.

3. If, after applying all of the adjustments provided for in section 422.7, the allocation provisions of section 422.8, and the deductions allowable in this section subject to the

modifications provided in section 172(d) of the Internal Revenue Code, the taxable income results in a net operating loss, the net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years for an individual taxpayer with a casualty or theft property loss or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the taxpayer first earned income in Iowa whichever year is the later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph “a” or “d” or if not required to be carried back shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. Notwithstanding paragraph “a”, for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

4. Where married persons file separately, both must use the optional standard deduction if either elects to use it, and both must claim itemized deductions if either elects to claim itemized deductions.

5. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa under the rules prescribed by the director.

6. In determining the amount of deduction for federal income tax under subsection 1 or subsection 2, paragraph “b”, for tax years beginning in the 2001 calendar year, the amount of the deduction shall not be adjusted by the amount received during the tax year of the advanced refund of the rate reduction tax credit provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, and the advanced refund of such credit shall not be subject to taxation under this division.

7. In determining the amount of deduction for federal income tax under subsection 1 or subsection 2, paragraph “b”, for tax years beginning in the 2002 calendar year, the amount of the deduction for the tax year shall not be adjusted by the amount of the rate reduction credit received in the tax year to the extent that the credit is attributable to the rate reduction credit provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, and the amount of such credit shall not be taxable under this division.

8. In determining the amount of deduction for federal income tax under subsection 1 or subsection 2, paragraph “b”, for tax years beginning in the 2008 calendar year, the amount of the deduction for the tax year shall not be adjusted by the amount received during the tax year of the income tax rebate provided pursuant to the federal Recovery Rebates and Economic Stimulus for the American People Act of 2008, Pub. L. No. 110-185, and the amount of such income tax rebate shall not be subject to taxation under this division.

9. A taxpayer is allowed to take the deduction for disaster-related casualty losses under section 165(h) of the Internal Revenue Code, as modified by the Heartland Disaster Relief Act of 2008, Pub. L. No. 110-343, in computing net income for state tax purposes.

[C35, §6943-f9; C39, §6943.041; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.9; 82 Acts, ch 1023, §9, 10, 30, 32, ch 1192, §1, 2, ch 1226, §4, 6]

83 Acts, ch 179, §7, 22; 84 Acts, ch 1305, §31; 87 Acts, ch 233, §493; 87 Acts, 2nd Ex, ch 1, §7 – 9; 88 Acts, ch 1028, §17 – 20; 89 Acts, ch 268, §5; 91 Acts, ch 159, §9; 91 Acts, ch 210, §2; 92 Acts, ch 1222, §4, 6; 94 Acts, ch 1046, §9; 94 Acts, ch 1166, §4 – 6, 12; 95 Acts, ch 5, §2, 14; 96 Acts, ch 1168, §1, 3; 97 Acts, ch 41, §32; 97 Acts, ch 135, §5, 9; 98 Acts, ch 1078, §5, 12; 99 Acts, ch 95, §5, 6, 12, 13; 99 Acts, ch 114, §25; 2001 Acts, ch 132, §22, 24; 2001 Acts, 1st Ex, ch 3, §1, 2; 2002 Acts, ch 1069, §6, 13, 14; 2003 Acts, ch 139, §6, 11, 12; 2003 Acts, ch 142, §7, 11; 2005 Acts, ch 24, §5, 10, 11; 2005 Acts, ch 140, §37 – 39, 73; 2006 Acts, ch 1158, §13; 2008

Acts, ch 1027, §1, 3; 2009 Acts, ch 60, §4, 17; 2011 Acts, ch 41, §3, 5, 20, 23, 24; 2011 Acts, ch 131, §144, 146

2008 amendment adding new subsection 8 applies retroactively to January 1, 2008, for tax years beginning on or after January 1, 2008, and before January 1, 2009; 2008 Acts, ch 1027, §3

2009 amendment to subsection 4 applies retroactively to January 1, 2009, for tax years beginning on or after that date; 2009 Acts, ch 60, §17

2011 amendment to subsection 2, paragraph h, takes effect April 12, 2011, and applies retroactively to January 1, 2008, for tax years ending on or after that date; 2011 Acts, ch 41, §23, 24

Subsection 9 takes effect July 27, 2011, and applies retroactively to January 1, 2008, for tax years beginning on or after that date and before January 1, 2009; refunds limited to amounts paid in excess of tax liability, exclusive of interest; 2011 Acts, ch 131, §145, 146

Subsection 2, paragraphs h and i amended

NEW subsection 9

#### **422.10 Research activities credit.**

1. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state.

a. (1) For individuals, the credit equals the sum of the following:

(a) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(b) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph "a", subparagraph (1), subparagraph division (a), a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in section 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in section 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are four and fifty-five hundredths percent and one and ninety-five hundredths percent, respectively.

2. For purposes of this section, an individual may claim a research credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, S corporation, limited liability company, estate, or trust.

3. a. For purposes of this section, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative simplified credit such amounts are for research conducted within this state.

b. For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2011.

4. Any credit in excess of the tax liability imposed by section 422.5 less the amounts of nonrefundable credits allowed under this division for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following taxable year.

5. An individual may claim an additional research activities credit authorized pursuant to section 15.335 if the eligible business is a partnership, S corporation, limited liability company, or estate or trust which elects to have the income taxed directly to the individual. The amount of the credit shall be as provided in section 15.335.

6. The department shall by February 15 of each year issue an annual report to the general assembly containing the total amount of all claims made by employers under this section

and the portion of the claims issued as refunds, for all claims processed during the previous calendar year. The report shall contain the name of each claimant for whom a tax credit in excess of five hundred thousand dollars was issued and the amount of the credit received.

83 Acts, ch 179, §8, 25; 85 Acts, ch 230, §5; 86 Acts, ch 1007, §22; 87 Acts, 2nd Ex, ch 1, §10; 88 Acts, ch 1028, §21; 90 Acts, ch 1171, §3; 91 Acts, ch 159, §10; 91 Acts, ch 215, §2; 93 Acts, ch 113, §2, 4; 94 Acts, ch 1166, §7, 11; 95 Acts, ch 152, §4, 7; 97 Acts, ch 23, §43; 97 Acts, ch 135, §6, 9; 98 Acts, ch 1078, §6, 10; 99 Acts, ch 95, §7, 12, 13; 2000 Acts, ch 1146, §4, 9, 11; 2000 Acts, ch 1194, §9, 21; 2001 Acts, ch 127, §6, 9, 10; 2002 Acts, ch 1069, §7, 10, 14; 2003 Acts, ch 139, §7, 11, 12; 2004 Acts, ch 1073, §17; 2005 Acts, ch 24, §6, 10, 11; 2006 Acts, ch 1140, §5, 10, 11; 2006 Acts, ch 1158, §14, 15; 2007 Acts, ch 12, §4, 7, 8; 2008 Acts, ch 1011, §5, 9; 2009 Acts, ch 179, §131, 153, 233; 2011 Acts, ch 41, §11, 12, 14, 16

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

2011 amendments to subsections 1 and 3 take effect April 12, 2011, and apply retroactively to January 1, 2010, for tax years beginning on or after that date; 2011 Acts, ch 41, §14, 16

Subsection 1, paragraphs b and c amended

Subsection 3 amended

#### **422.11N Ethanol promotion tax credit.**

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

a. “E-85 gasoline”, “ethanol”, “ethanol blended gasoline”, “gasoline”, “retail dealer”, and “retail motor fuel site” mean the same as defined in section 214A.1.

b. “Flexible fuel vehicle” means the same as defined in section 452A.2.

c. “Motor fuel” means the same as defined in section 452A.2.

d. “Motor fuel pump” means the same as defined in section 214.1.

e. “Sell” means to sell on a retail basis.

f. “Tax credit” means the ethanol promotion tax credit as provided in this section.

2. The special terms provided in section 452A.31 shall also apply to this section.

3. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an ethanol promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this section. In order to be eligible, all of the following must apply:

a. The taxpayer is a retail dealer who sells and dispenses ethanol blended gasoline through a motor fuel pump located at the retail dealer’s retail motor fuel site during the determination period or parts of the determination periods for which the tax credit is claimed as provided in this section.

b. The retail dealer complies with requirements of the department to administer this section.

4. a. When first claiming the tax credit, the retail dealer shall elect to compute and claim the tax credit on a company-wide basis or site-by-site basis in the same manner as provided in section 452A.33.

(1) In making a company-wide election, the retail dealer must compute and claim the tax credit based on calculations as provided in this section for all retail motor fuel sites where the retail dealer sells and dispenses motor fuel on a retail basis. The retail dealer shall not claim the tax credit based on a calculation which does not include all such retail motor fuel sites. A retail dealer shall use the company-wide election in order to calculate the retail dealer’s biofuel threshold percentage as provided in subsection 5, paragraph “b”.

(2) In making a site-by-site election, the retail dealer must compute and claim the tax credit based on calculations as provided in this section for each retail motor fuel site where the retail dealer sells and dispenses motor fuel on a retail basis. The retail dealer shall not claim the tax credit based on a calculation which includes two or more retail motor fuel sites. Nothing in this subparagraph requires the retail dealer to compute or claim a tax credit for a particular retail motor fuel site. The retail dealer shall not use the site-by-site election in order to calculate the retail dealer’s biofuel threshold percentage as provided in subsection 5, paragraph “b”.

b. Once the retail dealer makes an election as provided in paragraph “a”, the retail dealer shall not change the election without the written consent of the department.

5. In order to receive the tax credit, the retail dealer must calculate all of the following:

a. The retail dealer's biofuel distribution percentage which is the sum of the retail dealer's total ethanol gallonage plus the retail dealer's total biodiesel gallonage expressed as a percentage of the retail dealer's total gasoline gallonage, in the retail dealer's applicable determination period.

b. The retail dealer's biofuel threshold percentage is as follows:

(1) For a retail dealer who sells and dispenses more than two hundred thousand gallons of motor fuel in an applicable determination period, the retail dealer's biofuel threshold percentage is as follows:

(a) Ten percent for the determination period beginning on January 1, 2009, and ending December 31, 2009.

(b) Eleven percent for the determination period beginning on January 1, 2010, and ending December 31, 2010.

(c) Twelve percent for the determination period beginning on January 1, 2011, and ending December 31, 2011.

(d) Thirteen percent for the determination period beginning on January 1, 2012, and ending December 31, 2012.

(e) Fourteen percent for the determination period beginning on January 1, 2013, and ending December 31, 2013.

(f) Fifteen percent for the determination period beginning on January 1, 2014, and ending December 31, 2014.

(g) Seventeen percent for the determination period beginning on January 1, 2015, and ending December 31, 2015.

(h) Nineteen percent for the determination period beginning on January 1, 2016, and ending December 31, 2016.

(i) Twenty-one percent for the determination period beginning on January 1, 2017, and ending December 31, 2017.

(j) Twenty-three percent for the determination period beginning on January 1, 2018, and ending December 31, 2018.

(k) Twenty-five percent for each determination period in the period beginning on January 1, 2019, and ending on December 31, 2020.

(2) For a retail dealer who sells and dispenses two hundred thousand gallons of motor fuel or less in an applicable determination period, the biofuel threshold percentages shall be:

(a) Six percent for the determination period beginning on January 1, 2009, and ending December 31, 2009.

(b) Six percent for the determination period beginning on January 1, 2010, and ending December 31, 2010.

(c) Ten percent for the determination period beginning on January 1, 2011, and ending December 31, 2011.

(d) Eleven percent for the determination period beginning on January 1, 2012, and ending December 31, 2012.

(e) Twelve percent for the determination period beginning on January 1, 2013, and ending December 31, 2013.

(f) Thirteen percent for the determination period beginning on January 1, 2014, and ending December 31, 2014.

(g) Fourteen percent for the determination period beginning on January 1, 2015, and ending December 31, 2015.

(h) Fifteen percent for the determination period beginning on January 1, 2016, and ending December 31, 2016.

(i) Seventeen percent for the determination period beginning on January 1, 2017, and ending December 31, 2017.

(j) Nineteen percent for the determination period beginning on January 1, 2018, and ending December 31, 2018.

(k) Twenty-one percent for the determination period beginning on January 1, 2019, and ending December 31, 2019.

(l) Twenty-five percent for the determination period beginning on January 1, 2020, and ending December 31, 2020.

(3) (a) Notwithstanding paragraph “a”, the governor may adjust a biofuel threshold percentage for a determination period if the governor finds that exigent circumstances exist. Exigent circumstances exist due to potential substantial economic injury to the state’s economy. Exigent circumstances also exist if it is probable that a substantial number of retail dealers cannot comply with a biofuel threshold percentage during a determination period due to any of the following:

(i) Less than the target number of flexible fuel vehicles are registered under chapter 321. The target numbers of flexible fuel vehicles are as follows:

- (A) On January 1, 2011, two hundred fifty thousand.
- (B) On January 1, 2014, three hundred fifty thousand.
- (C) On January 1, 2017, four hundred fifty thousand.
- (D) On January 1, 2019, five hundred fifty thousand.

(ii) A shortage in the biofuel feedstock resulting in a dramatic decrease in biofuel inventories.

(b) If the governor finds that exigent circumstances exist, the governor may reduce the applicable biofuel threshold percentage by replacing it with an adjusted biofuel threshold percentage. The governor shall consult with the department of revenue and the office of renewable fuels and coproducts pursuant to section 159A.3. The governor shall make the adjustment by giving notice of intent to issue a proclamation which shall take effect not earlier than thirty-five days after publication in the Iowa administrative bulletin of a notice to issue the proclamation. The governor shall provide a period of notice and comment in the same manner as provided in section 17A.4, subsection 1. The adjusted biofuel threshold percentage shall be effective for the following determination period.

c. The retail dealer’s biofuel threshold percentage disparity which is a positive percentage difference obtained by taking the minuend which is the retail dealer’s biofuel threshold percentage and subtracting from it the subtrahend which is the retail dealer’s biofuel distribution percentage, in the retail dealer’s applicable determination period.

6. a. For a retail dealer whose tax year is the same as a determination period beginning on January 1 and ending on December 31, the retail dealer’s tax credit is calculated by multiplying the retail dealer’s total ethanol gallonage by a tax credit rate, which may be adjusted based on the retail dealer’s biofuel threshold percentage disparity. The tax credit rate is as follows:

(1) For any tax year in which the retail dealer has attained a biofuel threshold percentage for the determination period, the tax credit rate is eight cents.

(2) For any tax year in which the retail dealer has not attained a biofuel threshold percentage for the determination period, the tax credit rate shall be adjusted based on the retail dealer’s biofuel threshold percentage disparity. The amount of the adjusted tax credit rate is as follows:

(a) If the retail dealer’s biofuel threshold percentage disparity equals two percent or less, the tax credit rate is six cents.

(b) If the retail dealer’s biofuel threshold percentage disparity equals more than two percent but not more than four percent, the tax credit rate is as follows:

- (i) For calendar year 2011, two and one-half cents.
- (ii) For calendar year 2012 and for each subsequent calendar year, four cents.

(c) A retail dealer is not eligible for a tax credit if the retail dealer’s biofuel threshold percentage disparity equals more than four percent.

b. For a retail dealer whose tax year is not the same as a determination period beginning on January 1 and ending on December 31, the retail dealer shall calculate the tax credit as follows:

(1) If a retail dealer has not claimed a tax credit in the retail dealer’s previous tax year, the retail dealer may claim the tax credit in the retail dealer’s current tax year for that period beginning on January 1 of the retail dealer’s previous tax year to the last day of the retail dealer’s previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in paragraph “a”.

(2) (a) For the period beginning on the first day of the retail dealer’s tax year until

December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in paragraph “a”.

(b) For the period beginning on January 1 to the end of the retail dealer’s tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in paragraph “a”.

7. a. A retail dealer is eligible to claim an ethanol promotion tax credit as provided in this section even though the retail dealer claims one or all of the following related tax credits:

- (1) The E-85 gasoline promotion tax credit pursuant to section 422.110.
- (2) The E-15 plus gasoline promotion tax credit pursuant to section 422.11Y.

b. The retail dealer may claim the ethanol promotion tax credit and one or more of the related tax credits as provided in paragraph “a” for the same tax year and for the same ethanol gallonage.

8. Any credit in excess of the retail dealer’s tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer’s final, completed return credited to the tax liability for the following tax year.

9. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of a partnership, limited liability company, S corporation, estate, or trust.

10. This section is repealed on January 1, 2021.

2006 Acts, ch 1142, §39, 49; 2006 Acts, ch 1175, §10 – 14, 17, 23; 2007 Acts, ch 126, §66; 2007 Acts, ch 161, §15, 22; 2010 Acts, ch 1031, §248; 2011 Acts, ch 25, §143; 2011 Acts, ch 113, §3 – 9, 13, 14

For provisions relating to availability and calculation of an ethanol promotion tax credit in calendar year 2020 for a retail dealer whose tax year ends prior to December 31, 2020, see 2006 Acts, ch 1142, §49; 2006 Acts, ch 1175, §17; 2011 Acts, ch 113, §11, 13, 14

2011 amendments by 2011 Acts, ch 113, §3 – 9, take effect May 26, 2011, and apply retroactively to tax years beginning on and after January 1, 2011; 2011 Acts, ch 113, §13, 14

Code editor directive applied

Subsection 1, paragraph a amended

Subsection 3, paragraph a amended

NEW subsection 4 and former subsections 4 – 9 renumbered as 5 – 10

Subsection 5, paragraph d stricken

Subsection 6, paragraph a, subparagraph (1) amended

Subsection 6, paragraph a, subparagraph (2), subparagraph divisions (a) and (b) amended

Subsection 7 amended

#### **422.110 E-85 gasoline promotion tax credit.**

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

a. “E-85 gasoline”, “ethanol”, “gasoline”, and “retail dealer” mean the same as defined in section 214A.1.

b. “Motor fuel pump” means the same as defined in section 214.1.

c. “Sell” means to sell on a retail basis.

d. “Tax credit” means the E-85 gasoline promotion tax credit as provided in this section.

2. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an E-85 gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer who sells and dispenses E-85 gasoline through a motor fuel pump located at the retail dealer’s retail motor fuel site during the calendar year or parts of the calendar year for which the tax credit is claimed as provided in this section.

(2) The retail dealer complies with requirements of the department to administer this section.

b. The tax credit shall apply to E-85 gasoline that meets the standards provided in section 214A.2.

3. For a retail dealer whose tax year is on a calendar year basis, the retail dealer shall calculate the amount of the tax credit by multiplying a designated rate of sixteen cents by the retail dealer’s total E-85 gasoline gallonage as provided in sections 452A.31 and 452A.32.

4. For a retail dealer whose tax year is not on a calendar year basis, the retail dealer shall calculate the tax credit as follows:

a. If a retail dealer has not claimed a tax credit in the retail dealer’s previous tax year, the

retail dealer may claim the tax credit in the retail dealer's current tax year for that period beginning on January 1 of the retail dealer's previous tax year to the last day of the retail dealer's previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in subsection 3.

b. (1) For the period beginning on the first day of the retail dealer's tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in subsection 3.

(2) For the period beginning on January 1 to the end of the retail dealer's tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in subsection 3.

5. a. A retail dealer is eligible to claim an E-85 gasoline promotion tax credit as provided in this section even though the retail dealer claims one or all of the following related tax credits:

(1) The ethanol promotion tax credit pursuant to section 422.11N.

(2) The E-15 plus gasoline promotion tax credit pursuant to section 422.11Y.

b. (1) The retail dealer may claim the E-85 gasoline promotion tax credit and one or more of the related tax credits as provided in paragraph "a" for the same tax year.

(2) The retail dealer may claim the ethanol promotion tax credit as provided in paragraph "a" for the same ethanol gallonage used to calculate and claim the E-85 gasoline promotion tax credit.

6. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

7. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

8. This section is repealed on January 1, 2018.

2006 Acts, ch 1142, §40, 48, 49; 2006 Acts, ch 1175, §15, 23; 2007 Acts, ch 126, §67; 2007 Acts, ch 161, §16, 22; 2011 Acts, ch 113, §15 – 18, 22, 23; 2011 Acts, ch 131, §62, 78, 79

For provisions relating to availability and calculation of an E-85 gasoline promotion tax credit in calendar year 2017 for a retail dealer whose tax year ends prior to December 31, 2017, see 2006 Acts, ch 1142, §49; 2011 Acts, ch 113, §20, 22, 23

2011 amendments to subsections 2, 3, 5, and 8 take effect January 1, 2012, and apply to tax years beginning on and after that date; 2011 Acts, ch 113, §22, 23; 2011 Acts, ch 131, §78, 79

Subsection 2 amended

Subsection 3 stricken and rewritten

Subsections 5 and 8 amended

#### **422.11P Biodiesel blended fuel tax credit.**

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

a. "Biodiesel blended fuel", "diesel fuel", and "retail dealer" mean the same as defined in section 214A.1.

b. "Motor fuel pump" means the same as defined in section 214.1.

c. "Sell" means to sell on a retail basis.

d. "Tax credit" means a biodiesel blended fuel tax credit as provided in this section.

2. For purposes of this section, biodiesel blended fuel is classified in the same manner as provided in section 214A.2.

3. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a biodiesel blended fuel tax credit for each tax year that the taxpayer is eligible to claim a tax credit under this subsection.

a. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer who sells and dispenses qualifying biodiesel blended fuel through a motor fuel pump located at the retail dealer's retail motor fuel site during the calendar year or parts of the calendar years for which the tax credit is claimed as provided in this section.

(2) The retail dealer complies with requirements of the department established to administer this section.

b. The tax credit shall apply to biodiesel blended fuel classified as provided in this section, if the classification meets the standards provided in section 214A.2. In ensuring that biodiesel blended fuel meets the classification requirements of this section, the department shall take into account reasonable variances due to testing and other limitations.

4. For a retail dealer whose tax year is on a calendar year basis, the retail dealer shall calculate the amount of the tax credit by multiplying a designated rate by the retail dealer's total biodiesel blended fuel gallonage as provided in section 452A.31 which qualifies under this subsection.

a. In calendar year 2012, in order to qualify for the tax credit, the biodiesel blended fuel must be classified as B-2 or higher.

(1) For biodiesel blended fuel classified as B-2 or higher but not as high as B-5, the designated rate is two cents.

(2) For biodiesel blended fuel classified as B-5 or higher, the designated rate is four and one-half cents.

b. In calendar year 2013 and for each subsequent calendar year, in order to qualify for the tax credit, the biodiesel blended fuel must be classified as B-5 or higher. The designated rate for the qualifying biodiesel blended fuel is four and one-half cents.

5. For a retail dealer whose tax year is not on a calendar year basis, the retail dealer shall calculate the tax credit as follows:

a. If a retail dealer has not claimed a tax credit in the retail dealer's previous tax year, the retail dealer may claim the tax credit in the retail dealer's current tax year for that period beginning on January 1 of the retail dealer's previous tax year to the last day of the retail dealer's previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in subsection 4.

b. (1) For the period beginning on the first day of the retail dealer's tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in subsection 4.

(2) For the period beginning on January 1 to the end of the retail dealer's tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in subsection 4.

6. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

7. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

8. This section is repealed January 1, 2018.

2006 Acts, ch 1142, §41, 48, 49; 2007 Acts, ch 161, §17, 22; 2008 Acts, ch 1169, §31, 32, 34, 35; 2008 Acts, ch 1191, §137; 2011 Acts, ch 113, §24 – 28, 33, 34; 2011 Acts, ch 131, §94, 104

For provisions relating to requirements for claiming a biodiesel blended fuel tax credit in calendar year 2006 for a retail dealer whose tax year ends prior to December 31, 2006; and for availability and calculation of the tax credit for calendar year 2011 for a retail dealer whose tax year ends prior to December 31, 2011, see 2006 Acts, ch 1142, §49; 2011 Acts, ch 113, §30, 33, 34

2008 amendments to subsections 3 and 4 take effect January 1, 2009, and apply to tax years beginning on or after that date; 2008 Acts, ch 1169, §34, 35; 2008 Acts, ch 1191, §137

2011 amendments to this section take effect January 1, 2012, and apply to tax years beginning on or after that date; 2011 Acts, ch 113, §33, 34; 2011 Acts, ch 131, §94, 104

For provisions relating to requirements for claiming a biodiesel blended fuel tax credit in calendar year 2017 for a retail dealer whose tax year ends before December 31, 2017, see 2011 Acts, ch 113, §31, 33, 34

NEW subsection 2 and former subsection 2 amended and renumbered as 3

Former subsection 3 stricken, rewritten, and renumbered as 4

NEW subsection 5 and former subsections 4 and 5 renumbered as 6 and 7

Former subsection 6 amended and renumbered as 8

#### **422.11S School tuition organization tax credit.**

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a school tuition organization tax credit equal to sixty-five percent of the amount of the voluntary cash or noncash contributions made by the taxpayer during the tax year to a school tuition organization, subject to the total dollar value of the organization's tax

credit certificates as computed in subsection 7. The tax credit shall be claimed by use of a tax credit certificate as provided in subsection 6.

2. To be eligible for this credit, all of the following shall apply:

a. A deduction pursuant to section 170 of the Internal Revenue Code for any amount of the contribution is not taken for state tax purposes.

b. The contribution does not designate that any part of the contribution be used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

c. The value of a noncash contribution shall be appraised pursuant to rules of the director.

3. Any credit in excess of the tax liability is not refundable but the excess for the tax year may be credited to the tax liability for the following five tax years or until depleted, whichever is the earlier.

4. Married taxpayers who file separate returns or file separately on a combined return form must determine the tax credit under subsection 1 based upon their combined net income and allocate the total credit amount to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa must determine their tax credit in the ratio of their Iowa source net income to their all source net income. Nonresidents or part-year residents who are married and elect to file separate returns or to file separately on a combined return form must allocate the tax credit between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income of the taxpayers.

5. For purposes of this section:

a. "*Eligible student*" means a student who is a member of a household whose total annual income during the calendar year before the student receives a tuition grant for purposes of this section does not exceed an amount equal to three times the most recently published federal poverty guidelines in the federal register by the United States department of health and human services.

b. "*Qualified school*" means a nonpublic elementary or secondary school in this state which is accredited under section 256.11 and adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216.

c. "*School tuition organization*" means a charitable organization in this state that is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code and that does all of the following:

(1) Allocates at least ninety percent of its annual revenue in tuition grants for children to allow them to attend a qualified school of their parents' choice.

(2) Only awards tuition grants to children who reside in Iowa.

(3) Provides tuition grants to students without limiting availability to only students of one school.

(4) Only provides tuition grants to eligible students.

(5) Prepares an annual reviewed financial statement certified by a public accounting firm.

6. a. In order for the taxpayer to claim the school tuition organization tax credit under subsection 1, a tax credit certificate issued by the school tuition organization to which the contribution was made shall be attached to the person's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the amount of the credit, and other information required by the department.

b. The department shall authorize a school tuition organization to issue tax credit certificates for contributions made to the school tuition organization. The aggregate amount of tax credit certificates that the department shall authorize for a school tuition organization for a tax year shall be determined for that organization pursuant to subsection 7. However, a school tuition organization shall not be authorized to issue tax credit certificates unless the organization is controlled by a board of directors consisting of seven members. The names and addresses of the members shall be provided to the department and shall be made available by the department to the public, notwithstanding any state confidentiality restrictions.

c. Pursuant to rules of the department, a school tuition organization shall initially register with the department. The organization's registration shall include proof of section 501(c)(3)

status and provide a list of the schools the school tuition organization serves. Once the school tuition organization has registered, it is not required to subsequently register unless the schools it serves changes.

d. Each school that is served by a school tuition organization shall submit a participation form annually to the department by November 1 providing the following information:

(1) Certified enrollment as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.

(2) The school tuition organization that represents the school. A school shall only be represented by one school tuition organization.

7. a. For purposes of this subsection:

(1) “*Certified enrollment*” means the enrollment at schools served by school tuition organizations as indicated by participation forms provided to the department each October.

(2) “*Total approved tax credits*” means for the tax year beginning in the 2006 calendar year, two million five hundred thousand dollars, for the tax year beginning in the 2007 calendar year, five million dollars, and for tax years beginning on or after January 1, 2008, seven million five hundred thousand dollars. However, for tax years beginning on or after January 1, 2012, and only if legislation is enacted by the Eighty-fourth General Assembly, 2011 session, amending section 257.8, subsections 1 and 2, to establish both the state percent of growth and the categorical state percent of growth for the budget year beginning July 1, 2012, at two percent, “*total approved tax credits*” means eight million seven hundred fifty thousand dollars.

(3) “*Tuition grant*” means grants to students to cover all or part of the tuition at a qualified school.

b. Each year by December 1, the department shall authorize school tuition organizations to issue tax credit certificates for the following tax year. However, for the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, shall authorize school tuition organizations to issue tax credit certificates for the 2006 calendar tax year. For the tax year beginning in the 2006 calendar year only, each school served by a school tuition organization shall submit a participation form to the department by August 1, 2006, providing the certified enrollment as of the third Friday of September 2005, along with the school tuition organization that represents the school. Tax credit certificates available for issue by each school tuition organization shall be determined in the following manner:

(1) Total the certified enrollment of each participating qualified school to arrive at the total participating certified enrollment.

(2) Determine the per student tax credit available by dividing the total approved tax credits by the total participating certified enrollment.

(3) Multiply the per student tax credit by the total participating certified enrollment of each school tuition organization.

8. A school tuition organization that receives a voluntary cash or noncash contribution pursuant to this section shall report to the department, on a form prescribed by the department, by January 12 of each tax year all of the following information:

a. The name and address of the members and the chairperson of the governing board of the school tuition organization.

b. The total number and dollar value of contributions received and the total number and dollar value of the tax credits approved during the previous tax year.

c. A list of the individual donors for the previous tax year that includes the dollar value of each donation and the dollar value of each approved tax credit.

d. The total number of children utilizing tuition grants for the school year in progress and the total dollar value of the grants.

e. The name and address of each represented school at which tuition grants are currently being utilized, detailing the number of tuition grant students and the total dollar value of grants being utilized at each school served by the school tuition organization.

2006 Acts, ch 1163, §1, 2; 2007 Acts, ch 161, §20, 22; 2007 Acts, ch 186, §9 – 13, 31; 2007 Acts, ch 215, §111; 2011 Acts, ch 131, §95, 158

Subsection 7, paragraph a, subparagraph (2) amended

**422.11Y E-15 plus gasoline promotion tax credit.**

1. As used in this section, unless the context otherwise requires:
  - a. “E-85 gasoline”, “ethanol”, “gasoline”, “retail dealer”, and “retail motor fuel site” mean the same as defined in section 214A.1.
  - b. “Motor fuel pump” means the same as defined in section 214.1.
  - c. “Sell” means to sell on a retail basis.
  - d. “Tax credit” means the E-15 plus gasoline promotion tax credit as provided in this section.
2. For purposes of this section, ethanol blended gasoline is classified in the same manner as provided in section 214A.2.
3. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by the amount of the E-15 plus gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim a tax credit under this subsection.
  - a. In order to be eligible, all of the following must apply:
    - (1) The taxpayer is a retail dealer who sells and dispenses qualifying ethanol blended gasoline through a motor fuel pump located at the retail dealer’s retail motor fuel site during the calendar year or parts of the calendar years for which the tax credit is claimed as provided in this section.
    - (2) The retail dealer complies with requirements of the department established to administer this section.
      - b. The tax credit shall apply to ethanol blended gasoline classified as provided in this section, if the classification meets the standards provided in section 214A.2.
4. For a retail dealer whose tax year is on a calendar year basis, the retail dealer shall calculate the amount of the tax credit by multiplying a designated rate by the retail dealer’s total ethanol blended gasoline gallonage as provided in section 452A.31 which qualifies under this subsection.
  - a. In order to qualify for the tax credit, the ethanol blended gasoline must be classified as E-15 or higher but not classified as E-85.
  - b. The designated rate of the tax credit is as follows:
    - (1) For calendar year 2012, calendar year 2013, and calendar year 2014, three cents.
    - (2) For calendar year 2015, calendar year 2016, and calendar year 2017, two cents.
5. For a retail dealer whose tax year is not on a calendar year basis, the retail dealer shall calculate the tax credit as follows:
  - a. If a retail dealer has not claimed a tax credit in the retail dealer’s previous tax year, the retail dealer may claim the tax credit in the retail dealer’s current tax year for that period beginning on January 1 of the retail dealer’s previous tax year to the last day of the retail dealer’s previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in subsection 4.
    - b. (1) For the period beginning on the first day of the retail dealer’s tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in subsection 4.
    - (2) For the period beginning on January 1 to the end of the retail dealer’s tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in subsection 4.
6.
  - a. A retail dealer is eligible to claim an E-15 plus gasoline promotion tax credit as provided in this section even though the retail dealer claims one or all of the following related tax credits:
    - (1) The ethanol promotion tax credit pursuant to section 422.11N.
    - (2) The E-85 gasoline promotion tax credit pursuant to section 422.11O.
  - b. (1) The retail dealer may claim the E-15 plus gasoline promotion tax credit and one or more of the related tax credits as provided in paragraph “a” for the same tax year.
  - (2) The retail dealer may claim the ethanol promotion tax credit as provided in paragraph “a” for the same ethanol gallonage used to calculate and claim the E-15 plus gasoline promotion tax credit.
7. Any credit in excess of the retail dealer’s tax liability shall be refunded. In lieu of

claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

8. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

9. This section is repealed on January 1, 2018.

2011 Acts, ch 113, §35, 39, 40; 2011 Acts, ch 131, §63 – 65, 79, 158

Section takes effect July 1, 2011, and applies to tax years beginning on and after January 1, 2012; 2011 Acts, ch 113, §39, 40; 2011 Acts, ch 131, §79, 158; for provisions relating to requirements for claiming an E-15 plus gasoline promotion tax credit in calendar year 2017 for a retail dealer whose tax year ends prior to December 31, 2017, and for availability and calculation of the tax credit for calendar year 2011 for a retail dealer whose tax year ends prior to December 31, 2011, see 2011 Acts, ch 113, §37, 39, 40

NEW section

#### **422.11Z Innovation fund investment tax credits.**

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

2011 Acts, ch 130, §41, 47, 71

Section applies retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 130,

§47

NEW section

#### **422.12D Income tax checkoff for the Iowa state fair foundation fund.**

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate one dollar or more to be paid to the foundation fund of the Iowa state fair foundation as established in section 173.22. If the refund due on the return or the payment remitted with the return is insufficient to pay the amount designated by the taxpayer to the foundation fund, the amount designated shall be reduced to the remaining amount of the refund or the remaining amount remitted with the return. The designation of a contribution to the foundation fund under this section is irrevocable.

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the foundation fund on the tax return. The department, on or before January 31, shall transfer the total amount designated on the tax form due in the preceding year to the foundation fund.

3. The Iowa state fair board may authorize payment from the foundation fund for purposes of supporting foundation activities.

4. The department shall adopt rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of administrative services and accounts identified as owing under section 8A.504 and the political contribution allowed under section 68A.601 shall be satisfied.

93 Acts, ch 144, §3, 5, 6; 94 Acts, ch 1199, §3 – 6; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §45; 2011 Acts, ch 79, §7

Limitation on number of income tax return checkoffs; automatic repeal of certain checkoffs; see §422.12E

Subsections 1 and 2 amended

#### **422.16A Job training withholding — certification and transfer.**

Upon the completion by a business of its repayment obligation for a training project funded under chapter 260E, including a job training project funded under section 15A.8 or repaid in whole or in part by the supplemental new jobs credit from withholding under section 15A.7 or section 15E.197, the sponsoring community college shall report to the economic development authority the amount of withholding paid by the business to the community college during the final twelve months of withholding payments. The economic development authority shall notify the department of revenue of that amount. The department shall credit to the workforce development fund account established in section 15.342A twenty-five percent of that amount each quarter for a period of ten years. If the amount of withholding from the business or employer is insufficient, the department shall prorate the quarterly amount credited to the

workforce development fund account. The maximum amount from all employers which shall be transferred to the workforce development fund account in any year is four million dollars.

95 Acts, ch 184, §9; 96 Acts, ch 1180, §17; 97 Acts, ch 98, §1, 3; 98 Acts, ch 1225, §26; 2000 Acts, ch 1196, §9, 10; 2000 Acts, ch 1230, §23, 35; 2001 Acts, ch 188, §26; 2003 Acts, ch 145, §286; 2005 Acts, ch 150, §61, 69; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **422.20 Information confidential — penalty.**

1. It shall be unlawful for any present or former officer or employee of the state to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person shall also be dismissed from office or discharged from employment. Nothing herein shall prohibit turning over to duly authorized officers of the United States or tax officials of other states state information and income returns pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

2. It is unlawful for an officer, employee, or agent, or former officer, employee, or agent of the state to disclose to any person, except as authorized in subsection 1 of this section, any federal tax return or return information as defined in section 6103(b) of the Internal Revenue Code. It is unlawful for a person to whom any federal tax return or return information, as defined in section 6103(b) of the Internal Revenue Code, is disclosed in a manner unauthorized by subsection 1 of this section to thereafter print or publish in any manner not provided by law any such return or return information. A person violating this provision is guilty of a serious misdemeanor.

3. *a.* Unless otherwise expressly permitted by section 8A.504, section 8G.4, section 96.11, subsection 6, section 421.17, subsections 22, 23, and 26, subsection 27, paragraph "k", and subsection 31, section 252B.9, section 321.40, subsection 6, sections 321.120, 421.19, 421.28, 422.72, and 452A.63, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

*b.* This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

[C62, 66, 71, 73, 75, 77, 79, 81, §422.20]

87 Acts, ch 199, §6; 88 Acts, ch 1028, §27; 91 Acts, ch 159, §16; 97 Acts, ch 158, §12; 2003 Acts, ch 145, §256; 2008 Acts, ch 1113, §9, 11; 2010 Acts, ch 1146, §14, 26; 2010 Acts, ch 1193, §147, 149; 2011 Acts, ch 122, §51

Subsection 3, paragraph a amended

### DIVISION III

#### BUSINESS TAX ON CORPORATIONS

#### **422.32 Definitions.**

1. For the purpose of this division and unless otherwise required by the context:

a. “*Affiliated group*” means a group of corporations as defined in section 1504(a) of the Internal Revenue Code.

b. “*Business income*” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business; or income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations; or gain or loss resulting from the sale, exchange, or other disposition of real property or of tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer’s trade or business carried on in Iowa or operationally related to sources within Iowa, or the property was operationally related to sources outside this state and to the taxpayer’s trade or business carried on in Iowa; or gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer’s trade or business carried on in Iowa while the stock was owned by the taxpayer. A taxpayer may have more than one regular trade or business in determining whether income is business income.

(1) It is the intent of the general assembly to treat as apportionable business income all income that may be treated as apportionable business income under the Constitution of the United States.

(2) The filing of an Iowa income tax return on a combined report basis is neither allowed nor required by this paragraph “b”.

c. “*Commercial domicile*” means the principal place from which the trade or business of the taxpayer is directed or managed.

d. “*Corporation*” includes joint stock companies, and associations organized for pecuniary profit, and partnerships and limited liability companies taxed as corporations under the Internal Revenue Code.

e. “*Domestic corporation*” means any corporation organized under the laws of this state.

f. “*Foreign corporation*” means any corporation other than a domestic corporation.

g. “*Internal Revenue Code*” means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2011.

h. “*Nonbusiness income*” means all income other than business income.

i. “*State*” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

j. “*Taxable in another state*”. For purposes of allocation and apportionment of income under this division, a taxpayer is “*taxable in another state*” if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

k. “*Unitary business*” means a business carried on partly within and partly without a state where the portion of the business carried on within the state depends on or contributes to the business outside the state.

2. The words, terms, and phrases defined in division II, section 422.4, subsections 4 to 6, 8, 9, 13, and 15 to 17, when used in this division, shall have the meanings ascribed to them in said section except where the context clearly indicates a different meaning.

[C35, §6943-f28; C39, §6943.064; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.32; 81 Acts, ch 132, §7, 9; 82 Acts, ch 1023, §11, 30, ch 1103, §1111, ch 1203, §1]

83 Acts, ch 179, §12, 13, 21, 23; 84 Acts, ch 1305, §33, 34; 87 Acts, 1st Ex, ch 1, §5; 88 Acts, ch 1028, §30 – 32, 55; 92 Acts, ch 1151, §7; 94 Acts, ch 1165, §18; 95 Acts, ch 141, §1 – 3; 97 Acts, ch 158, §13, 49; 99 Acts, ch 152, §4, 40; 2003 Acts, ch 139, §8, 11, 12; 2004 Acts, 1st Ex, ch 1001, §39, 41, 42; 2005 Acts, ch 24, §7, 10, 11; 2006 Acts, ch 1140, §6, 10, 11; 2007 Acts, ch 12, §5, 7, 8; 2008 Acts, ch 1011, §6, 9; 2009 Acts, ch 60, §6; 2011 Acts, ch 25, §40; 2011 Acts, ch 41, §4 – 6

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

2011 amendment to subsection 1, paragraph g, takes effect April 12, 2011, and applies retroactively to January 1, 2010, for tax years beginning on or after that date; 2011 Acts, ch 41, §5, 6

See Code editor's note on simple harmonization

Section amended

### **422.33 Corporate tax imposed — credit.**

1. A tax is imposed annually upon each corporation doing business in this state, or deriving income from sources within this state, in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

a. On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent.

b. On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent.

c. On taxable income between one hundred thousand dollars and two hundred fifty thousand dollars or any part thereof, the rate of ten percent.

d. On taxable income of two hundred fifty thousand dollars or more, the rate of twelve percent.

*“Income from sources within this state”* means income from real, tangible, or intangible property located or having a situs in this state.

1A. There is imposed upon each corporation exempt from the general business tax on corporations by section 422.34, subsection 2, a tax at the rates in subsection 1 upon the state's apportioned share computed in accordance with subsections 2 and 3 of the unrelated business income computed in accordance with the Internal Revenue Code and with the adjustments set forth in section 422.35.

2. If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business or sources within the state, with the net income attributable to the state to be determined as follows:

a. Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(1) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer's commercial domicile is in this state.

(2) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(3) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown, or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.

(4) Nonbusiness capital gains and losses from the sale or other disposition of assets shall be allocated as follows:

Gains and losses from the sale or other disposition of real property located in this state are allocable to this state.

Gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale or

disposition or if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

Gains and losses from the sale or disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

b. Net nonbusiness income of the above class having been separately allocated and deducted as above provided, the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

(1) Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(2) Capital gains and losses from the sale or other disposition of assets shall be apportioned to the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with paragraph "a", subparagraph (4).

(3) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(4) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(5) Where income consists of more than one class of income as provided in subparagraphs (1) to (4) of this paragraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(6) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the F.O.B. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state the greater of the tax determined in subsection 1, paragraphs "a" through "d" or the state alternative minimum tax equal to sixty percent of the maximum state corporate income tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.35 and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4) and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities and interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code, net of amortization of any discount or premium, shall be subtracted.

b. Apply the allocation and apportionment provisions of subsection 2.

c. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

d. In the case of a net operating loss computed for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which is taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

5. a. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph "a", subparagraph (1), a corporation may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in section 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in section 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are four and fifty-five hundredths percent and one and ninety-five hundredths percent, respectively.

d. (1) For purposes of this subsection, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative simplified credit such amounts are for research conducted within this state.

(2) For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2011.

e. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following taxable year.

f. A corporation which is a primary business or a supporting business in a quality jobs enterprise zone may claim the research activities credit authorized pursuant to section 15A.9, subsection 8, in lieu of the credit computed in paragraph "a" or "b".

g. A corporation which is an eligible business may claim an additional research activities credit authorized pursuant to section 15.335.

h. The department shall by February 15 of each year issue an annual report to the general assembly containing the total amount of all claims made by employers under this subsection and the portion of the claims issued as refunds, for all claims processed during the previous calendar year. The report shall contain the name of each claimant for whom a tax credit in excess of five hundred thousand dollars was issued and the amount of the credit received.

6. The taxes imposed under this division shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted in less than the ten years. For purposes of this section, “*agreement*”, “*industry*”, “*new job*” and “*project*” mean the same as defined in section 260E.2 and “*base employment level*” means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 260E on the date of that agreement.

7. a. There is allowed as a credit against the tax determined in subsection 1 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph “a” for a tax year shall not exceed the excess, if any, of the tax determined in subsection 1 over the state alternative minimum tax as determined in subsection 4.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 4 for the tax year over the tax determined in subsection 1 for the tax year.

8. The taxes imposed under this division shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer’s pro rata share of the items of income and expense of the financial institution. This recomputed tax shall be subtracted from the tax computed under this division and the resulting amount, which shall not exceed the taxpayer’s pro rata share of franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

9. a. The taxes imposed under this division shall be reduced by an assistive device tax credit. A small business purchasing, renting, or modifying an assistive device or making workplace modifications for an individual with a disability who is employed or will be employed by the small business is eligible, subject to availability of credits, to receive this assistive device tax credit which is equal to fifty percent of the first five thousand dollars paid during the tax year for the purchase, rental, or modification of the assistive device or for making the workplace modifications. Any credit in excess of the tax liability shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer’s final, completed return credited to the tax liability for the following tax year. If the small business elects to take the

assistive device tax credit, the small business shall not deduct for Iowa tax purposes any amount of the cost of an assistive device or workplace modifications which is deductible for federal income tax purposes.

b. To receive the assistive device tax credit, the eligible small business must submit an application to the economic development authority. If the taxpayer meets the criteria for eligibility, the economic development authority shall issue to the taxpayer a certification of entitlement for the assistive device tax credit. However, the combined amount of tax credits that may be approved for a fiscal year under this subsection shall not exceed five hundred thousand dollars. Tax credit certificates shall be issued on an earliest filed basis. The certification shall contain the taxpayer's name, address, tax identification number, the amount of the credit, and tax year for which the certificate applies. The taxpayer must file the tax credit certificate with the taxpayer's corporate income tax return in order to claim the tax credit. The economic development authority and department of revenue shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

c. For purposes of this subsection:

(1) "*Assistive device*" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "*Assistive device*" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "*Assistive device*" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "*assistive device*" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

(2) "*Disability*" means the same as defined in section 15.102, except that it does not include alcoholism.

(3) "*Small business*" means a business that either had gross receipts for its preceding tax year of three million dollars or less or employed not more than fourteen full-time employees during its preceding tax year.

(4) "*Workplace modifications*" means physical alterations to the work environment.

10. a. The taxes imposed under this division shall be reduced by a historic preservation and cultural and entertainment district tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded or credited to the following year, as provided in section 404A.4, subsection 3.

b. For purposes of this subsection, "*eligible property*" means the same as used in section 404A.1.

11. Reserved.

11A. The taxes imposed under this division shall be reduced by an ethanol promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. The taxpayer shall claim the tax credit in the same manner as provided in section 422.11N. The taxpayer may claim the tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the ethanol promotion tax credit pursuant to section 422.11N.

b. Any ethanol promotion tax credit which is in excess of the taxpayer's tax liability shall be refunded or may be shown on the taxpayer's final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11N.

c. This subsection is repealed on January 1, 2021.

11B. The taxes imposed under this division shall be reduced by an E-85 gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. The taxpayer shall claim the tax credit in the same manner as provided in section 422.11O. The taxpayer may claim the tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the E-85 gasoline promotion tax credit pursuant to section 422.11O.

b. Any E-85 gasoline promotion tax credit which is in excess of the taxpayer's tax liability

shall be refunded or may be shown on the taxpayer's final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11O.

c. This subsection is repealed on January 1, 2018.

11C. The taxes imposed under this division shall be reduced by a biodiesel blended fuel tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. The taxpayer may claim the biodiesel blended fuel tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the biodiesel blended fuel tax credit pursuant to section 422.11P.

b. Any biodiesel blended fuel tax credit which is in excess of the taxpayer's tax liability shall be refunded or may be shown on the taxpayer's final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11P.

c. This subsection is repealed on January 1, 2018.

11D. The taxes imposed under this division shall be reduced by an E-15 plus gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. The taxpayer shall claim the tax credit in the same manner as provided in section 422.11Y. The taxpayer may claim the tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the E-15 plus gasoline promotion tax credit pursuant to section 422.11Y.

b. Any E-15 plus gasoline promotion tax credit which is in excess of the taxpayer's tax liability shall be refunded or may be shown on the taxpayer's final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11Y.

c. This subsection is repealed on January 1, 2018.

12. a. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43 for an investment in a qualifying business or a community-based seed capital fund.

b. The taxes imposed under this division shall be reduced by investment tax credits authorized pursuant to sections 15.333, 15A.9, subsection 4, and section 15E.193B, subsection 6.

13. The taxes imposed under this division shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

14. The taxes imposed under this division shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

15. Reserved.

16. The taxes imposed under this division shall be reduced by tax credits for wind energy production allowed under chapter 476B and for renewable energy allowed under chapter 476C.

17. Reserved.

18. Reserved.

19. The taxes imposed under this division shall be reduced by a corporate tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

20. The taxes imposed under this division shall be reduced by a tax credit authorized pursuant to section 15E.66, if redeemed, for investments in the Iowa fund of funds.

21. The taxes imposed under this division shall be reduced by an agricultural assets transfer tax credit as allowed under section 175.37.

22. Reserved.

23. The taxes imposed under this division shall be reduced by a qualified expenditure tax credit authorized pursuant to section 15.393, subsection 2, paragraph "a".

24. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15.393, subsection 2, paragraph "b".

25. a. The taxes imposed under this division shall be reduced by a charitable conservation contribution tax credit equal to fifty percent of the fair market value of a qualified real property interest located in the state that is conveyed as an unconditional charitable donation in perpetuity by the taxpayer to a qualified organization exclusively for conservation

purposes. The maximum amount of tax credit is one hundred thousand dollars. The amount of the contribution for which the tax credit is claimed shall not be deductible in determining taxable income for state tax purposes.

b. For purposes of this section, “conservation purpose”, “qualified organization”, and “qualified real property interest” mean the same as defined for the qualified conservation contribution under section 170(h) of the Internal Revenue Code, except that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered a conveyance for a conservation purpose.

c. Any credit in excess of the tax liability is not refundable but the excess for the tax year may be credited to the tax liability for the following twenty tax years or until depleted, whichever is the earlier.

26. The taxes imposed under this division shall be reduced by a redevelopment tax credit allowed under chapter 15, subchapter II, part 9.

27. The taxes imposed under this division shall be reduced by a disaster recovery housing project tax credit allowed under section 16.211.

28. The taxes imposed under this division shall be reduced by a school tuition organization tax credit allowed under section 422.11S. The maximum amount of tax credits that may be approved under this subsection for a tax year equals twenty-five percent of the school tuition organization’s tax credits that may be approved pursuant to section 422.11S, subsection 7, for a tax year.

[C35, §6943-f29; C39, §6943.065; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.33; 81 Acts, ch 135, §1 – 3; 82 Acts, ch 1023, §12, 13, 30, 31, ch 1234, §1]

83 Acts, ch 179, §14, 15, 22, 25; 83 Acts, ch 207, §90, 93; 85 Acts, ch 32, §81; 85 Acts, ch 230, §7; 86 Acts, ch 1007, §28; 86 Acts, ch 1194, §1; 86 Acts, ch 1236, §8; 86 Acts, ch 1241, §22; 87 Acts, ch 22, §11; 87 Acts, 1st Ex, ch 1, §6, 7; 88 Acts, ch 1028, §33; 88 Acts, ch 1099, §1; 89 Acts, ch 251, §20 – 22; 89 Acts, ch 285, §5; 90 Acts, ch 1171, §5; 90 Acts, ch 1196, §2; 91 Acts, ch 215, §5; 92 Acts, ch 1200, §1, 4; 93 Acts, ch 113, §3; 94 Acts, ch 1165, §19; 94 Acts, ch 1166, §8, 11; 95 Acts, ch 83, §4, 35; 95 Acts, ch 152, §5, 7; 97 Acts, ch 135, §7, 9; 98 Acts, ch 1078, §7, 10; 99 Acts, ch 95, §8, 9, 12, 13; 99 Acts, ch 151, §10, 11, 89; 2000 Acts, ch 1146, §8, 9, 11; 2000 Acts, ch 1194, §12 – 14, 21; 2001 Acts, ch 123, §3, 6; 2001 Acts, ch 127, §8 – 10; 2002 Acts, ch 1006, §8, 13; 2002 Acts, ch 1069, §9, 10, 14; 2002 Acts, ch 1156, §3, 8; 2003 Acts, ch 139, §9, 11, 12; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 1, §113, 133; 2003 Acts, 1st Ex, ch 2, §85, 89

[2003 Acts, 1st Ex, ch 1, §113, 133 amendment adding new subsection 15 stricken pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, ch 1073, §18; 2004 Acts, ch 1175, §405, 418; 2005 Acts, ch 24, §8, 10, 11; 2005 Acts, ch 146, §2, 3; 2005 Acts, ch 150, §14, 62, 69; 2005 Acts, ch 160, §2, 14; 2006 Acts, ch 1136, §2; 2006 Acts, ch 1140, §7, 10, 11; 2006 Acts, ch 1142, §42 – 49; 2006 Acts, ch 1158, §29 – 33; 2006 Acts, ch 1159, §26; 2006 Acts, ch 1161, §4, 7; 2006 Acts, ch 1175, §16, 17, 23; 2007 Acts, ch 12, §6 – 8; 2007 Acts, ch 162, §7, 13; 2007 Acts, ch 165, §5, 9; 2008 Acts, ch 1004, §2, 7; 2008 Acts, ch 1011, §7, 9; 2008 Acts, ch 1169, §33 – 35; 2008 Acts, ch 1173, §9; 2008 Acts, ch 1191, §63, 107, 137, 163, 168; 2009 Acts, ch 41, §125; 2009 Acts, ch 100, §34, 35; 2009 Acts, ch 177, §44; 2009 Acts, ch 179, §133, 153, 234; 2010 Acts, ch 1061, §84, 182; 2010 Acts, ch 1138, §12, 16, 22, 26; 2011 Acts, ch 34, §98; 2011 Acts, ch 41, §13, 14, 16; 2011 Acts, ch 113, §19, 22, 23, 29, 33, 34, 36, 39, 40; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 130, §42, 47

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

For provisions relating to availability and calculation of an ethanol blended gasoline tax credit under former subsection 11 in calendar year 2008 for a retail dealer whose tax year ends prior to December 31, 2008, see 2006 Acts, ch 1142, §49

For provisions relating to availability and calculation of an ethanol promotion tax credit under subsection 11A in calendar year 2020 for a retail dealer whose tax year ends prior to December 31, 2020, see 2006 Acts, ch 1142, §49; 2006 Acts, ch 1175, §17; 2011 Acts, ch 113, §11, 13, 14

Subsection 11B applies retroactively to tax years beginning on or after January 1, 2006; 2006 Acts, ch 1142, §48; for provisions relating to availability and calculation of an E-85 gasoline promotion tax credit in calendar year 2017 for a retail dealer whose tax year ends prior to December 31, 2017, see 2006 Acts, ch 1142, §49; 2011 Acts, ch 113, §20, 22, 23

Subsection 11C applies retroactively to tax years beginning on or after January 1, 2006; 2006 Acts, ch 1142, §48; for provisions relating to requirements for claiming a biodiesel blended fuel tax credit in calendar year 2006 for a retail dealer whose tax year ends before December 31, 2006, and for availability and calculation of the tax credit for calendar year 2011 for a retail dealer whose tax year ends prior to December 31, 2011, see 2006 Acts, ch 1142, §49; 2011 Acts, ch 113, §30, 33, 34; for provisions relating to requirements for claiming a biodiesel blended fuel tax credit in calendar year 2017, for a retail dealer whose tax year ends before December 31, 2017, see 2011 Acts, ch 113, §31, 33, 34

2008 amendment to subsection 11C takes effect January 1, 2009, and applies to tax years beginning on or after that date; 2008 Acts, ch 1169, §34, 35; 2008 Acts, ch 1191, §137

Continuation of wage-benefits tax credits under former subsection 18 for qualified new jobs in existence on June 30, 2008; 2008 Acts, ch 1191, §168

Subsection 25 applies retroactively to January 1, 2008, for tax years beginning on or after that date; 2008 Acts, ch 1191, §107

Subsection 27 takes effect May 12, 2009, and applies to disaster recovery housing project costs incurred on or after that date and before July 1, 2010; 2009 Acts, ch 100, §35; 2010 Acts, ch 1061, §84, 182

Tax credit certificates issued for future tax years for investments made on or before July 1, 2010, under former subsection 13 are valid and may be claimed by a taxpayer after July 1, 2010, in the tax year stated on the certificate; 2010 Acts, ch 1138, §26

2010 amendment striking former subsection 17 applies retroactively to tax years beginning on or after January 1, 2010; 2010 Acts, ch 1138, §16

2011 amendments to subsection 5, paragraphs b, c, and d, take effect April 12, 2011, and apply retroactively to January 1, 2010, for tax years beginning on or after that date; 2011 Acts, ch 41, §14, 16

2011 amendment to subsection 11B takes effect January 1, 2012, and applies to tax years beginning on and after that date; 2011 Acts, ch 113, §22, 23

2011 amendment to subsection 11C takes effect January 1, 2012, and applies to tax years beginning on and after that date; 2011 Acts, ch 113, §33, 34

Subsection 11D takes effect July 1, 2011, and applies to tax years beginning on or after January 1, 2012, and to that part of a retail dealer's tax year or tax years occurring during that portion of a calendar year beginning on and after July 1, 2011, and ending on December 31, 2011; for provisions relating to requirements for claiming an E-15 plus gasoline promotion tax credit in calendar year 2017 for a retail dealer whose tax year ends before December 31, 2017, and for calculation of the tax credit for a portion of a tax year occurring in calendar year 2011, see 2011 Acts, ch 113, §37, 39, 40

Subsection 13 applies retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 130, §47, 71

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 5, paragraphs b – d amended

Subsection 9, paragraph b amended

Subsection 11B, paragraph c amended

Subsection 11C, paragraph c stricken and former paragraph d amended and redesignated as c

NEW subsections 11D and 13

#### **422.35 Net income of corporation — how computed.**

The term “*net income*” means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.
2. Add interest and dividends from foreign securities, from securities of state and other political subdivisions, and from regulated investment companies exempt from federal income tax under the Internal Revenue Code.
3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.
4. Subtract fifty percent of the federal income taxes paid or accrued, as the case may be, during the tax year, adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.
5. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal taxable income.
6. *a.* If the taxpayer is a small business corporation, subtract an amount equal to sixty-five percent of the wages paid to individuals, but not to exceed twenty thousand dollars per individual, named in subparagraphs (1), (2), and (3) who were hired for the first time by the taxpayer during the tax year for work done in this state:
  - (1) An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:
    - (a) Has a physical or mental impairment which substantially limits one or more major life activities.
    - (b) Has a record of that impairment.
    - (c) Is regarded as having that impairment.
  - (2) An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (a) Has been convicted of a felony in this or any other state or the District of Columbia.
- (b) Is on parole pursuant to chapter 906.
- (c) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(d) Is in a work release program pursuant to chapter 904, division IX.

(3) An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

b. This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraph “a”, subparagraphs (1), (2), and (3) during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

c. For purposes of this subsection:

(1) “*Physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) (a) “*Small business*” means a profit or nonprofit business, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which the following apply:

(i) It is not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) It has either twenty or fewer full-time equivalent positions or not more than the equivalent of three million dollars in annual gross revenues as computed for the preceding fiscal year or as the average of the three preceding fiscal years.

(iii) It does not include the practice of a profession.

(b) “*Small business*” includes an employee-owned business which has been an employee-owned business for less than three years or which meets the conditions of subparagraph division (a), subparagraph subdivisions (i) through (iii).

(c) For purposes of this definition, “*dominant in its field of operation*” means having more than twenty full-time equivalent positions and more than three million dollars in annual gross revenues, and “*affiliate or subsidiary of a business dominant in its field of operation*” means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalents, of a business dominant in that field of operation.

6A. a. If the taxpayer is a business corporation and does not qualify for the adjustment under subsection 6, subtract an amount equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in subparagraphs (1) and (2) who were hired for the first time by the taxpayer during the tax year for work done in this state:

(1) An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(a) Has been convicted of a felony in this or any other state or the District of Columbia.

(b) Is on parole pursuant to chapter 906.

(c) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(d) Is in a work release program pursuant to chapter 904, division IX.

(2) An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

b. This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraph “a”, subparagraphs (1) and (2) during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

c. The department shall develop and distribute information concerning the deduction

available for businesses employing persons named in paragraph “a”, subparagraphs (1) and (2).

7. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

8. Add the amounts deducted and subtract the amounts included in income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

9. Reserved.

10. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well using methods in section 613 of the Internal Revenue Code that is in excess of the cost depletion amount determined under section 611 of the Internal Revenue Code.

11. If after applying all of the adjustments provided for in this section and the allocation and apportionment provisions of section 422.33, the Iowa taxable income results in a net operating loss, such net operating loss shall be deducted as follows:

a. For tax years beginning prior to January 1, 2009, the Iowa net operating loss shall be carried back three taxable years for a net operating loss incurred in a presidentially declared disaster area by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses for tax years beginning prior to January 1, 2009, the net operating loss shall be carried back two taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later.

b. An Iowa net operating loss for a tax year beginning on or after January 1, 2009, or an Iowa net operating loss remaining after being carried back as required in paragraph “a” or “f” shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. No portion of a net operating loss which was sustained from that portion of the trade or business carried on outside the state of Iowa shall be deducted.

e. The limitations on net operating loss carryback and carryforward under sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code shall apply.

f. Notwithstanding paragraph “a”, for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming, for tax years beginning prior to January 1, 2009, is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

g. The deductions described in paragraphs “a” through “f” of this subsection are allowed subject to the requirement that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only that portion of the deductions for net operating loss and federal income taxes that is fairly and equitably allocable to Iowa, under rules prescribed by the director.

12. Subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

13. Subtract the interest earned from bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

14. Reserved.

15. Reserved.

16. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed

as if the speculative shell building were classified as fifteen-year property during the period during which it is owned by the taxpayer and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the taxpayer, subsidiary of the taxpayer, or majority owners of the taxpayer, for other than as a speculative shell building, as defined in section 427.1, subsection 27.

17. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal taxable income.

18. Add, to the extent not already included, income from the sale of obligations of the state and its political subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state corporate income tax.

19. *a.* The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, § 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing taxable income, the following adjustments shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

*b.* A taxpayer may elect to apply the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No. 108-27, in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005. If the taxpayer elects to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the deduction may be taken on amended state tax returns, if necessary. If the taxpayer does not elect to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the following adjustment shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k)(4) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k)(4).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

19A. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 110-185, § 103, Pub. L. No. 111-5, § 1201, Pub. L. No. 111-240, § 2022, and Pub. L. No. 111-312, § 401, does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal taxable income, then the taxpayer shall make the following adjustments to federal taxable income when computing net income for state tax purposes:

*a.* Add the total amount of depreciation taken under section 168(k) of the Internal Revenue Code for the tax year.

*b.* Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(k).

*c.* Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs "a" and "b". The director shall adopt rules for the administration of this paragraph.

19B. The additional first-year depreciation allowance authorized in section 168(n) of the Internal Revenue Code, as enacted by Pub. L. No. 110-343, § 710, does not apply in

computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal taxable income, then the taxpayer shall make the following adjustments to federal taxable income when computing net income for state tax purposes:

a. Add the total amount of depreciation taken under section 168(n) of the Internal Revenue Code for the tax year.

b. Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(n).

c. Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs “a” and “b”. The director shall adopt rules for the administration of this paragraph.

20. A taxpayer may elect not to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 108-27, § 202, in computing taxable income for state tax purposes. If the taxpayer does not take the increased expensing allowance under section 179 of the Internal Revenue Code for state tax purposes, the following adjustments shall be made:

a. Add the total amount of expense deduction taken on section 179 property for federal tax purposes under section 179 of the Internal Revenue Code.

b. Subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code prior to enactment of Pub. L. No. 108-27, § 202.

c. Any other adjustments to gains and losses to the adjustments made in paragraphs “a” and “b” pursuant to rules adopted by the director.

21. Subtract the amount of foreign dividend income, including subpart F income as defined in section 952 of the Internal Revenue Code, based upon the percentage of ownership as set forth in section 243 of the Internal Revenue Code.

22. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

23. Subtract, to the extent included, an amount equal to any income received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under section 15.393 which meets the criteria of a qualified expenditure under section 15.393, subsection 2, paragraph “a”, subparagraph (2).

24. A taxpayer is not allowed to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 111-5, § 1202, in computing taxable income for state tax purposes.

25. Subtract, to the extent included, the amount of any biodiesel production refund provided pursuant to section 423.4.

[C35, §6943-f31; C39, §6943.067; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.35; 81 Acts, ch 132, §8, 9; 82 Acts, ch 1023, §14, 15, 30, 31, ch 1203, §2, ch 1206, §1]

83 Acts, ch 174, §2, 3; 83 Acts, ch 179, §16, 24; 86 Acts, ch 1236, §9; 86 Acts, ch 1238, §20; 86 Acts, ch 1241, §23; 87 Acts, 1st Ex, ch 1, §8 – 11; 89 Acts, ch 175, §3; 89 Acts, ch 225, §20, 21; 90 Acts, ch 1168, §46; 90 Acts, ch 1171, §6; 90 Acts, ch 1195, §2; 90 Acts, ch 1251, §53; 91 Acts, ch 210, §3; 92 Acts, ch 1222, §5, 6; 92 Acts, ch 1225, §2, 5; 94 Acts, ch 1107, §26; 94 Acts, ch 1166, §9, 10, 12; 95 Acts, ch 152, §6, 7; 96 Acts, ch 1129, §113; 97 Acts, ch 135, §8, 9; 98 Acts, ch 1078, §8, 12; 98 Acts, ch 1172, §13, 14; 99 Acts, ch 95, §10 – 13; 2001 Acts, ch 15, §3, 4; 2001 Acts, ch 116, §7, 28; 2001 Acts, 2nd Ex, ch 6, §23 – 26, 37; 2003 Acts, ch 139, §10 – 12; 2004 Acts, ch 1101, §47; 2004 Acts, 1st Ex, ch 1001, §40 – 42; 2005 Acts, ch 2, §3, 4, 6; 2005 Acts, ch 19, §54; 2005 Acts, ch 24, §9 – 11; 2005 Acts, ch 140, §41, 73; 2006 Acts, 1st Ex,

ch 1001, §42, 49; 2007 Acts, ch 54, §36; 2007 Acts, ch 162, §8, 13; 2007 Acts, ch 186, §17; 2008 Acts, ch 1011, §8, 9; 2009 Acts, ch 133, §141 – 143; 2009 Acts, ch 135, §4, 5; 2011 Acts, ch 41, §21 – 25; 2011 Acts, ch 113, §58, 60

Subsection 24 takes effect March 11, 2008, and applies retroactively to January 1, 2008, for tax years beginning on or after that date; 2008 Acts, ch 1011, §9

2009 amendment to subsection 11 applies retroactively to January 1, 2009, for tax years beginning on or after that date; 2009 Acts, ch 135, §5

Subsections 19A and 19B take effect April 12, 2011, and apply retroactively to January 1, 2008, for tax years ending on or after that date; 2011 Acts, ch 41, §23, 24

2011 amendment to subsection 24 takes effect April 12, 2011, and applies retroactively to January 1, 2009, for tax years beginning on or after that date; 2011 Acts, ch 41, §23, 25

Subsection 25 takes effect January 1, 2012; 2011 Acts, ch 113, §60

NEW subsections 19A, 19B, and 25

Subsection 24 amended

## DIVISION V

### TAXATION OF FINANCIAL INSTITUTIONS

#### **422.60 Imposition of tax — credit.**

1. A franchise tax according to and measured by net income is imposed on financial institutions for the privilege of doing business in this state as financial institutions.

2. *a.* In addition to all taxes imposed under this division, there is imposed upon each financial institution doing business within the state the greater of the tax determined in section 422.63 or the state alternative minimum tax equal to sixty percent of the maximum state franchise tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

*b.* The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.61, subsection 3, and with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (c)(1), (d), and (g), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code.

(2) Make the adjustments provided in section 56(c)(1) of the Internal Revenue Code, except that in making the calculation under section 56(g)(1) of the Internal Revenue Code the state alternative minimum taxable income, computed without regard to the adjustments made by this subparagraph, the exemption provided for in subparagraph (4), and the state alternative tax net operating loss described in subparagraph (5), shall be substituted for the items described in section 56(g)(1)(B) of the Internal Revenue Code.

(3) Apply the allocation and apportionment provisions of section 422.63.

(4) Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph, exceeds one hundred fifty thousand dollars.

(5) In the case of a net operating loss beginning after December 31, 1986, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which was taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

3. *a.* (1) There is allowed as a credit against the tax determined in section 422.63 for a tax year an amount equal to the minimum tax credit for that tax year.

(2) The minimum tax credit for a tax year is the excess, if any, of the net minimum tax

imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. (1) The allowable credit under paragraph “a” for a tax year shall not exceed the excess, if any, of the tax determined in section 422.63 over the state alternative minimum tax as determined in subsection 2.

(2) The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 2 for the tax year over the tax determined in section 422.63 for the tax year.

4. a. The taxes imposed under this division shall be reduced by a historic preservation and cultural and entertainment district tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded or credited to the following year, as provided in section 404A.4, subsection 3.

b. For purposes of this subsection, “eligible property” means the same as used in section 404A.1.

5. a. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43 for an investment in a qualifying business or a community-based seed capital fund.

b. The taxes imposed under this division shall be reduced by investment tax credits authorized pursuant to sections 15.333 and 15E.193B, subsection 6.

6. The taxes imposed under this division shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

7. The taxes imposed under this division shall be reduced by tax credits for wind energy production allowed under chapter 476B and for renewable energy allowed under chapter 476C.

8. The taxes imposed under this division shall be reduced by a corporate tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

9. The taxes imposed under this division shall be reduced by a tax credit authorized pursuant to section 15E.66, if redeemed, for investments in the Iowa fund of funds.

10. The taxes imposed under this division shall be reduced by a qualified expenditure tax credit authorized pursuant to section 15.393, subsection 2, paragraph “a”.

11. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15.393, subsection 2, paragraph “b”.

12. The taxes imposed under this division shall be reduced by a redevelopment tax credit allowed under chapter 15, subchapter II, part 9.

13. The taxes imposed under this division shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

[C71, 73, 75, 77, 79, 81, §422.60; 82 Acts, ch 1023, §16, 31]

83 Acts, ch 179, §17, 22; 86 Acts, ch 1241, §28; 87 Acts, 1st Ex, ch 1, §14; 89 Acts, ch 285, §6; 2002 Acts, ch 1003, §3, 5; 2002 Acts, ch 1006, §9, 13; 2002 Acts, ch 1156, §4, 8; 2003 Acts, 1st Ex, ch 2, §86, 89; 2004 Acts, ch 1175, §406, 418; 2005 Acts, ch 150, §15, 63, 69; 2005 Acts, ch 160, §3, 14; 2006 Acts, ch 1158, §34 – 38; 2007 Acts, ch 162, §9, 13; 2007 Acts, ch 165, §6, 9; 2008 Acts, ch 1173, §10; 2008 Acts, ch 1191, §164; 2009 Acts, ch 41, §126; 2010 Acts, ch 1138, §13, 16, 23, 26; 2011 Acts, ch 25, §82, 143; 2011 Acts, ch 130, §43, 47, 71

Tax credit certificates issued for future tax years for investments made on or before July 1, 2010, under former subsection 6 are valid and may be claimed by a taxpayer after July 1, 2010, in the tax year stated on the certificate; 2010 Acts, ch 1138, §26

2010 amendment striking former subsection 9 applies retroactively to tax years beginning on or after January 1, 2010; 2010 Acts, ch 1138, §16

Subsection 13 applies retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 130, §47

Code editor directive applied

Subsection 2 amended

NEW subsection 13

DIVISION VI  
ADMINISTRATION

**422.72 Information deemed confidential — informational exchange agreement — subpoenas.**

1. *a.* (1) It is unlawful for the director, or any person having an administrative duty under this chapter, or any present or former officer or other employee of the state authorized by the director to examine returns, to divulge in any manner whatever, the business affairs, operations, or information obtained by an investigation under this chapter of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy of a return or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law.

(2) It is unlawful for any person to willfully inspect, except as authorized by the director, any return or return information.

(3) However, the director may authorize examination of such state returns and other state information which is confidential under this section, if a reciprocal arrangement exists, by tax officers of another state or the federal government.

*b.* The director may, by rules adopted pursuant to chapter 17A, authorize examination of state information and returns by other officers or employees of this state to the extent required by their official duties and responsibilities. Disclosure of state information to tax officers of another state is limited to disclosures which have a tax administrative purpose and only to officers of those states which by agreement with this state limit the disclosure of the information as strictly as the laws of this state protecting the confidentiality of returns and information. The director shall place upon the state tax form a notice to the taxpayer that state tax information may be disclosed to tax officials of another state or of the United States for tax administrative purposes.

*c.* The department shall not authorize the examination of tax information by officers and employees of this state, another state, or of the United States if the officers or employees would otherwise be required to obtain a judicial order to examine the information if it were to be obtained from another source, and if the purpose of the examination is other than for tax administration. However, the director may provide sample individual income tax information to be used for statistical purposes to the legislative services agency. The information shall not include the name or mailing address of the taxpayer or the taxpayer's social security number. Any information contained in an individual income tax return which is provided by the director shall only be used as a part of a database which contains similar information from a number of returns. The legislative services agency shall not have access to the income tax returns of individuals. Each request for individual income tax information shall contain a statement by the director of the legislative services agency that the individual income tax information received by the legislative services agency shall be used solely for statistical purposes. This subsection does not prevent the department from authorizing the examination of state returns and state information under the provisions of section 252B.9. This subsection prevails over any general law of this state relating to public records.

*d.* The director shall provide state tax returns and return information to the auditor of state, to the extent that the information is necessary to complete the annual audit of the department required by section 11.2. The state tax returns and return information provided by the director shall remain confidential and shall not be included in any public documents issued by the auditor of state.

2. Federal tax returns, copies of returns, and return information as defined in section 6103(b) of the Internal Revenue Code, which are required to be filed with the department for the enforcement of the income tax laws of this state, shall be held as confidential by the department and subject to the disclosure limitations in subsection 1.

3. *a.* Unless otherwise expressly permitted by section 8A.504, section 8G.4, section 96.11, subsection 6, section 421.17, subsections 22, 23, and 26, subsection 27, paragraph "k", and

subsection 31, section 252B.9, section 321.40, subsection 6, sections 321.120, 421.19, 421.28, 422.20, and 452A.63, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

b. This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. A person violating subsection 1, 2, 3, or 6 is guilty of a serious misdemeanor.

5. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

6. a. The department may enter into a written informational exchange agreement for tax administration purposes with a city or county which is entitled to receive funds due to a local hotel and motel tax or a local sales and services tax. The written informational exchange agreement shall designate no more than two paid city or county employees that have access to actual return information relating to that city's or county's receipts from a local hotel and motel tax or a local sales and services tax.

b. City or county employees designated to have access to information under this subsection are deemed to be officers and employees of the state for purposes of the restrictions pursuant to subsection 1 pertaining to confidential information. The department may refuse to enter into a written informational exchange agreement if the city or county does not agree to pay the actual cost of providing the information and the department may refuse to abide by a written informational exchange agreement if the city or county does not promptly pay the actual cost of providing the information or take reasonable precautions to protect the information's confidentiality.

7. a. Notwithstanding subsection 3, the director shall provide state tax returns and return information in response to a subpoena issued by the court pursuant to rule of criminal procedure 2.5 commanding the appearance before the attorney general or an assistant attorney general if the subpoena is accompanied by affidavits from such person and from a sworn peace officer member of the department of public safety affirming that the information is necessary for the investigation of a felony violation of chapter 124 or chapter 706B.

b. The affidavits accompanying the subpoenas and the information provided by the director shall remain a confidential record which may be disseminated only to a prosecutor or peace officer involved in the investigation, or to the taxpayer who filed the information and to the court in connection with the filing of criminal charges or institution of a forfeiture action. A person who knowingly files a false affidavit with the director to secure information or who divulges information received under this subsection in a manner prohibited by this subsection commits a serious misdemeanor.

[C35, §6943-f59; C39, §6943.096; C46, 50, 54, 58, 62, 66, §422.65; C71, 73, 75, 77, 79, 81, §422.72]

83 Acts, ch 32, §1, 2; 87 Acts, ch 199, §9; 88 Acts, ch 1028, §34; 88 Acts, ch 1153, §3, 4; 90 Acts, ch 1232, §19; 91 Acts, ch 159, §20; 97 Acts, ch 158, §22, 23; 99 Acts, ch 151, §25, 89; 99 Acts, ch 152, §10, 40; 2003 Acts, ch 35, §45, 46, 49; 2003 Acts, ch 145, §257; 2008 Acts, ch 1113, §10, 11; 2010 Acts, ch 1146, §15, 26; 2010 Acts, ch 1193, §148, 149; 2011 Acts, ch 122, §52

Subsection 3, paragraph a amended

#### **422.73 Correction of errors — refunds, credits, and carrybacks.**

1. a. If it appears that an amount of tax, penalty, or interest has been paid which was not due under division II, III or V of this chapter, then that amount shall be credited against any tax due on the books of the department by the person who made the excessive payment, or that amount shall be refunded to the person or with the person's approval, credited to tax to become due. A claim for refund or credit that has not been filed with the department within three years after the return upon which a refund or credit claimed became due, or within

one year after the payment of the tax upon which a refund or credit is claimed was made, whichever time is the later, shall not be allowed by the director. If, as a result of a carryback of a net operating loss or a net capital loss, the amount of tax in a prior period is reduced and an overpayment results, the claim for refund or credit of the overpayment shall be filed with the department within the three years after the return for the taxable year of the net operating loss or net capital loss became due. Notwithstanding the period of limitation specified, the taxpayer shall have six months from the day of final disposition of any income tax matter between the taxpayer and the internal revenue service with respect to the particular tax year to claim an income tax refund or credit.

b. The department shall enter into an agreement with the internal revenue service for the transmission of federal income tax reports on individuals required to file an Iowa income tax return who have been involved in an income tax matter with the internal revenue service. After final disposition of the income tax matter between the taxpayer and the internal revenue service, the department shall determine whether the individual is due a state income tax refund as a result of final disposition of such income tax matter. If the individual is due a state income tax refund, the department shall notify the individual within thirty days and request the individual to file a claim for refund or credit with the department.

2. Notwithstanding subsection 1, a claim for credit or refund of the income tax paid is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the federal Taxpayer Relief Act of 1997, Pub. L. No. 105-34, which affected the federal adjusted gross incomes of individuals or estates and trusts, or affected the taxable incomes of corporate taxpayers.

[C35, §6943-f60; C39, §6943.097; C46, 50, 54, 58, 62, 66, §422.66; C71, 73, 75, 77, 79, 81, §422.73; 81 Acts, ch 138, §1]

83 Acts, ch 154, §1, 2; 83 Acts, ch 155, §1, 2, 3; 84 Acts, ch 1155, §1; 85 Acts, ch 230, §11; 86 Acts, ch 1194, §3; 86 Acts, ch 1237, §26; 87 Acts, 2nd Ex, ch 1, §12; 89 Acts, ch 285, §8; 91 Acts, ch 221, §1, 2; 94 Acts, ch 1023, §51; 98 Acts, ch 1078, §9, 13; 99 Acts, ch 156, §4, 23; 2003 Acts, 1st Ex, ch 2, §185, 205; 2006 Acts, 1st Ex, ch 1001, §43, 49; 2007 Acts, ch 186, §18; 2011 Acts, ch 25, §143

Code editor directive applied

## DIVISION VII

### ESTIMATED TAXES BY CORPORATIONS AND FINANCIAL INSTITUTIONS

#### **422.89 Exception to penalty.**

The penalty for underpayment of any installment of estimated tax imposed under section 422.88 shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax amount at least to one of the following:

1. The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months.

2. An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year.

3. a. An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(1) For the first three months of the taxable year if an installment is required to be paid in the fourth month;

(2) For the first three months or for the first five months of the taxable year if an installment is required to be paid in the sixth month;

(3) For the first six months or for the first eight months of the taxable year if an installment is required to be paid in the ninth month; and

(4) For the first nine months or for the first eleven months of the taxable year if an installment is required to be paid in the twelfth month of the taxable year.

*b.* The taxable income shall be placed on an annualized basis by multiplying the taxable income as determined under this subsection by twelve and dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven months, as the case may be) referred to in this subsection.

[C79, 81, §422.89]

95 Acts, ch 83, §12, 36; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 422D

### OPTIONAL TAXES FOR EMERGENCY MEDICAL SERVICES

#### **422D.1 Authorization — election — imposition and repeal — use of revenues.**

1. *a.* A county board of supervisors may offer for voter approval any of the following taxes or a combination of the following taxes:

- (1) Local option income surtax.
- (2) An ad valorem property tax.

*b.* Revenues generated from these taxes shall be used for emergency medical services as provided in section 422D.6.

2. *a.* The taxes for emergency medical services shall only be imposed after an election at which a majority of those voting on the question of imposing the tax or combination of taxes specified in subsection 1, paragraph “a”, subparagraph (1) or (2), vote in favor of the question. However, the tax or combination of taxes specified in subsection 1 shall not be imposed on property within or on residents of a benefited emergency medical services district under chapter 357F. The question of imposing the tax or combination of the taxes may be submitted at the regular city election, a special election, or state general election. Notice of the question shall be provided by publication at least sixty days before the time of the election and shall identify the tax or combination of taxes and the rate or rates, as applicable. If a majority of those voting on the question approve the imposition of the tax or combination of taxes, the tax or combination of taxes shall be imposed as follows:

(1) A local option income surtax shall be imposed for tax years beginning on or after January 1 of the fiscal year in which the favorable election was held.

(2) An ad valorem property tax shall be imposed for the fiscal year in which the election was held.

*b.* Before a county imposes an income surtax as specified in subsection 1, paragraph “a”, subparagraph (1), a benefited emergency medical services district in the county shall be dissolved, and the county shall be liable for the outstanding obligations of the benefited district. If the benefited district extends into more than one county, the county imposing the income surtax shall be liable for only that portion of the obligations relating to the portion of the benefited district in the county.

3. Revenues received by the county from the taxes imposed under this chapter shall be deposited into the emergency medical services trust fund created pursuant to section 422D.6 and shall be used as provided in that section.

4. Any tax or combination of taxes imposed shall be for a maximum period of five years.

92 Acts, ch 1226, §17; 2011 Acts, ch 25, §83

Subsections 1 and 2 amended

## CHAPTER 423

## STREAMLINED SALES AND USE TAX ACT

Former ch 423 repealed and new provisions governing sales and use tax enacted effective July 1, 2004; see 2003 Acts, 1st Ex, ch 2, §94 – 151, 205  
Sales and use tax industrial processing exemption study; annual reports through January 1, 2013; 2005 Acts, ch 77, §1, 2

## SUBCHAPTER I

## DEFINITIONS

**423.1 Definitions.**

As used in this chapter the following words, terms, and phrases have the meanings ascribed to them by this section, except where the context clearly indicates that a different meaning is intended:

1. “*Advertising and promotional direct mail*” means direct mail the primary purpose of which is to attract public attention to a product, person, business, or organization or in an attempt to sell, popularize, or secure financial support for a product, person, business, or organization. For purposes of this subsection, “*product*” may include tangible personal property, a service, or an item transferred electronically.

2. “*Affiliate*” means any entity to which any of the following applies:

a. Directly, indirectly, or constructively controls another entity.

b. Is directly, indirectly, or constructively controlled by another entity.

c. Is subject to the control of a common entity. A common entity is one which owns directly or individually more than ten percent of the voting securities of the entity.

3. “*Agent*” means a person appointed by a seller to represent the seller before the member states.

4. “*Agreement*” means the streamlined sales and use tax agreement authorized by subchapter IV of this chapter to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use taxes.

5. “*Agricultural production*” includes the production of flowering, ornamental, or vegetable plants in commercial greenhouses or otherwise, and production from aquaculture. “*Agricultural products*” includes flowering, ornamental, or vegetable plants and those products of aquaculture.

6. “*Business*” includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

7. “*Certificate of title*” means a certificate of title issued for a vehicle or for manufactured housing under chapter 321.

8. “*Certified automated system*” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

9. “*Certified service provider*” means an agent certified under the agreement to perform all of a seller’s sales or use tax functions, other than the seller’s obligation to remit tax on its own purchases.

10. “*Computer*” means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

11. “*Computer software*” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

12. “*Delivered electronically*” means delivered to the purchaser by means other than tangible storage media.

13. “*Delivery charges*” means charges assessed by a seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including but not limited to transportation, shipping, postage, handling, crating, and packing charges.

14. “*Department*” means the department of revenue.

15. *a.* “*Direct mail*” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. “*Direct mail*” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.

*b.* “*Direct mail*” does not include:

(1) Multiple items of printed material delivered to a single address.

(2) The development of billing information or the provision of a data processing service that is more than incidental.

16. “*Director*” means the director of revenue.

17. “*Electronic*” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

18. “*Farm deer*” means the same as defined in section 170.1.

19. “*Farm machinery and equipment*” means machinery and equipment used in agricultural production.

20. “*First use of a service*”. A “*first use of a service*” occurs, for the purposes of this chapter, at the location at which the service is received. For purposes of this subsection, the location at which the service is received is the location at which the purchaser or the purchaser’s donee can first make use of the result of the service. For purposes of this subsection, the location at which the seller performs the service is not determinative of the location at which the service is received.

21. “*Goods, wares, or merchandise*” means the same as tangible personal property.

22. “*Governing board*” means the group comprised of representatives of the member states of the agreement which is created by the agreement to be responsible for the agreement’s administration and operation.

23. “*Installed purchase price*” is the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. “*Installed purchase price*” includes but is not limited to amounts charged for installing a foundation and electrical and plumbing hookups. “*Installed purchase price*” excludes any amount charged for landscaping in connection with the conversion.

24. “*Lease or rental*”.

*a.* “*Lease or rental*” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A “*lease or rental*” may include future options to purchase or extend.

*b.* “*Lease or rental*” includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1).

*c.* “*Lease or rental*” does not include any of the following:

(1) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(2) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of any option price does not exceed the greater of one hundred dollars or one percent of the total required payments.

(3) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

*d.* This definition shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles; the Internal Revenue Code; the uniform commercial code, chapter 554; or other provisions of federal, state, or local law.

25. “*Livestock*” includes but is not limited to an animal classified as an ostrich, rhea, emu, bison, or farm deer.

26. “*Manufactured housing*” means “*manufactured home*” as defined in section 321.1.

27. “*Member state*” is any state which has signed the agreement.

28. “*Mobile home*” means “*manufactured or mobile home*” as defined in section 321.1.

29. “*Model 1 seller*” is a seller registered under the agreement that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

30. “*Model 2 seller*” is a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

31. “*Model 3 seller*” is a seller registered under the agreement that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a “*seller*” includes an affiliated group of sellers using the same proprietary system.

32. “*Model 4 seller*” is a seller registered under the agreement that is not a model 1, model 2, or model 3 seller.

33. “*Nonresidential commercial operations*” means industrial, commercial, mining, or agricultural operations, whether for profit or not, but does not include apartment complexes, manufactured home communities, or mobile home parks.

34. “*Not registered under the agreement*” means lack of registration by a seller with the member states under the central registration system referenced in section 423.11, subsection 4.

35. “*Other direct mail*” means all direct mail that is not advertising and promotional direct mail even if advertising and promotional direct mail is included in the same mailing. For purposes of this subsection, other direct mail includes but is not limited to:

a. Transactional direct mail that contains personal information specific to the addressee including but not limited to invoices, bills, statements of account, and payroll advices.

b. A legally required mailing including but not limited to privacy notices, tax reports, and stockholder reports.

c. Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including but not limited to newsletters and pieces of informational literature.

36. “*Person*” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

37. “*Place of business*” means any warehouse, store, place, office, building, or structure where goods, wares, or merchandise are offered for sale at retail or where any taxable amusement is conducted, or each office where gas, water, heat, communication, or electric services are offered for sale at retail. When a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building, or place where the books, papers, and records of the taxpayer are kept shall be deemed to be the taxpayer’s place of business.

38. “*Prewritten computer software*” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. The combining of two or more prewritten computer software programs or prewritten portions of prewritten programs does not cause the combination to be other than prewritten computer software. “*Prewritten computer software*” also means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements. Prewritten computer software or a prewritten portion of the prewritten software that is modified or enhanced to any degree, when such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, when there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for

such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

39. “*Property purchased for resale in connection with the performance of a service*” means property which is purchased for resale in connection with the rendition, furnishing, or performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

a. The provider and user of the service intend that a sale of the property will occur.

b. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value.

c. The sale is evidenced by a separate charge for the identifiable piece of property.

40. “*Purchase*” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

41. “*Purchase price*” means the same as “*sales price*” as defined in this section.

42. “*Purchaser*” is a person to whom a sale of personal property is made or to whom a service is furnished.

43. “*Receive*” and “*receipt*” mean any of the following:

a. Taking possession of tangible personal property.

b. Making first use of a service.

c. Taking possession or making first use of digital goods, whichever comes first.

“*Receive*” and “*receipt*” do not include possession by a shipping company on behalf of a purchaser.

44. “*Registered under the agreement*” means registration by a seller under the central registration system referenced in section 423.11, subsection 4.

45. “*Relief agency*” means the state, any county, city and county, city, or district thereof, or any agency engaged in actual relief work.

46. “*Retail sale*” or “*sale at retail*” means any sale, lease, or rental for any purpose other than resale, sublease, or subrent.

47. “*Retailer*” means and includes every person engaged in the business of selling tangible personal property or taxable services at retail, or the furnishing of gas, electricity, water, or communication service, and tickets or admissions to places of amusement and athletic events or operating amusement devices or other forms of commercial amusement from which revenues are derived. However, when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this chapter. “*Retailer*” includes a seller obligated to collect sales or use tax.

48. “*Retailer maintaining a place of business in this state*” or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

49. “*Retailers who are not model sellers*” means all retailers other than model 1, model 2, or model 3 sellers.

50. “*Sales*” or “*sale*” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration.

51. “*Sales price*” applies to the measure subject to sales tax.

a. “*Sales price*” means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

- (1) The seller's cost of the property sold.
  - (2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller.
  - (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges.
  - (4) Delivery charges.
  - (5) Installation charges.
  - (6) Credit for any trade-in authorized by section 423.3, subsection 59.
- b. "Sales price" does not include:
- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale.
  - (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.
  - (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.
  - (4) Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product. This subparagraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.
- c. The sales price does not include and the sales tax shall not apply to amounts received for charges included in paragraph "a", subparagraphs (3) through (6), if they are separately contracted for, separately stated on the invoice, billing, or similar document given to the purchaser, and the amounts represent charges which are not the sales price of a taxable sale or of the furnishing of a taxable service.
- d. For purposes of this definition, the sales price from a rental or lease includes rent, royalties, and copyright and license fees.
52. "Sales tax" means the tax levied under subchapter II of this chapter.
53. "Seller" means any person making sales, leases, or rentals of personal property or services.
54. "Services" means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer who pays the wages of an employee for a valuable consideration by any person engaged in any business or occupation specifically enumerated in section 423.2. The tax shall be due and collectible when first use of the service is received by the ultimate user of the service.
55. "Services used in the processing of tangible personal property" includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale.
56. "State" means any state of the United States, the District of Columbia, and Puerto Rico.
57. "State agency" means an authority, board, commission, department, instrumentality, or other administrative office or unit of this state, or any other state entity reported in the Iowa comprehensive annual financial report, including public institutions of higher education.
58. "System" means the central electronic registration system maintained by Iowa and other states which are signatories to the agreement.
59. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.
60. "Taxpayer" includes any person who is subject to a tax imposed by this chapter, whether acting on the person's own behalf or as a fiduciary.
61. "Trailer" shall mean every trailer, as is now or may be hereafter so defined by chapter

321, which is required to be registered or is subject only to the issuance of a certificate of title under chapter 321.

62. “Use” means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. A retailer’s or building contractor’s sale of manufactured housing for use in this state, whether in the form of tangible personal property or of realty, is a use of that property for the purposes of this chapter.

63. “Use tax” means the tax levied under subchapter III of this chapter for which the retailer collects and remits tax to the department.

64. “User” means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

65. “Value of services” means the price to the user exclusive of any direct tax imposed by the federal government or by this chapter.

66. “Vehicles subject to registration” means any vehicle subject to registration pursuant to section 321.18.

67. “Voting security” means a security to which any of the following applies:

a. Confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the entity.

b. Is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.

c. Is a general partnership interest.

2003 Acts, 1st Ex, ch 2, §94, 205; 2004 Acts, ch 1073, § 22, 23; 2005 Acts, ch 140, §3, 4, 42; 2006 Acts, ch 1030, §39; 2007 Acts, ch 179, §1; 2010 Acts, ch 1145, §2 – 7, 17; 2011 Acts, ch 25, §84; 2011 Acts, ch 92, §1 – 4

NEW subsection 1 and former subsections 1 – 13 renumbered as 2 – 14

Subsection 14 amended and renumbered as 15

Subsections 15 – 18 renumbered as 16 – 19

Subsection 19 amended and renumbered as 20

Subsections 20 – 33 renumbered as 21 – 34

NEW subsection 35 and former subsection 34 renumbered as 36

Subsections 35 and 36 amended and renumbered as 37 and 38

Subsections 37 – 51 renumbered as 39 – 53

Subsection 52 amended and renumbered as 54

Subsections 53 – 65 renumbered as 55 – 67

## SUBCHAPTER II

### SALES TAX

#### 423.2 Tax imposed.

1. There is imposed a tax of six percent upon the sales price of all sales of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users except as otherwise provided in this subchapter.

a. For the purposes of this subchapter, sales of the following services are treated as if they were sales of tangible personal property:

(1) Sales of engraving, photography, retouching, printing, and binding services.

(2) Sales of vulcanizing, recapping, and retreading services.

(3) Sales of prepaid calling services and prepaid wireless calling services.

(4) Sales of optional service or warranty contracts, except residential service contracts regulated under chapter 523C, which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under this section. The sales price is subject to tax even if some of the services furnished are not enumerated under this section. Additional sales, services, or use taxes shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this subsection.

(5) Sales of optional service or warranty contracts for computer software maintenance or support services.

(a) If a service or warranty contract does not specify a fee amount for nontaxable services

or taxable personal property, the tax imposed pursuant to this section shall be imposed upon an amount equal to one-half of the sales price of the contract.

(b) If a service or warranty contract provides only for technical support services, no tax shall be imposed pursuant to this section.

(6) Subparagraphs (4) and (5) shall also apply to the use tax imposed under section 423.5.

b. Sales of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders for the erection of buildings or the alteration, repair, or improvement of real property are retail sales of tangible personal property in whatever quantity sold. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail. The tax shall not be due when materials are withdrawn from inventory for use in construction outside of Iowa and the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials in the performance by the manufacturer or its subcontractor of construction outside of Iowa. The sale of carpeting is not a sale of building materials. The sale of carpeting to owners, contractors, subcontractors, or builders shall be treated as the sale of ordinary tangible personal property and subject to the tax imposed under this subsection and the use tax.

c. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies, or equipment, in the performance of construction contracts in Iowa, shall, for the purpose of this subchapter, be construed as a sale at retail of tangible personal property by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to the manufacturer of the fabrication or production of the tangible personal property.

2. A tax of six percent is imposed upon the sales price of the sale or furnishing of gas, electricity, water, heat, pay television service, and communication service, including the sales price from such sales by any municipal corporation or joint water utility furnishing gas, electricity, water, heat, pay television service, and communication service to the public in its proprietary capacity, except as otherwise provided in this subchapter, when sold at retail in the state to consumers or users.

3. A tax of six percent is imposed upon the sales price of all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions. A tax of six percent is imposed on the sales price of an entry fee or like charge imposed solely for the privilege of participating in an activity at a place of amusement, fair, or athletic event unless the sales price of tickets or admissions charges for observing the same activity are taxable under this subchapter. A tax of six percent is imposed upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

4. a. A tax of six percent is imposed upon the sales price derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, and card game tournaments conducted under section 99B.7B, that are operated or conducted within the state, the tax to be collected from the operator in the same manner as for the collection of taxes upon the sales price of tickets or admission as provided in this section. Nothing in this subsection shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

b. The tax imposed under this subsection covers the total amount from the operation of games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, card game tournaments conducted under section 99B.7B, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on the total amount from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of

amusement, and generally upon the sales price from any source of amusement operated for profit, not specified in this section, and upon the sales price from which tax is not collected for tickets or admission, but tax shall not be imposed upon any activity exempt from sales tax under section 423.3, subsection 78. Every person receiving any sales price from the sources described in this section is subject to all provisions of this subchapter relating to retail sales tax and other provisions of this chapter as applicable.

5. There is imposed a tax of six percent upon the sales price from the furnishing of services as defined in section 423.1.

6. *a.* The sales price of any of the following enumerated services is subject to the tax imposed by subsection 5: alteration and garment repair; armored car; vehicle repair; battery, tire, and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash and wax; campgrounds; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dating services; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, carpet, and upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; gun and camera repair; house and building moving; household appliance, television, and radio repair; janitorial and building maintenance or cleaning; jewelry and watch repair; lawn care, landscaping, and tree trimming and removal; limousine service, including driver; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pay television; pet grooming; pipe fitting and plumbing; wood preparation; executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state; reflexology; security and detective services; sewage services for nonresidential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; tanning beds or salons; taxidermy services; telephone answering service; test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; transportation service consisting of the rental of recreational vehicles or recreational boats, or the rental of motor vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less, or the rental of aircraft for a period of sixty days or less; Turkish baths, massage, and reducing salons, excluding services provided by massage therapists licensed under chapter 152C; water conditioning and softening; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables; wrecking service; wrecker and towing.

*b.* For the purposes of this subsection, “*financial institutions*” means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, credit unions organized under chapter 533, and all banks, savings banks, credit unions, and savings and loan associations chartered or otherwise created under the laws of any state and doing business in Iowa.

7. *a.* A tax of six percent is imposed upon the sales price from the sales, furnishing, or service of solid waste collection and disposal service.

(1) For purposes of this subsection, “*solid waste*” means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include auto hulks; street sweepings; ash; construction debris; mining waste; trees; tires; lead acid batteries; used oil; hazardous waste; animal waste used as fertilizer; earthen fill, boulders, or rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to

permits under section 402 of the federal Water Pollution Control Act, or dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954.

(2) A recycling facility that separates or processes recyclable materials and that reduces the volume of the waste by at least eighty-five percent is exempt from the tax imposed by this subsection if the waste exempted is collected and disposed of separately from other solid waste.

b. A person who transports solid waste generated by that person or another person without compensation shall pay the tax imposed by this subsection at the collection or disposal facility based on the disposal charge or tipping fee. However, the costs of a service or portion of a service to collect and manage recyclable materials separated from solid waste by the waste generator are exempt from the tax imposed by this subsection.

8. a. A tax of six percent is imposed on the sales price from sales of bundled transactions. For the purposes of this subsection, a “*bundled transaction*” is the retail sale of two or more distinct and identifiable products, except real property and services to real property, which are sold for one nonitemized price. A “*bundled transaction*” does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

b. “*Distinct and identifiable products*” does not include any of the following:

(1) Packaging or other materials that accompany the retail sale of the products and are incidental or immaterial to the retail sale of the products.

(2) A product provided free of charge with the required purchase of another product. A product is “*provided free of charge*” if the sales price of the product purchased does not vary depending on the inclusion of the product which is provided free of charge.

(3) Items included in the definition of “*sales price*” pursuant to section 423.1.

c. “*One nonitemized price*” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form.

9. A tax of six percent is imposed upon the sales price from any mobile telecommunications service, including all paging services, that this state is allowed to tax pursuant to the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 116 et seq. For purposes of this subsection, taxes on mobile telecommunications service, as defined under the federal Mobile Telecommunications Sourcing Act that are deemed to be provided by the customer’s home service provider, shall be paid to the taxing jurisdiction whose territorial limits encompass the customer’s place of primary use, regardless of where the mobile telecommunications service originates, terminates, or passes through and shall in all other respects be taxed in conformity with the federal Mobile Telecommunications Sourcing Act. All other provisions of the federal Mobile Telecommunications Sourcing Act are adopted by the state of Iowa and incorporated into this subsection by reference. With respect to mobile telecommunications service under the federal Mobile Telecommunications Sourcing Act, the director shall, if requested, enter into agreements consistent with the provisions of the federal Act.

10. a. Any person or that person’s affiliate, which is a retailer in this state or a retailer maintaining a place of business in this state under this chapter, that enters into a contract with an agency of this state must register, collect, and remit Iowa sales tax under this chapter on all sales of tangible personal property and enumerated services.

b. Every bid submitted and each contract executed by a state agency shall contain a certification by the bidder or contractor stating that the bidder or contractor is registered with the department and will collect and remit Iowa sales tax due under this chapter. In the certification, the bidder or contractor shall also acknowledge that the state agency may declare the contract or bid void if the certification is false. Fraudulent certification, by act or omission, may result in the state agency or its representative filing for damages for breach of contract.

11. a. All revenues arising under the operation of the provisions of this section shall be deposited into the general fund of the state.

b. Subsequent to the deposit into the general fund of the state and after the transfer of

such revenues collected under chapter 423B, the department shall transfer one-sixth of such remaining revenues to the secure an advanced vision for education fund created in section 423F.2. This paragraph is repealed December 31, 2029.

12. All taxes collected under this chapter by a retailer or any individual are deemed to be held in trust for the state of Iowa.

13. The sales tax rate of six percent is reduced to five percent on January 1, 2030.

2003 Acts, 1st Ex, ch 2, §95, 205; 2004 Acts, ch 1073, §24, 25; 2005 Acts, ch 140, §5, 18, 43; 2006 Acts, ch 1158, §70, 80; 2007 Acts, ch 119, §6; 2007 Acts, ch 186, §20; 2008 Acts, ch 1134, §4 – 10, 36; 2010 Acts, ch 1145, §8, 9, 17; 2011 Acts, ch 25, §143; 2011 Acts, ch 92, §5

Local sales and services tax, §423B.5 et seq.

2006 amendment to subsection 8 takes effect January 1, 2008; 2006 Acts, ch 1158, §80

Applicability of 2008 tax increase to certain sales; refunds to certain construction contractors; 2008 Acts, ch 1134, §35, 36

Code editor directive applied

Subsection 9 amended

### 423.3 Exemptions.

There is exempted from the provisions of this subchapter and from the computation of the amount of tax imposed by it the following:

1. The sales price from sales of tangible personal property and services furnished which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The sales price of sales for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with the furnishing of taxable services except for sales, other than leases or rentals, which are sales of machinery, equipment, attachments, and replacement parts specifically enumerated in subsection 37 and used in the manner described in subsection 37 or the purchase of tangible personal property, the leasing or rental of which is exempted from tax by subsection 49.

3. The sales price of agricultural breeding livestock and domesticated fowl.

4. The sales price of commercial fertilizer.

5. *a.* The sales price of agricultural limestone, herbicide, pesticide, insecticide, including adjuvants, surfactants, and other products directly related to the application enhancement of those products, food, medication, or agricultural drain tile, including installation of agricultural drain tile, any of which are to be used in disease control, weed control, insect control, or health promotion of plants or livestock produced as part of agricultural production for market.

*b.* The following enumerated materials associated with the installation of agricultural drain tile which is exempt pursuant to paragraph “*a*” shall also be exempt under paragraph “*a*”:

- (1) Tile intakes.
- (2) Outlet pipes and guards.
- (3) Aluminum and gabion structures.
- (4) Erosion control fabric.
- (5) Water control structures.
- (6) Miscellaneous tile fittings.

6. The sales price of tangible personal property which will be consumed as fuel in creating heat, power, or steam for grain drying, or for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, or for use in cultivation of agricultural products by aquaculture, or in implements of husbandry engaged in agricultural production.

7. The sales price of services furnished by specialized flying implements of husbandry used for agricultural aerial spraying.

8. *a.* The sales price exclusive of services of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if the following conditions are met:

(1) The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

(2) The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

(3) The replacement part is used in any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in the production of agricultural products.

b. Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, are not eligible for this exemption.

9. The sales price of wood chips, sawdust, hay, straw, paper, or other materials used for bedding in the production of agricultural livestock or fowl.

10. The sales price of gas, electricity, water, or heat to be used in implements of husbandry engaged in agricultural production.

11. The sales price exclusive of services of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment, and including auger systems, curtains and curtain systems, drip systems, fan and fan systems, shutters, inlets and shutter or inlet systems, and refrigerators, and replacement parts, if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production, aquaculture production, or the production of flowering, ornamental, or vegetable plants.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is used in any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in livestock or dairy production, aquaculture production, or the production of flowering, ornamental, or vegetable plants.

12. The sales price, exclusive of services, from sales of irrigation equipment used in farming operations.

13. The sales price from the sale or rental of irrigation equipment, whether installed above or below ground, to a contractor or farmer if the equipment will be primarily used in agricultural operations.

14. The sales price from the sales of horses, commonly known as draft horses, when purchased for use and so used as draft horses.

15. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production.

16. The sales price from the sale of feed and feed supplements and additives when used for consumption by farm deer or bison.

17. The sales price of all goods, wares, or merchandise, or services, used for educational purposes sold to any private nonprofit educational institution in this state. For the purpose of this subsection, "educational institution" means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. "Educational institution" includes an institution primarily functioning as a library.

18. The sales price of tangible personal property sold, or of services furnished, to the following nonprofit corporations:

a. Residential care facilities and intermediate care facilities for persons with mental retardation and residential care facilities for persons with mental illness licensed by the department of inspections and appeals under chapter 135C.

b. Residential facilities licensed by the department of human services pursuant to chapter 237, other than those maintained by individuals as defined in section 237.1, subsection 7.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for persons with mental retardation and other persons with developmental disabilities and adult day care services approved for reimbursement by the state department of human services.

d. Community mental health centers accredited by the department of human services pursuant to chapter 225C.

e. Community health centers as defined in 42 U.S.C. § 254(c) and migrant health centers as defined in 42 U.S.C. § 254(b).

f. Home and community-based services providers certified to offer Medicaid waiver services by the department of human services that are any of the following:

- (1) Ill and handicapped waiver service providers, described in 441 IAC 77.30.
- (2) Hospice providers, described in 441 IAC 77.32.
- (3) Elderly waiver service providers, described in 441 IAC 77.33.
- (4) AIDS/HIV waiver service providers, described in 441 IAC 77.34.
- (5) Federally qualified health centers, described in 441 IAC 77.35.
- (6) Intellectual disabilities waiver service providers, described in 441 IAC 77.37.
- (7) Brain injury waiver service providers, described in 441 IAC 77.39.

19. The sales price of tangible personal property sold to a nonprofit organization which was organized for the purpose of lending the tangible personal property to the general public for use by them for nonprofit purposes.

20. The sales price of tangible personal property sold, or of services furnished, to nonprofit legal aid organizations.

21. The sales price of goods, wares, or merchandise, or of services, used for educational, scientific, historic preservation, or aesthetic purpose sold to a nonprofit private museum.

22. The sales price from sales of goods, wares, or merchandise, or from services furnished, to a nonprofit private art center to be used in the operation of the art center.

23. The sales price of tangible personal property sold, or of services furnished, by a fair organized under chapter 174.

24. The sales price from services furnished by the notification center established pursuant to section 480.3, and the vendor selected pursuant to section 480.3 to provide the notification service.

25. The sales price of food and beverages sold for human consumption by a nonprofit organization which principally promotes a food or beverage product for human consumption produced, grown, or raised in this state and whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.

26. The sales price of tangible personal property sold, or of services furnished, to a statewide nonprofit organ procurement organization, as defined in section 142C.2.

26A. a. The sales price of reagents and related accessory equipment to a regional blood testing facility if all of the following conditions are met:

(1) The regional blood testing facility is registered by the federal food and drug administration.

(2) The regional blood testing facility performs donor testing for other blood centers.

(3) The regional blood testing facility is located in this state on or before January 1, 2011.

b. This subsection is repealed if a regional blood testing facility is not located in this state on or before January 1, 2011.

27. The sales price of tangible personal property sold, or of services furnished, to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital.

28. The sales price of tangible personal property sold, or of services furnished, to a freestanding nonprofit hospice facility which operates a hospice program as defined in 42 C.F.R. ch. IV, § 418.3, which property or services are to be used in the hospice program.

29. The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract with a nonprofit hospital licensed pursuant to chapter 135B if all of the following apply:

a. The sales and delivery of the goods, wares, or merchandise, or the services furnished occurred between July 1, 1998, and December 31, 2001.

b. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

c. The sales or services were purchased by a contractor as the agent for the hospital or were purchased directly by the hospital.

30. The sales price of livestock ear tags sold by a nonprofit organization whose income is exempt from federal taxation under section 501(c)(6) of the Internal Revenue Code where the proceeds are used in bovine research programs selected or approved by such organization.

31. *a.* The sales price of goods, wares, or merchandise sold to and of services furnished, and used for public purposes sold to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state, including regional transit systems, as defined in section 324A.1, the state board of regents, department of human services, state department of transportation, any municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except any of the following:

(1) The sales price of goods, wares, or merchandise sold to, or of services furnished, and used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, heat, pay television service, or communication service to the general public.

(2) The sales price of furnishing of sewage services to a county or municipality on behalf of nonresidential commercial operations.

(3) The furnishing of solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality.

*b.* The exemption provided by this subsection shall also apply to all such sales of goods, wares, or merchandise or of services furnished and subject to use tax.

32. The sales price of tangible personal property sold, or of services furnished, by a county or city. This exemption does not apply to any of the following:

*a.* The tax specifically imposed under section 423.2 on the sales price from sales or furnishing of gas, electricity, water, heat, pay television service, or communication service to the public by a municipal corporation in its proprietary capacity.

*b.* The sale or furnishing of solid waste collection and disposal service to nonresidential commercial operations.

*c.* The sale or furnishing of sewage service for nonresidential commercial operations.

*d.* Fees paid to cities and counties for the privilege of participating in any athletic sports.

33. *a.* The sales price of mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, sold by the legislative services agency and its legislative information office on the premises of property under the control of the legislative council, at the state capitol, and on other state property.

*b.* The legislative services agency is not a retailer under this chapter and the sale of items or provision of services by the legislative services agency is not a retail sale under this chapter and is exempt from the sales tax.

34. The sales price from sales of mementos and other items relating to Iowa history and historic sites by the department of cultural affairs on the premises of property under its control and at the state capitol.

35. The sales price from sales or services furnished by the state fair organized under chapter 173.

36. The sales price from sales of tangible personal property or of the sale or furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state if the other state provides a similar reciprocal exemption for this state and political subdivision of this state.

37. The sales price of services on or connected with new construction, reconstruction, alteration, expansion, remodeling, or the services of a general building contractor, architect, or engineer. The exemption in this subsection also applies to the sales price on the lease or rental of all machinery, equipment, and replacement parts directly and primarily used by owners, contractors, subcontractors, and builders for new construction, reconstruction, alteration, expansion, or remodeling of real property or structures and of all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the machinery, equipment, and replacement parts so used.

38. The sales price from the sale of building materials, supplies, or equipment sold to rural water districts organized under chapter 504 as provided in chapter 357A and used for the construction of facilities of a rural water district.

39. The sales price from “casual sales”.

a. “Casual sales” means:

(1) Sales of tangible personal property, or the furnishing of services, of a nonrecurring nature, by the owner, if the seller, at the time of the sale, is not engaged for profit in the business of selling tangible personal property or services taxed under section 423.2.

(2) The sale of all or substantially all of the tangible personal property or services held or used by a seller in the course of the seller’s trade or business for which the seller is required to hold a sales tax permit when the seller sells or otherwise transfers the trade or business to another person who shall engage in a similar trade or business.

(3) Notwithstanding subparagraph (1), the sale, furnishing, or performance of a service that is of a recurring nature by the owner if, at the time of the sale, all of the following apply:

(a) The seller is not engaged for profit in the business of the selling, furnishing, or performance of services taxed under section 423.2. For purposes of this subparagraph, the fact of the recurring nature of selling, furnishing, or performance of services does not constitute by itself engaging for profit in the business of selling, furnishing, or performance of services.

(b) The owner of the business is the only person performing the service.

(c) The owner of the business is a full-time student.

(d) The total gross receipts from the sales, furnishing, or performance of services during the calendar year does not exceed five thousand dollars.

b. The exemption under this subsection does not apply to vehicles subject to registration, all-terrain vehicles, snowmobiles, off-road motorcycles, off-road utility vehicles, aircraft, or commercial or pleasure watercraft or water vessels.

40. The sales price from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or application of the fluids in or on a motor vehicle, which service is subject to section 423.2, subsection 6, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section 423.26. For purposes of this subsection, automotive fluids are all those which are refined, manufactured, or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle. They include but are not limited to motor oil and other lubricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze, and gasoline additives.

41. The sales price from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard, or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing of such media and the charge for the viewing is subject to taxation under this subchapter or is subject to use tax.

b. The lessee broadcasts the contents of such media for public viewing or listening.

42. The sales price from the sale of tangible personal property consisting of advertising material including paper to a person in Iowa if that person or that person’s agent will, subsequent to the sale, send that advertising material outside this state and the material is subsequently used solely outside of Iowa. For the purpose of this subsection, “advertising material” means any brochure, catalog, leaflet, flyer, order form, return envelope, or similar item used to promote sales of property or services.

43. The sales price from the sale of property or of services performed on property which the retailer transfers to a carrier for shipment to a point outside of Iowa, places in the United States mail or parcel post directed to a point outside of Iowa, or transports to a point outside of Iowa by means of the retailer’s own vehicles, and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption shall not apply if the purchaser, consumer, or their agent, other than a carrier, takes physical possession of the property in Iowa.

44. The sales price from the sale of wine which is shipped from outside Iowa and which meets the requirements for sales and use tax exemption pursuant to section 123.187.

45. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.

46. The sales price from sales or rentals to a printer or publisher of the following: acetate; anti-halation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models and modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, and paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; ph-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and pasteups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; veloxes; wood mounts; and any other items used in a like capacity to any of the above enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies which are not enumerated in this subsection are excluded from the exemption. "Printer" means that portion of a person's business engaged in printing that completes a finished product for ultimate sale at retail or means that portion of a person's business used to complete a finished printed packaging material used to package a product for ultimate sale at retail. "Printer" does not mean an in-house printer who prints or copyrights its own materials.

47. a. The sales price from the sale or rental of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment if such items are any of the following:

(1) Directly and primarily used in processing by a manufacturer.

(2) Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

(3) Directly and primarily used in research and development of new products or processes of processing.

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

(5) Directly and primarily used in recycling or reprocessing of waste products.

(6) Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government.

b. The sales price from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph "a", subparagraph (1), (2), (3), (5), or (6).

c. The sales price from the sale or rental of the following shall not be exempt from the tax imposed by this subchapter:

- (1) Hand tools.
- (2) Point-of-sale equipment and computers.
- (3) Industrial machinery, equipment, and computers, including pollution-control equipment within the scope of section 427A.1, subsection 1, paragraphs “h” and “i”.
- (4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

d. As used in this subsection:

(1) “*Commercial enterprise*” includes businesses and manufacturers conducted for profit and centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations.

(2) “*Financial institution*” means as defined in section 527.2.

(3) “*Insurance company*” means an insurer organized or operating under chapter 508, 514, 515, 518, 518A, 519, or 520, or authorized to do business in Iowa as an insurer or an insurance producer under chapter 522B.

(4) “*Manufacturer*” means as defined in section 428.20, but also includes contract manufacturers. A contract manufacturer is a manufacturer that otherwise falls within the definition of manufacturer under section 428.20, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities.

(5) “*Processing*” means a series of operations in which materials are manufactured, refined, purified, created, combined, or transformed by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes but is not limited to refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; and construction of packaging and shipping devices, placement into shipping containers or any type of shipping devices or medium, and the movement of materials, components, or products until shipment from the processor.

(6) “*Receipt or producing of raw materials*” means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, the receipt or producing of raw materials is deemed to occur immediately following the severance of the raw materials from the real estate.

47A. a. Subject to paragraph “b”, the sales price from the sale or rental of central office equipment or transmission equipment primarily used by local exchange carriers and competitive local exchange service providers as defined in section 476.96; by franchised cable television operators, mutual companies, municipal utilities, cooperatives, and companies furnishing communications services that are not subject to rate regulation as provided in chapter 476; by long distance companies as defined in section 477.10; or for a commercial mobile radio service as defined in 47 C.F.R. § 20.3 in the furnishing of telecommunications services on a commercial basis. For the purposes of this subsection, “*central office equipment*” means equipment utilized in the initiating, processing, amplifying, switching, or monitoring of telecommunications services. “*Transmission equipment*” means equipment utilized in the process of sending information from one location to another location. “*Central office equipment*” and “*transmission equipment*” also include ancillary equipment and apparatus which support, regulate, control, repair, test, or enable such equipment to accomplish its function.

b. The exemption in this subsection shall be phased in by means of tax refunds as follows:

- (1) If the sale or rental occurs on or after July 1, 2006, through June 30, 2007, one-seventh of the state tax on the sales price shall be refunded.

(2) If the sale or rental occurs on or after July 1, 2007, through June 30, 2008, two-sevenths of the state tax on the sales price shall be refunded.

(3) If the sale or rental occurs on or after July 1, 2008, through June 30, 2009, three-sevenths of the state tax on the sales price shall be refunded.

(4) If the sale or rental occurs on or after July 1, 2009, through June 30, 2010, four-sevenths of the state tax on the sales price shall be refunded.

(5) If the sale or rental occurs on or after July 1, 2010, through June 30, 2011, five-sevenths of the state tax on the sales price shall be refunded.

(6) If the sale or rental occurs on or after July 1, 2011, through June 30, 2012, six-sevenths of the state tax on the sales price shall be refunded.

(7) If the sale or rental occurs on or after July 1, 2012, the sales price is exempt and no payment of tax and subsequent refund are required.

c. For sales or rentals occurring on or after July 1, 2006, through June 30, 2012, a refund of the tax paid as provided in paragraph "b", subparagraph (1), (2), (3), (4), (5), or (6), must be applied for, not later than six months after the month in which the sale or rental occurred, in the manner and on the forms provided by the department. Refunds shall only be of the state tax collected. Refunds authorized shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

48. The sales price from the furnishing of the design and installation of new industrial machinery or equipment, including electrical and electronic installation.

49. The sales price from the sale of carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services and the lease or rental of tangible personal property when used by a manufacturer of food products to produce marketable food products for human consumption, including but not limited to treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture.

50. The sales price of sales of electricity, steam, or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail or of any fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

51. The sales price of tangible personal property sold for processing. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that the property will, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail; or for generating electric current; or the property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing tangible personal property which is intended to be sold ultimately at retail or consumed in the maintenance or repair of fabric or clothing, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides is a retail sale for purposes of the processing exemption set out in this subsection and in subsection 50.

52. The sales price from the sale of argon and other similar gases to be used in the manufacturing process.

53. The sales price from the sale of electricity to water companies assessed for property tax pursuant to sections 428.24, 428.26, and 428.28 which is used solely for the purpose of pumping water from a river or well.

54. The sales price from the sale of wind energy conversion property to be used as an electric power source and the sale of the materials used to manufacture, install, or construct wind energy conversion property used or to be used as an electric power source.

For purposes of this subsection, "wind energy conversion property" means any device,

including but not limited to a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, which converts wind energy to a form of usable energy.

55. The sales price from the sales of newspapers, free newspapers, or shoppers guides and the printing and publishing of such newspapers and shoppers guides, and envelopes for advertising.

56. The sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the sales price from the sales of ethanol blended gasoline, as defined in section 214A.1.

57. The sales price from all sales of food and food ingredients. However, as used in this subsection, a sale of “*food and food ingredients*” does not include a sale of alcoholic beverages, candy, or dietary supplements; food sold through vending machines; or sales of prepared food, soft drinks, or tobacco. For the purposes of this subsection:

a. “*Alcoholic beverages*” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

b. “*Candy*” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

c. “*Dietary supplement*” means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients:

- (1) A vitamin.
- (2) A mineral.
- (3) An herb or other botanical.
- (4) An amino acid.

(5) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(6) A concentrate, metabolite, constituent, extract, or combination of any of the ingredients in subparagraphs (1) through (5) that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and is required to be labeled as a dietary supplement, identifiable by the “supplement facts” box found on the label and as required pursuant to 21 C.F.R. § 101.36.

d. “*Food and food ingredients*” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

e. “*Food sold through vending machines*” means food dispensed from a machine or other mechanical device that accepts payment, other than food which would be qualified for exemption under subsection 58 if purchased with a coupon described in subsection 58.

f. “*Prepared food*” means any of following:

- (1) Food sold in a heated state or heated by the seller, including food sold by a caterer.
- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item.
- (3) “*Prepared food*”, for the purposes of this paragraph, does not include food that is any of the following:

(a) Only cut, repackaged, or pasteurized by the seller.

(b) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the United States food and drug administration, ch. 3, part 401.11 of its food code, so as to prevent foodborne illnesses.

(c) Bakery items sold by the seller which baked them. The words “*bakery items*” includes but is not limited to breads, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(d) Food sold without eating utensils provided by the seller in an unheated state as a single item which is priced by weight or volume.

- (4) Food sold with eating utensils provided by the seller, including plates, knives, forks,

spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport food.

g. “*Soft drinks*” means nonalcoholic beverages that contain natural or artificial sweeteners. “*Soft drinks*” does not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

h. “*Tobacco*” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

58. The sales price from the sale of items purchased with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. § 2011 et seq.

59. In transactions in which tangible personal property is traded toward the sales price of other tangible personal property, that portion of the sales price which is not payable in money to the retailer is exempted from the taxable amount if the following conditions are met:

a. The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer’s business.

b. The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

60. The sales price from the sale or rental of prescription drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, and other medical devices intended for human use or consumption. For the purposes of this subsection:

a. “*Drug*” means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages, which is any of the following:

(1) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplement to any of them.

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

(3) Intended to affect the structure or any function of the body.

b. “*Durable medical equipment*” means equipment, including repair and replacement parts, and all components or attachments, but does not include mobility enhancing equipment, to which all of the following apply:

(1) Can withstand repeated use.

(2) Is primarily and customarily used to serve a medical purpose.

(3) Generally is not useful to a person in the absence of illness or injury.

(4) Is not worn in or on the body.

(5) Is for home use only.

(6) Is prescribed by a practitioner.

c. “*Mobility enhancing equipment*” means equipment, including repair and replacement parts, but does not include durable medical equipment, to which all of the following apply:

(1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle.

(2) Is not generally used by persons with normal mobility.

(3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(4) Is prescribed by a practitioner.

d. “*Other medical device*” means equipment or a supply that is not a drug, durable medical equipment, mobility enhancing equipment, or prosthetic device. “*Other medical devices*” includes but is not limited to ostomy, urological, and tracheostomy supplies, diabetic testing materials, hypodermic syringes and needles, anesthesia trays, biopsy trays and biopsy needles, cannula systems, catheter trays and invasive catheters, fistula sets, irrigation solutions, intravenous administering solutions and stopcocks, myelogram trays, small vein infusion kits, spinal puncture trays, and venous blood sets intended to be dispensed for human use with or without a prescription to an ultimate user.

e. “*Practitioner*” means a practitioner as defined in section 155A.3, or a person licensed to prescribe drugs.

f. “*Prescription*” means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a practitioner.

g. “*Prescription drug*” means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

h. “*Prosthetic device*” means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to do any of the following:

- (1) Artificially replace a missing portion of the body.
- (2) Prevent or correct physical deformity or malfunction.
- (3) Support a weak or deformed portion of the body.

“*Prosthetic device*” includes but is not limited to orthopedic or orthotic devices, ostomy equipment, urological equipment, tracheostomy equipment, and intraocular lenses.

i. “*Ultimate user*” means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual’s own use or for the use of a member of the individual’s household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed, or prescribed.

61. The sales price from services furnished by aerial commercial and charter transportation services.

62. The sales price from the sale of raffle tickets for a raffle licensed pursuant to section 99B.5.

63. The sales price from the sale of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in chapter 99B.

64. The sales price from the sale of a modular home, as defined in section 435.1, to the extent of the portion of the purchase price of the modular home which is not attributable to the cost of the tangible personal property used in the processing of the modular home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the modular home is forty percent.

65. The sales price from charges paid to a provider for access to on-line computer services. For purposes of this subsection, “*on-line computer service*” means a service that provides or enables computer access by multiple users to the internet or to other information made available through a computer server or other device.

66. The sales price from the sale or rental of information services. “*Information services*” means every business activity, process, or function by which a seller or its agent accumulates, prepares, organizes, or conveys data, facts, knowledge, procedures, and like services to a buyer or its agent of such information through any tangible or intangible medium. Information accumulated, prepared, or organized for a buyer or its agent is an information service even though it may incorporate preexisting components of data or other information. “*Information services*” includes but is not limited to database files, mailing lists, subscription files, market research, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, and scouting reports, or other similar items.

67. The sales price of a sale at retail if the substance of the transaction is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.

68. a. The sales price from the sale of an article of clothing designed to be worn on or about the human body if all of the following apply:

- (1) The sales price of the article is less than one hundred dollars.
- (2) The sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Saturday.

b. This subsection does not apply to any of the following:

- (1) Sport or recreational equipment and protective equipment.
- (2) Clothing accessories or equipment.
- (3) The rental of clothing.

c. For purposes of this subsection:

(1) “*Clothing*” means all human wearing apparel suitable for general use.

(a) “*Clothing*” includes but is not limited to the following: aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers (children and adults, including disposable diapers); earmuffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoelaces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel.

(b) “*Clothing*” does not include the following: belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies (including but not limited to knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles); and sewing materials that become part of clothing (including but not limited to buttons, fabric, lace, thread, yarn, and zippers).

(2) “*Clothing accessories or equipment*” means incidental items worn on the person or in conjunction with clothing. “*Clothing accessories or equipment*” includes but is not limited to the following: briefcases; cosmetics; hair notions (including but not limited to barrettes, hair bows, and hair nets); handbags; handkerchiefs; jewelry; sunglasses, nonprescription; umbrellas; wallets; watches; and wigs and hairpieces.

(3) “*Protective equipment*” means items for human wear and designed as protection for the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. “*Protective equipment*” includes but is not limited to the following: breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welders gloves and masks.

(4) “*Sport or recreational equipment*” means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. “*Sport or recreational equipment*” includes but is not limited to the following: ballet and tap shoes; cleated or spiked athletic shoes; gloves (including but not limited to baseball, bowling, boxing, hockey, and golf); goggles; hand and elbow guards; life preservers and vests; mouth guards; roller and ice skates; shin guards; shoulder pads; ski boots; waders; and wetsuits and fins.

69. The sales price from charges paid for the delivery of electricity or natural gas if the sale or furnishing of the electricity or natural gas or its use is exempt from the tax on sales prices imposed under this subchapter or from the use tax imposed under subchapter III.

69A. The sales price from surcharges paid for E911 service and wireless E911 service pursuant to chapter 34A.

70. The sales price of delivery charges. This exemption does not apply to the delivery of electric energy or natural gas.

71. The sales price from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

72. The sales price from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser’s barge, ship, or waterborne vessel while it is afloat upon such a river.

73. The sales price from sales of vehicles subject to registration or subject only to the issuance of a certificate of title and sales of aircraft subject to registration under section 328.20.

74. The sales price from the sale of aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

75. The sales price from the sale or rental of aircraft; the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the sales price of all services used for aircraft repair, remodeling, and maintenance services when such

services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, “*aircraft*” means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

76. The sales price from the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the sales price of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, “*aircraft*” means aircraft used in nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

77. *a.* The sales price from the sale of aircraft to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

- (1) The aircraft is kept in the inventory of the dealer for sale at all times.
- (2) The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.
- (3) The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

*b.* If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraph “*a*”, subparagraphs (1), (2), and (3), are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

78. *a.* The sales price from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property, or services rendered, are used by or donated to a nonprofit entity that is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a nonprofit private educational institution, and where the entire proceeds from the sales, rental, or services are expended for any of the following purposes:

- (1) Educational.
- (2) Religious.
- (3) Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add to or to improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

*b.* For purposes of this exemption, an organization that meets the requirements of paragraph “*a*” and which is created for the sole or primary purpose of providing athletic activities to youth shall be considered created for an educational purpose.

*c.* This exemption does not apply to the sales price from games of skill, games of chance, raffles, and bingo games as defined in chapter 99B. This exemption is disallowed on the amount of the sales price only to the extent the profits from the sales, rental, or services are not used by or donated to the appropriate entity and expended for educational, religious, or charitable purposes.

79. The sales price from the sale or rental of tangible personal property or from services furnished to a recognized community action agency as provided in section 216A.93 to be used for the purposes of the agency.

80. *a.* For purposes of this subsection, “*designated exempt entity*” means an entity which is designated in section 423.4, subsection 1 or 6.

*b.* If a contractor, subcontractor, or builder is to use building materials, supplies, and equipment in the performance of a construction contract with a designated exempt entity, the person shall purchase such items of tangible personal property without liability for the tax if such property will be used in the performance of the construction contract and a purchasing agent authorization letter and an exemption certificate, issued by the designated exempt entity, are presented to the retailer. The sales price of building materials, supplies, or equipment is exempt from tax by this subsection only to the extent the building materials, supplies, or equipment are completely consumed in the performance of the construction contract with the designated exempt entity.

*c.* Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail

sales tax permit and transacting retail sales of building materials, supplies, and equipment, the tax shall not be due when materials are withdrawn from inventory for use in construction performed for a designated exempt entity if an exemption certificate is received from such entity.

d. Tax shall not apply to tangible personal property purchased and consumed by a manufacturer as building materials, supplies, or equipment in the performance of a construction contract for a designated exempt entity, if a purchasing agent authorization letter and an exemption certificate are received from such entity and presented to a retailer.

81. The sales price from the sales of lottery tickets or shares pursuant to chapter 99G.

82. a. The sales price from the sale or rental of core-making, mold-making, and sand-handling machinery and equipment, including replacement parts, directly and primarily used in the mold-making process by a foundry.

b. The sales price from the sale of fuel used in creating heat, power, steam, or for generating electric current, or from the sale of electricity, consumed by core-making, mold-making, and sand-handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

c. The sales price from the furnishing of the design and installation, including electrical and electronic installation, of core-making, mold-making, and sand-handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

83. The sales price from noncustomer point of sale or noncustomer automated teller machine access or service charges assessed by a financial institution. For purposes of this subsection, “*financial institution*” means the same as defined in section 527.2.

84. a. Subject to paragraph “b”, the sales price from the sale or furnishing of metered gas, electricity, and fuel, including propane and heating oil, to residential customers which is used to provide energy for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. The exemption in this subsection shall be phased in by means of a reduction in the tax rate as follows:

(1) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2004, through December 31, 2004, the rate of tax is two percent of the sales price.

(2) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2005, through December 31, 2005, the rate of tax is one percent of the sales price.

(3) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2006, the rate of tax is zero percent of the sales price.

c. The exemption in this subsection does not apply to local option sales and services tax imposed pursuant to chapters 423B and 423E.

85. The sales price from the sale of the following items: self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

86. a. The sales price from services performed on a vessel if all of the following apply:

(1) The vessel is a licensed vessel under the laws of the United States coast guard.

(2) The service is used to repair or restore a defect in the vessel.

(3) The vessel is engaged in interstate commerce and will continue in interstate commerce once the repairs or restoration is completed.

(4) The vessel is in navigable water that borders a boundary of this state.

b. For purposes of this exemption, “vessel” includes a ship, barge, or other waterborne vessel.

87. The sales price from the sales of toys to a nonprofit organization exempt from federal income tax under section 501 of the Internal Revenue Code that purchases the toys from donations collected by the nonprofit organization and distributes the toys to children at no cost.

88. The sales price from the sale of building materials, supplies, goods, wares, or merchandise sold to a nonprofit Iowa affiliate of a nonprofit international organization whose primary activity is the promotion of the construction, remodeling, or rehabilitation of one-family or two-family dwellings for use by low-income families and where the building materials, supplies, goods, wares, or merchandise are used in the construction, remodeling, or rehabilitation of such dwellings.

89. a. The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract for the original construction of a building or structure to be used as a collaborative educational facility.

b. The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract for the construction of additions or modifications to a building or structure used as part of a collaborative educational facility.

c. To receive the exemption provided in paragraph “a” or “b”, a collaborative educational facility must meet all of the criteria in paragraph “d” or “e”:

d. (1) The contract for construction of the building or structure is entered into on or after April 1, 2003.

(2) The building or structure is located within the corporate limits of a city in the state with a population in excess of one hundred ninety-five thousand residents.

(3) The sole purpose of the building or structure is to provide facilities for a collaborative of public and private educational institutions that provide education to students.

(4) The owner of the building or structure is a nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(a) of the Internal Revenue Code.

e. (1) The contract for construction of the building or structure is entered into on or after May 15, 2007.

(2) The sole purpose of the building or structure is to provide facilities for a regional academy under a collaborative of public and private educational institutions that includes a community college established under chapter 260C that provide education to students.

(3) The owner of the building or structure is a qualified charitable nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.

f. References to “building” or “structure” in paragraphs “d” and “e” include any additions or modifications to the building or structure.

90. The sales price from the sale of solar energy equipment. For purposes of this subsection, “solar energy equipment” means equipment that is primarily used to collect and convert incident solar radiation into thermal, mechanical, or electrical energy or equipment that is primarily used to transform such converted solar energy to a storage point or to a point of use.

91. a. The sales price from the sale of coins, currency, or bullion.

b. For purposes of this subsection:

(1) “Bullion” means bars, ingots, or commemorative medallions of gold, silver, platinum, palladium, or a combination of these where the value of the metal depends on its content and not the form.

(2) “Coins” or “currency” means a coin or currency made of gold, silver, or other metal or paper which is or has been used as legal tender.

92. a. (1) The sales price from the sale or rental of computers and equipment that are necessary for the maintenance and operation of a web search portal and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure

for transformation, distribution, or management of electricity used for the maintenance and operation of the web search portal, including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the web search portal.

(2) The sales price of backup power generation fuel, that is purchased by a web search portal business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use in providing a web search portal.

b. For the purpose of claiming this exemption, all of the following requirements shall be met:

(1) The business of the purchaser or renter shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in the state that is used for the operations and maintenance of the web search portal site on the internet including but not limited to research and development to support capabilities to organize information and to provide internet access, navigation, and search.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of two hundred million dollars within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

c. This exemption applies from the date of the initial investment in or the initiation of site preparation activities for the web search portal facility as described in paragraph "b". For purposes of claiming this exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business's affiliates. This exemption applies to affiliates of the web search portal business.

d. Failure to meet eighty percent of the minimum investment amount requirement specified in paragraph "b" within the first six years of operation from the date the web search portal business initiates site preparation activities will result in the web search portal business losing the right to claim this exemption and the web search portal business shall pay all sales or use tax that would have been due on the purchase or rental or use of the items listed in this exemption, plus any applicable penalty and interest imposed by statute.

e. For purposes of this subsection:

(1) "Affiliate" means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

(2) "Control" means any of the following:

(a) In the case of a United States corporation, the ownership, directly or indirectly, of fifty percent or more of the voting power to elect directors.

(b) In the case of a foreign corporation, if the voting power to elect the directors is less than fifty percent, the maximum amount allowed by applicable law.

(c) In the case of an entity other than a corporation, fifty percent or more ownership interest in the entity, or the power to direct the management of the entity.

(3) "Web search portal business" means an entity among whose primary businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; and to provide internet access, navigation, and search functionalities.

93. a. (1) The sales price from the sale or rental of computers and equipment that are necessary for the maintenance and operation of a web search portal business and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the web search portal business, including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery

systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the web search portal business.

(2) The sales price of backup power generation fuel, that is purchased by a web search portal business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use by a web search portal business.

b. For the purpose of claiming this exemption, all of the following requirements shall be met:

(1) The purchaser or renter shall be a web search portal business.

(2) The web search portal business shall have a physical location in the state that is used for the operations and maintenance of the web search portal business.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of two hundred million dollars within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

c. This exemption applies from the date of the initial investment in or the initiation of site preparation activities for the web search portal facility as described in paragraph "b". For purposes of claiming this exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business's affiliates. This exemption applies to affiliates of the web search portal business.

d. Failure to meet eighty percent of the minimum investment amount requirement specified in paragraph "b" within the first six years of operation from the date the web search portal business initiates site preparation activities will result in the web search portal business losing the right to claim this web search portal business exemption and the web search portal business shall pay all sales or use tax that would have been due on the purchase or rental or use of the items listed in this exemption, plus any applicable penalty and interest imposed by statute.

e. For purposes of this subsection:

(1) "*Affiliate*" means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

(2) "*Control*" means any of the following:

(a) In the case of a United States corporation, the ownership, directly or indirectly, of fifty percent or more of the voting power to elect directors.

(b) In the case of a foreign corporation, if the voting power to elect the directors is less than fifty percent, the maximum amount allowed by applicable law.

(c) In the case of an entity other than a corporation, fifty percent or more ownership interest in the entity, or the power to direct the management of the entity.

(3) "*Web search portal business*" means an entity whose business among other businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; or to provide internet access, navigation, or search functionalities.

94. Water use permit fees paid pursuant to section 455B.265.

95. a. (1) The sales price from the sale or rental of computers and equipment that are necessary for the maintenance and operation of a data center business and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the data center business, including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the data center business.

(2) The sales price of backup power generation fuel that is purchased by a data center business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use by a data center business.

b. For the purpose of claiming this exemption, all of the following requirements shall be met:

(1) The purchaser or renter shall be a data center business.

(2) The data center business shall have a physical location in the state that is, in the aggregate, at least five thousand square feet in size that is used for the operations and maintenance of the data center business.

(3) The data center business shall make a minimum investment in an Iowa physical location of two hundred million dollars within the first six years of operation in Iowa beginning with the date the data center business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The data center business shall comply with the sustainable design and construction standards established by the state building code commissioner pursuant to section 103A.8B.

c. This exemption applies from the date of the initial investment in or the initiation of site preparation activities for the data center business facility as described in paragraph “b”.

d. Failure to meet eighty percent of the minimum investment amount requirement specified in paragraph “b” within the first six years of operation from the date the data center business initiates site preparation activities will result in the data center business losing the right to claim this data center business exemption and the data center business shall pay all sales or use tax that would have been due on the purchase or rental or use of the items listed in this exemption, plus any applicable penalty and interest imposed by statute.

e. For purposes of this subsection:

(1) “*Data center*” means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge. A data center business’s facility typically includes the mechanical and electrical systems, redundant or backup power supplies, redundant data communications connections, environmental controls, and fire suppression systems. A data center business’s facility also includes a restricted access area employing advanced physical security measures such as video surveillance systems and card-based security or biometric security access systems.

(2) “*Data center business*” means an entity whose business among other businesses, is to operate a data center.

2003 Acts, 1st Ex, ch 2, §96, 205; 2004 Acts, ch 1022, §4; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1073, §26, 27; 2004 Acts, ch 1086, §105; 2004 Acts, ch 1133, §1; 2004 Acts, ch 1175, §320, 394; 2005 Acts, ch 71, §1; 2005 Acts, ch 134, §1; 2005 Acts, ch 140, §6 – 11, 16, 30, 44 – 46, 72, 73; 2006 Acts, ch 1001, §1, 2, 4, 5; 2006 Acts, ch 1134, §1; 2006 Acts, ch 1158, §40 – 44; 2006 Acts, ch 1161, §5, 7; 2006 Acts, ch 1162, §1; 2006 Acts, ch 1185, §128; 2007 Acts, ch 22, §74, 75; 2007 Acts, ch 186, §21, 22; 2007 Acts, ch 199, §1; 2007 Acts, ch 215, §112, 125; 2008 Acts, ch 1006, §1; 2008 Acts, ch 1163, §1; 2008 Acts, ch 1184, §55, 56; 2009 Acts, ch 133, §144; 2009 Acts, ch 179, §136, 197, 218 – 220; 2010 Acts, ch 1031, §388; 2010 Acts, ch 1148, §1; 2011 Acts, ch 25, §41, 42, 85 – 87, 143; 2011 Acts, ch 92, §6

2009 amendment to subsection 78 takes effect May 26, 2009, and applies retroactively to July 1, 1998; October 1, 2009, filing deadline and limitation on claims resulting from transactions occurring between July 1, 1998, and May 26, 2009; 2009 Acts, ch 179, §219, 220

Code editor directive applied

Subsection 60 amended

Subsection 68, paragraph c, subparagraph (1) amended

Subsection 77 amended

Subsection 92, paragraph a, subparagraphs (1) and (2) amended

Subsection 93, paragraph a, subparagraphs (1) and (2) amended

#### 423.4 Refunds.

1. A private nonprofit educational institution in this state, nonprofit Iowa affiliate of a nonprofit international organization whose primary activity is the promotion of the construction, remodeling, or rehabilitation of one-family or two-family dwellings for

low-income families, nonprofit private museum in this state, tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which do not have earnings going to the benefit of an equity investor or stockholder, may make application to the department for the refund of the sales or use tax upon the sales price of all sales of goods, wares, or merchandise, or from services furnished to a contractor, used in the fulfillment of a written contract with the state of Iowa, any political subdivision of the state, or a division, board, commission, agency, or instrumentality of the state or a political subdivision, a private nonprofit educational institution in this state, a nonprofit Iowa affiliate described in this subsection, or a nonprofit private museum in this state if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, is devoted to educational uses, becomes part of a low-income one-family or two-family dwelling in the state, or becomes a nonprofit private museum; except goods, wares, or merchandise, or services furnished which are used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public or in connection with the operation of a municipal pay television system; and except goods, wares, and merchandise used in the performance of a contract for a "project" under chapter 419 as defined in that chapter other than goods, wares, or merchandise used in the performance of a contract for a "project" under chapter 419 for which a bond issue was approved by a municipality prior to July 1, 1968, or for which the goods, wares, or merchandise becomes an integral part of the project under contract and at the completion of the project becomes public property or is devoted to educational uses.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares, or merchandise, or services furnished and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit, private nonprofit educational institution, nonprofit Iowa affiliate, or nonprofit private museum which has made any written contract for performance by the contractor. The forms shall be filed by the contractor with the governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum before final settlement is made.

b. Such governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum shall, not more than one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares, or merchandise, or services furnished, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

c. Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

d. Any contractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition shall be liable for the payment of the tax and any applicable penalty and interest.

2. The refund of sales and use tax paid on transportation construction projects let by the state department of transportation is subject to the special provisions of this subsection.

a. A contractor awarded a contract for a transportation construction project is considered the consumer of all building materials, building supplies, and equipment and shall pay sales tax to the supplier or remit consumer use tax directly to the department.

b. The contractor is not required to file information with the state department of transportation stating the amount of goods, wares, or merchandise, or services rendered,

furnished, or performed and used in the performance of the contract or the amount of sales or use tax paid.

c. The state department of transportation shall file a refund claim based on a formula that considers the following:

(1) The quantity of material to complete the contract, and quantities of items of work.

(2) The estimated cost of these materials included in the items of work, and the state sales or use tax to be paid on the tax rate in effect in section 423.2. The quantity of materials shall be determined after each letting based on the contract quantities of all items of work let to contract. The quantity of individual component materials required for each item shall be determined and maintained in a database. The total quantities of materials shall be determined by multiplying the quantities of component materials for each contract item of work by the total quantities of each contract item for each letting. Where variances exist in the cost of materials, the lowest cost shall be used as the base cost.

d. Only the state sales or use tax is refundable. Local option taxes paid by the contractor are not refundable.

3. A relief agency may apply to the director for refund of the amount of sales or use tax imposed and paid upon sales to it of any goods, wares, merchandise, or services furnished, used for free distribution to the poor and needy.

a. The refunds may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department, and filed within the time as the director shall provide by rule, the relief agency shall report to the department the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services furnished, used for free distribution to the poor and needy.

(2) On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

(3) The relief agency must prove to the satisfaction of the director that the person making the sales has included the amount thereof in the computation of the sales price of such person and that such person has paid the tax levied by this subchapter or subchapter III, based upon such computation of the sales price.

b. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the relief agency.

4. A person in possession of a wind energy production tax credit certificate pursuant to chapter 476B or a renewable energy tax credit certificate issued pursuant to chapter 476C may apply to the director for refund of the amount of sales or use tax imposed and paid upon purchases made by the applicant.

a. The refunds may be obtained only in the following manner and under the following conditions:

(1) On forms furnished by the department and filed by January 31 after the end of the calendar year in which the tax credit certificate is to be applied, the applicant shall report to the department the total amount of sales and use tax paid during the reporting period on purchases made by the applicant.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) If required by the department, the applicant shall prove that the person making the sales has included the amount thereof in the computation of the sales price of such person and that such person has paid the tax levied by this subchapter or subchapter III, based upon such computation of the sales price.

(4) The applicant shall provide the tax credit certificates issued pursuant to chapter 476B or 476C to the department with the forms required by this paragraph "a".

b. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the applicant for an amount not greater than the amount of tax credits issued in tax credit certificates pursuant to chapter 476B or 476C.

5. a. For purposes of this subsection:

(1) "Automobile racetrack facility" means a sanctioned automobile racetrack facility

located as part of a racetrack and entertainment complex, including any museum attached to or included in the racetrack facility but excluding any restaurant, and which facility is located, on a maximum of two hundred thirty-two acres, in a city with a population of at least fourteen thousand five hundred but not more than sixteen thousand five hundred residents, which city is located in a county with a population of at least thirty-five thousand but not more than forty thousand residents and where the construction on the racetrack facility commenced not later than July 1, 2006, and the cost of the construction upon completion was at least thirty-five million dollars.

(2) “*Change of control*” means any of the following:

(a) Any change in the ownership of the original or any subsequent legal entity that is the owner or operator of the automobile racetrack facility such that less than twenty-five percent of the equity interests in the legal entity is owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both.

(b) The original owners of the legal entity that is the owner or operator of the automobile racetrack facility shall collectively cease to own at least twenty-five percent of the voting equity interests of such legal entity.

(3) “*Iowa corporation*” means a corporation incorporated under the laws of Iowa where at least twenty-five percent of the corporation’s equity interests are owned by individuals who are residents of Iowa.

(4) “*Owner or operator*” means a for-profit legal entity where at least twenty-five percent of its equity interests are owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both and that is the owner or operator of an automobile racetrack facility and is primarily a promoter of motor vehicle races.

(5) “*Population*” means the population based upon the 2000 certified federal census.

b. The owner or operator of an automobile racetrack facility may apply to the department for a rebate of sales tax imposed and collected by retailers upon sales of tangible personal property or services furnished to purchasers at the automobile racetrack facility.

c. The rebate may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department within the time period provided by the department by rule, which time period shall not be longer than quarterly.

(2) The owner or operator shall provide information as deemed necessary by the department.

(3) The transactions for which sales tax was collected and the rebate is sought occurred on or after January 1, 2006, but before January 1, 2016. However, not more than twelve million five hundred thousand dollars in total rebates shall be provided pursuant to this subsection.

(4) Notwithstanding subparagraph (3), the rebate of sales tax shall cease for transactions occurring on or after the date of the change of control of the automobile racetrack facility.

(5) The automobile racetrack facility has not received or shall not receive any grants under the community attraction and tourism program pursuant to chapter 15F, subchapter II, or the vision Iowa program pursuant to chapter 15F, subchapter III.

d. To assist the department in determining the amount of the rebate, the owner or operator shall identify to the department retailers located at the automobile racetrack facility who will be collecting sales tax. The department shall verify such identity and ensure that all proper permits have been issued. For purposes of this subsection, advance ticket and admissions sales shall be considered occurring at the automobile racetrack facility regardless of where the transactions actually occur.

e. Upon determining that the conditions and requirements of this subsection and the department are met, the department shall issue a warrant to the owner or operator in the amount equal to the amount claimed and verified by the department.

f. Notwithstanding the state sales tax imposed in section 423.2, a rebate issued pursuant to this subsection shall not exceed an amount equal to five percent of the sales price of the tangible personal property or services furnished to purchasers at the automobile racetrack facility. Any local option taxes paid and collected shall not be subject to rebate under this subsection.

g. This subsection is repealed June 30, 2016, or thirty days following the date on which

twelve million five hundred thousand dollars in total rebates have been provided, or thirty days following the date on which rebates cease as provided in paragraph “c”, subparagraph (4), whichever is the earliest.

6. a. (1) The owner of a collaborative educational facility in this state may make application to the department for the refund of the sales or use tax upon the sales price of all sales of goods, wares, or merchandise, or from services furnished to a contractor, used in the fulfillment of a written construction contract with the owner of the collaborative educational facility for the original construction, or additions or modifications to, a building or structure to be used as part of the collaborative educational facility.

(2) To receive the refund under this subsection, a collaborative educational facility must meet all of the following criteria:

(a) The contract for construction of the building or structure is entered into on or after April 1, 2003.

(b) The building or structure is located within the corporate limits of a city in the state with a population in excess of one hundred ninety-five thousand residents.

(c) The sole purpose of the building or structure is to provide facilities for a collaborative of public and private educational institutions that provide education to students.

(d) The owner of the building or structure is a nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(a) of the Internal Revenue Code.

(3) References to “*building*” or “*structure*” in subparagraph (2), subparagraph divisions (a) through (d) include any additions or modifications to the building or structure.

b. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares, or merchandise, or services furnished and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the owner of the collaborative educational facility which has made any written contract for performance by the contractor.

c. (1) The owner of the collaborative educational facility shall, not more than one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares, or merchandise, or services furnished, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the owner of the collaborative educational facility in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

(2) Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

d. Any contractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition shall be liable for the payment of the tax and any applicable penalty and interest.

7. a. The owner of a data center business, as defined in section 423.3, subsection 95, located in this state may make an annual application for up to five consecutive years to the department for the refund of fifty percent of the sales or use tax upon the sales price of all sales of fuel used in creating heat, power, and steam for processing or generating electrical current, or from the sale of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility.

b. A data center business shall qualify for the refund in this subsection if all of the following criteria are met:

(1) The data center business shall make an investment in an Iowa physical location within the first three years of operation in Iowa beginning with the date on which the data center business initiates site preparation activities.

(2) The amount of the investment in an Iowa physical location, including the value of a lease agreement, or an investment in land or buildings, and the capital expenditures for computers, machinery, and other equipment used in the operation of the data center business shall equal at least one million dollars, but shall not exceed ten million dollars for a newly constructed building or five million dollars for a rehabilitated building.

(3) If the data center business is leasing a building to house operations, the data center business shall enter into a lease that is at least five years in duration.

(4) The data center business shall comply with the sustainable design and construction standards established by the state building code commissioner pursuant to section 103A.8B.

c. The refund may be obtained only in the following manner and under the following conditions:

(1) The applicant shall use forms furnished by the department.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) The applicant may request when the refund begins, but it must start on the first day of a month and proceed for a continuous twelve-month period.

d. In determining the amount to be refunded, if the dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity are on or after the first day of the first month through the last day of the last month of the refund year, fifty percent of the amount of tax charged in the billings shall be refunded. In determining the amount to be refunded, if the dates of the sale or furnishing of fuel for purposes of commercial energy and the delivery of the fuel are on or after the first day of the first month through the last day of the last month of the refund year, fifty percent of the amount of tax charged in the billings shall be refunded.

e. To receive refunds during the five-year period, the applicant shall file a refund claim within three months after the end of each refund year.

f. The refund in this subsection applies only to state sales and use tax paid and does not apply to local option sales and services taxes imposed pursuant to chapter 423B. Notwithstanding the state sales tax imposed in section 423.2, a refund issued pursuant to this section shall not exceed an amount equal to five percent of the sales price of the fuel used to create heat, power, and steam for processing or generating electrical current or from the sale price of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility.

8. a. The owner of a data center business, as defined in section 423.3, subsection 95, paragraph "e", located in this state that is not eligible for the exemption under section 423.3, subsection 95, may make an annual application to the department for the refund of fifty percent of the sales or use tax upon all of the following:

(1) The sales price from the sale or rental of computers and equipment that are necessary for the maintenance and operation of a data center business and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the data center business including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the data center business.

(2) The sales price of backup power generation fuel that is purchased by a data center business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use in providing data center services.

b. A data center business shall qualify for the partial refund in this subsection if all of the following criteria are met:

(1) The data center business shall have a physical location in the state which is at least five thousand square feet in size.

(2) The data center business shall make a minimum investment of at least ten million dollars, in the case of new construction, or at least five million dollars in the case of a rehabilitated building, in an Iowa physical location within the first six years of operation in Iowa, beginning with the date on which the data center business initiates site preparation activities. The minimum investment includes the initial investment, including the value of a lease agreement or the amount invested in land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(3) If the data center business is leasing a building to house operations, the data center business shall enter into a lease that is at least five years in duration.

(4) The data center business shall comply with the sustainable design and construction standards established by the state building code commissioner pursuant to section 103A.8B.

c. The refund allowed under this subsection shall be available for the following periods of time:

(1) For an investment of at least ten million dollars, in the case of new construction, or at least five million dollars, in the case of a rehabilitated building, but less than one hundred thirty-six million dollars, ten years.

(2) For an investment of at least one hundred thirty-six million dollars, but less than two hundred million dollars, seven years.

d. The refund may be obtained only in the following manner and under the following conditions:

(1) The applicant shall use forms furnished by the department.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) The applicant may request when the refund begins, but it must start on the first day of a month and proceed for a continuous twelve-month period.

e. In determining the amount to be refunded, if the dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity are on or after the first day of the first month through the last day of the last month of the refund year, fifty percent of the amount of tax charged in the billings shall be refunded. In determining the amount to be refunded, if the dates of the sale or furnishing of fuel for purposes of commercial energy and the delivery of the fuel are on or after the first day of the first month through the last day of the last month of the refund year, fifty percent of the amount of tax charged in the billings shall be refunded.

f. To receive refunds during the applicable refund period, the applicant shall file a refund claim within three months after the end of each refund year.

g. The refund in this subsection applies only to state sales and use tax paid and does not apply to local option sales and services taxes imposed pursuant to chapter 423B. Notwithstanding the state sales tax imposed in section 423.2, a refund issued pursuant to this section shall not exceed an amount equal to five percent of the sales price of the items listed in paragraph "a", subparagraphs (1), (2), and (3).

9. A person who qualifies as a biodiesel producer as provided in this subsection may apply to the director for a refund of the amount of the sales or use tax imposed and paid upon purchases made by the person.

a. The person must be engaged in the manufacturing of biodiesel who has registered with the United States environmental protection agency as a manufacturer according to the requirements in 40 C.F.R. §79.4. The biodiesel must be for use in biodiesel blended fuel in conformance with section 214A.2. The person must comply with the requirements of this subsection and rules adopted by the department pursuant to this subsection.

b. The amount of the refund shall be calculated by multiplying a designated rate by the total number of gallons of biodiesel produced by the biodiesel producer in this state during each quarter of a calendar year. The designated rate shall be as follows:

(1) For the calendar year 2012, three cents.

(2) For the calendar year 2013, two and one-half cents.

(3) For the calendar year 2014, two cents.

c. A biodiesel producer shall not be eligible to receive a refund under this subsection on more than twenty-five million gallons of biodiesel produced each calendar year by the biodiesel producer at each facility where the biodiesel producer manufactures biodiesel.

d. A person shall obtain a refund by completing forms furnished by the department and filed by the person on a quarterly basis as required by the department. The department shall refund the amount claimed by the person after subtracting any amount owing from the sales or use taxes imposed and paid upon purchases made by the person.

e. This subsection is repealed on January 1, 2015.

2003 Acts, 1st Ex, ch 2, §97, 205; 2005 Acts, ch 110, §2; 2005 Acts, ch 134, §2; 2005 Acts, ch 160, §4, 14; 2006 Acts, ch 1001, §3; 2006 Acts, ch 1136, §3; 2006 Acts, ch 1185, §128; 2007 Acts, ch 126, §69; 2007 Acts, ch 199, §2; 2008 Acts, ch 1004, §3, 7; 2008 Acts, ch 1032, §52; 2008 Acts, ch 1128, §2, 15; 2009 Acts, ch 41, §253; 2009 Acts, ch 60, §7; 2009 Acts, ch 179, §39, 198, 199, 202, 211, 212; 2010 Acts, ch 1061, §87, 181; 2011 Acts, ch 25, §143; 2011 Acts, ch 113, §59, 60; 2011 Acts, ch 131, §66, 78

2008 amendment to subsection 4 takes effect May 1, 2008, and applies retroactively to tax years beginning on or after January 1, 2008; 2008 Acts, ch 1128, §15

2009 amendments to subsection 7 and amendment adding subsection 8 apply to sales and use tax paid on or after July 1, 2009; 2009 Acts, ch 179, §202; 2010 Acts, ch 1061, §87, 181

Subsection 9 takes effect January 1, 2012; 2011 Acts, ch 113, §60; 2011 Acts, ch 131, §78

Code editor directive applied

NEW subsection 9

### SUBCHAPTER III

#### USE TAX

##### **423.5 Imposition of tax.**

Except as provided in subsection 3, an excise tax at the rate of six percent of the purchase price or installed purchase price is imposed on the following:

1. The use in this state of tangible personal property as defined in section 423.1, including aircraft subject to registration under section 328.20, purchased for use in this state. For the purposes of this subchapter, the furnishing or use of the following services is also treated as the use of tangible personal property: optional service or warranty contracts, except residential service contracts regulated under chapter 523C, vulcanizing, recapping, or retreading services, engraving, photography, retouching, printing, or binding services, and communication service when furnished or delivered to consumers or users within this state.

2. The use of manufactured housing in this state, on the purchase price if the manufactured housing is sold in the form of tangible personal property or on the installed purchase price if the manufactured housing is sold in the form of realty.

3. An excise tax at the rate of five percent is imposed on the use of vehicles subject only to the issuance of a certificate of title and the use of manufactured housing, and on the use of leased vehicles, if the lease transaction does not require titling or registration of the vehicle, on the amount subject to tax as calculated pursuant to section 423.26, subsection 2.

4. Purchases of tangible personal property made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by this section. Services purchased from the same source or sources shall be subject to the service tax imposed by this subchapter and apply to the user of the services.

5. The use in this state of services enumerated in section 423.2. This tax is applicable where the service is first used in this state.

6. The excise tax is imposed upon every person using the property within this state until the tax has been paid directly to the county treasurer, the state department of transportation, a retailer, or the department. This tax is imposed on every person using the services or the product of the services in this state until the user has paid the tax either to an Iowa use tax permit holder or to the department.

7. For the purpose of the proper administration of the use tax and to prevent its evasion, evidence that tangible personal property was sold by any person for delivery in this state shall be prima facie evidence that such tangible personal property was sold for use in this state.

8. Any person or that person's affiliate, which is a retailer in this state or a retailer maintaining a place of business in this state under this chapter, that enters into a contract with an agency of this state must register, collect, and remit Iowa use tax under this chapter on all sales of tangible personal property and enumerated services. Every bid submitted and each contract executed by a state agency shall contain a certification by the bidder or contractor stating that the bidder or contractor is registered with the department and will collect and remit Iowa use tax due under this chapter. In the certification, the bidder or

contractor shall also acknowledge that the state agency may declare the contract or bid void if the certification is false. Fraudulent certification, by act or omission, may result in the state agency or its representative filing for damages for breach of contract.

9. The use tax rate of six percent is reduced to five percent on January 1, 2030.

2003 Acts, 1st Ex, ch 2, §98, 205; 2005 Acts, ch 140, §47; 2008 Acts, ch 1113, §112, 124, 129; 2008 Acts, ch 1134, §11, 13; 2008 Acts, ch 1191, §87; 2010 Acts, ch 1145, §10, 17; 2011 Acts, ch 92, §7

Liability for prior use tax, penalty, or interest relating to vehicles; 2008 Acts, ch 1113, §130

Applicability of 2008 tax increase to certain sales; refunds to certain contractors; 2008 Acts, ch 1134, §35, 36  
Subsection 5 amended

### 423.6 Exemptions.

The use in this state of the following tangible personal property and services is exempted from the tax imposed by this subchapter:

1. Tangible personal property and enumerated services, the sales price from the sale of which are required to be included in the measure of the sales tax, if that tax has been paid to the department or the retailer. This exemption does not include vehicles subject to registration or subject only to the issuance of a certificate of title.

2. The sale of tangible personal property or the furnishing of services in the regular course of business.

3. Property used in processing. The use of property in processing within the meaning of this subsection shall mean and include any of the following:

a. Any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, and containers used in the collection, recovery, or return of empty beverage containers subject to chapter 455C.

b. Fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

c. Chemicals, solvents, sorbents, or reagents, which are directly used and are consumed, dissipated, or depleted in processing tangible personal property which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product.

d. The distribution to the public of free newspapers or shoppers guides shall be deemed a retail sale for purposes of the processing exemption in this subsection.

4. All articles of tangible personal property brought into the state of Iowa by a nonresident individual for the individual's use or enjoyment while within the state.

5. Services exempt from taxation by the provisions of section 423.3.

6. Tangible personal property or services the sales price of which is exempt from the sales tax under section 423.3, except subsections 39 and 73, as it relates to the sale, but not the lease or rental, of vehicles subject only to the issuance of a certificate of title and as it relates to aircraft subject to registration under section 328.20.

7. Advertisement and promotional material and matter, seed catalogs, envelopes for same, and other similar material temporarily stored in this state which are acquired outside of Iowa and which, subsequent to being brought into this state, are sent outside of Iowa, either singly or physically attached to other tangible personal property sent outside of Iowa.

8. Tangible personal property which, by means of fabrication, compounding, or manufacturing, becomes an integral part of vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Vehicles subject to registration which are designed primarily for carrying persons are excluded from this subsection.

9. Mobile homes and manufactured housing the use of which has previously been subject to the tax imposed under this subchapter and for which that tax has been paid.

10. Mobile homes to the extent of the portion of the purchase price of the mobile home which is not attributable to the cost of the tangible personal property used in the processing of the mobile home, and manufactured housing to the extent of the purchase price or the

installed purchase price of the manufactured housing which is not attributable to the cost of the tangible personal property used in the processing of the manufactured housing. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the mobile home is eighty percent and the portion of the purchase price or installed purchase price which is not attributable to the cost of the tangible personal property used in the processing of the manufactured housing is eighty percent.

11. Tangible personal property used or to be used as a ship, barge, or waterborne vessel which is used or to be used primarily in or for the transportation of property or cargo for hire on the rivers bordering the state or as materials or parts of such ship, barge, or waterborne vessel.

12. Aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

13. Aircraft; tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, “*aircraft*” means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

14. Tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, “*aircraft*” means aircraft used in a nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

15. *a.* Aircraft sold to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

(1) The aircraft is kept in the inventory of the dealer for sale at all times.

(2) The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

(3) The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

*b.* If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraph “*a*”, subparagraphs (1), (2), and (3), are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

16. The use in this state of building materials, supplies, or equipment, the sale or use of which is not treated as a retail sale or a sale at retail under section 423.2, subsection 1.

2003 Acts, 1st Ex, ch 2, §99, 205; 2006 Acts, ch 1158, §45, 46; 2008 Acts, ch 1113, §41, 42; 2008 Acts, ch 1191, §64; 2011 Acts, ch 25, §88

Subsection 15 amended

SUBCHAPTER V  
SALES AND USE TAX ACT  
ADMINISTRATION — RETAILERS  
NOT REGISTERED UNDER  
AGREEMENT — CONSUMERS OBLIGATED  
TO PAY USE TAX DIRECTLY

**423.15 General sourcing rules.**

All sales of products, except those sales enumerated in section 423.16, shall be sourced according to this section by sellers obligated to collect Iowa sales and use tax. The sourcing

rules described in this section apply to sales of tangible personal property, digital goods, and all services other than telecommunications services. This section only applies to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's sale of a product. This section does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions in which the use occurs. A seller's obligation to collect Iowa sales tax or Iowa use tax only occurs if the sale is sourced to this state. Whether Iowa sales tax applies to a sale sourced to Iowa shall be determined based on the location at which the sale is consummated by delivery or, in the case of a service, where the first use of the service occurs.

1. Sales, excluding leases or rentals, of products shall be sourced as follows:

a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

c. When paragraphs "a" and "b" do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

d. When paragraphs "a", "b", and "c" do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

e. When paragraphs "a", "b", "c", and "d" do not apply, including the circumstance where the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

2. The lease or rental of tangible personal property, other than property identified in subsection 3 or section 423.16, shall be sourced as follows:

a. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection 1. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.

c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

3. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection 1, notwithstanding the exclusion of lease or rental in that subsection. "Transportation equipment" means any of the following:

a. Locomotives or railcars that are utilized for the carriage of persons or property in interstate commerce.

b. Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that meet both of the following requirements:

(1) Are registered through the international registration plan.

(2) Are operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

c. Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

d. Containers designed for use on and component parts attached or secured on the items set forth in paragraphs “a” through “c”.

2003 Acts, 1st Ex, ch 2, §108, 205; 2005 Acts, ch 140, §12; 2011 Acts, ch 92, §8

Unnumbered paragraph 1 amended

#### **423.19 Direct mail sourcing.**

1. Notwithstanding section 423.15, the following provisions apply to sales of advertising and promotional direct mail:

a. A purchaser of advertising and promotional direct mail may provide the seller with one of the following:

(1) A direct pay permit.

(2) An agreement certificate of exemption claiming to be direct mail, or a similar written statement, if the statement is approved, authorized, or accepted by the department.

(3) Information showing the jurisdiction to which the advertising and promotional direct mail is to be delivered to the recipient.

b. (1) If the purchaser provides the seller a permit, a certificate of exemption, or an approved written statement pursuant to paragraph “a”, subparagraph (1) or (2), then, in the absence of bad faith, the seller is relieved of the obligation to collect, pay, or remit tax on a transaction involving advertising and promotional direct mail to which the permit, certificate, or approved written statement applies. In such a transaction, the purchaser shall source the sale to the jurisdiction in which the advertising and promotional direct mail is to be delivered to the recipient and shall report and pay any tax due accordingly.

(2) If the purchaser provides the seller information showing the jurisdiction to which the advertising and promotional direct mail is to be delivered pursuant to paragraph “a”, subparagraph (3), the seller shall source the sale to the jurisdiction in which the advertising and promotional direct mail is to be delivered and shall collect and remit the tax due accordingly. If the seller has sourced the sale according to the delivery information provided by the purchaser, then, in the absence of bad faith, the seller is relieved of any further obligation to collect tax on the sale of the advertising and promotional direct mail.

c. (1) If the purchaser fails to provide the seller with one of the items listed in paragraph “a”, the sale shall be sourced pursuant to the sourcing directive described in section 423.15, subsection 1, paragraph “e”.

(2) If a sale is sourced to this state pursuant to subparagraph (1), the full amount of the tax imposed by subchapter II or III, as applicable, is due from the purchaser, notwithstanding section 423.22.

2. Notwithstanding section 423.15, sales of other direct mail are subject to all of the following:

a. Except as otherwise provided in this subsection, the sale of other direct mail shall be sourced pursuant to the sourcing directive described in section 423.15, subsection 1, paragraph “c”.

b. A purchaser of other direct mail may provide the seller with either of the following:

(1) A direct pay permit.

(2) An agreement certificate of exemption claiming to be direct mail, or a similar written statement, if the statement is approved, authorized, or accepted by the department.

c. (1) If the purchaser provides the seller a permit, a certificate of exemption, or an approved written statement pursuant to paragraph “b”, then, in the absence of bad faith, the seller is relieved of the obligation to collect, pay, or remit tax on a transaction involving other direct mail to which the permit, certificate, or approved written statement applies.

(2) Notwithstanding paragraph “a”, the sale of other direct mail under the circumstances described in subparagraph (1) shall be sourced to the jurisdiction in which the other direct

mail is to be delivered to the recipient, and the purchaser shall report and pay any tax due accordingly.

2003 Acts, 1st Ex, ch 2, §112, 205; 2011 Acts, ch 92, §9  
Section stricken and rewritten

SUBCHAPTER VI  
SALES AND USE TAX ACT  
ADMINISTRATION — RETAILERS  
REGISTERED VOLUNTARILY  
UNDER AGREEMENT

**423.50 Remittance of funds.**

1. Only one remittance of tax per return is required except as provided in this subsection. Sellers that collect more than thirty thousand dollars in sales and use taxes for this state during the preceding calendar year shall be required to make additional remittances as required under rules adopted by the director. The filing of a return is not required with an additional remittance.

2. All remittances shall be remitted electronically.

3. Electronic payments may be made either by automated clearinghouse credit or automated clearinghouse debit. Any data accompanying a remittance must be formatted using uniform tax type and payment codes approved by the governing board established pursuant to the agreement. An alternative method for making same-day payments shall be determined under rules adopted by the director.

4. If a due date falls on a Saturday, a Sunday, legal holiday, or a legal banking holiday in this state, the payment, including any related payment voucher information, is due on the next succeeding business day.

5. If the federal reserve bank is closed on the due date preventing a person from being able to make an automated payment, the payment shall be accepted as timely if made on the next day the federal reserve bank is open.

6. The department shall adopt a standardized process for the remittance of tax payments. The procedure shall have the capability of processing multiple payments and simplified returns by affiliated entities, certified service providers, or tax preparers. The process adopted pursuant to this subsection is subject to the approval of the governing board.

2003 Acts, 1st Ex, ch 2, §143, 205; 2010 Acts, ch 1145, §16, 17; 2011 Acts, ch 92, §10, 11

Subsection 4 amended

NEW subsection 5 and former subsection 5 renumbered as 6

## CHAPTER 423A

### HOTEL AND MOTEL TAX

Former ch 423A, that was transferred from ch 422A in Code 2005  
pursuant to 2003 Acts, 1st Ex, ch 2, §203, 205, repealed;  
continuation of hotel and motel taxes imposed under former ch 423A;  
2005 Acts, ch 140, §28, 29

Previous ch 423A transferred to chapter 421A pursuant to Code editor directive;  
2003 Acts, 1st Ex, ch 2, §203, 205

**423A.2 Definitions.**

1. For the purposes of this chapter, unless the context otherwise requires:
  - a. “*Department*” means the department of revenue.
  - b. “*Lessor*” means any person engaged in the business of renting lodging to users.
  - c. “*Lodging*” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished

to transient guests for rent, whether with or without meals. Lodging does not include rooms that are not used for sleeping accommodations.

d. “*Person*” means the same as the term is defined in section 423.1.

e. “*Renting*” or “*rent*” means a transfer of possession or control of lodging for a fixed or indeterminate term for consideration and includes any kind of direct or indirect charge for such lodging or its use.

f. “*Sales price*” means the consideration for renting of lodging and means the same as the term is defined in section 423.1.

g. “*User*” means a person to whom lodging is rented.

2. All other words and phrases used in this chapter and defined in section 423.1 have the meaning given them by section 423.1 for the purposes of this chapter.

2005 Acts, ch 140, §20, 28, 29; 2009 Acts, ch 179, §137; 2011 Acts, ch 25, §143

Former §423A.2 repealed; continuation of prior locally imposed hotel and motel taxes under 2005 enactment; 2005 Acts, ch 140, §28, 29  
Code editor directive applied

#### **423A.7 Local transient guest tax fund.**

1. A local transient guest tax fund is created in the department which shall consist of all moneys credited to such fund under section 423A.6.

2. All moneys in the local transient guest tax fund shall be remitted at least quarterly by the department, pursuant to rules of the director of revenue, to each city in the amount collected from businesses in that city and to each county in the amount collected from businesses in the unincorporated areas of the county.

3. Moneys received by the city from this fund shall be credited to the general fund of the city, subject to the provisions of subsection 4.

4. The revenue derived from any local hotel and motel tax authorized by section 423A.4 shall be used as follows:

a. Each county or city which levies the tax shall spend at least fifty percent of the revenues derived therefrom for the acquisition of sites for, or constructing, improving, enlarging, equipping, repairing, operating, or maintaining of recreation, convention, cultural, or entertainment facilities including but not limited to memorial buildings, halls and monuments, civic center convention buildings, auditoriums, coliseums, and parking areas or facilities located at those recreation, convention, cultural, or entertainment facilities or the payment of principal and interest, when due, on bonds or other evidence of indebtedness issued by the county or city for those recreation, convention, cultural, or entertainment facilities; or for the promotion and encouragement of tourist and convention business in the city or county and surrounding areas.

b. The remaining revenues may be spent by the city or county which levies the tax for any city or county operations authorized by law as a proper purpose for the expenditure within statutory limitations of city or county revenues derived from ad valorem taxes.

c. Any city or county which levies and collects the local hotel and motel tax authorized by section 423A.4 may pledge irrevocably an amount of the revenues derived therefrom for each of the years the bonds remain outstanding to the payment of bonds which the city or county may issue for one or more of the purposes set forth in paragraph “a”. Any revenue pledged to the payment of such bonds may be credited to the spending requirement of paragraph “a”.

d. (1) The provisions of chapter 384, division III, relating to the issuance of corporate purpose bonds, apply to the issuance by a city of bonds payable as provided in this section and the provisions of chapter 331, division IV, part 3, relating to the issuance of county purpose bonds, apply to the issuance by a county of bonds payable as provided in this section. The provisions of chapter 76 apply to the bonds payable as provided in this section except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged portion of the local hotel and motel tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the city or county which levied the tax from the first available local hotel and motel tax collections received in excess of the requirement for

the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes.

(2) The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the local hotel and motel tax for the last four calendar quarters, as certified by the director of revenue. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of determining the amount of bonds which may be issued. If the local hotel and motel tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be adjusted to project the collections for the full year for the purpose of determining the amount of the bonds which may be issued.

e. A city or county, jointly with one or more other cities or counties as provided in chapter 28E, may pledge irrevocably any amount derived from the revenues of the local hotel and motel tax to the support or payment of bonds issued for a project within the purposes set forth in paragraph “a” and located within one or more of the participatory cities or counties or may apply the proceeds of its bonds to the support of any such project. Revenue so pledged or applied shall be credited to the spending requirement of paragraph “a”.

f. (1) A city or county acting on behalf of an unincorporated area may, in lieu of calling an election, institute proceedings for the issuance of bonds under this section by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

(2) If at any time before the date fixed for taking action for the issuance of the bonds a petition signed by eligible electors residing in the city or the unincorporated area equal in number to at least three percent of the registered voters of the city or unincorporated area is filed, asking that the question of issuing the bonds be submitted to the registered voters of the city or unincorporated area, the council or board of supervisors acting on behalf of an unincorporated area shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds.

(3) The proposition of issuing bonds under this section is not approved unless the vote in favor of the proposition is equal to a majority of the vote cast.

(4) If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the council or board of supervisors acting on behalf of an unincorporated area may proceed with the authorization and issuance of the bonds.

(5) Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this section without otherwise complying with this paragraph.

2005 Acts, ch 140, §25; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 423B

### LOCAL OPTION TAXES

Chapter transferred from ch 422B in Code 2005 pursuant to  
Code editor directive; 2003 Acts, 1st Ex, ch 2, §203, 205  
Personal liability of officers and partners, see §421.26

#### 423B.9 Issuance of bonds.

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

a. “Bond issuer” or “issuer” means a city, a county, or a secondary recipient.

b. “Designated portion” means the portion of the local option sales and services tax revenues which is authorized to be expended for one or a combination of purposes under an adopted public measure.

c. “*Secondary recipient*” means a political subdivision of the state which is to receive revenues from a local option sales and services tax over a period of years pursuant to the terms of a chapter 28E agreement with one or more cities or counties.

2. An issuer of public bonds which is a recipient of revenues from a local option sales and services tax imposed pursuant to this chapter may issue bonds in anticipation of the collection of one or more designated portions of the local option sales and services tax and may pledge irrevocably an amount of the revenue derived from the designated portions for each of the years the bonds remain outstanding to the payment of the bonds. Bonds may be issued only for one or more of the purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax, except bonds shall not be issued which are payable from that portion of tax revenues designated for property tax relief. The bonds may be issued in accordance with the procedures set forth in either subsection 3 or 4.

3. The governing body of an issuer may authorize the issuance of bonds which are payable from the designated portion of the revenues of the local option sales and services tax, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

4. To authorize the issuance of bonds payable as provided in this subsection, the governing body of an issuer shall comply with all of the procedures as follows:

a. (1) A bond issuer may institute proceedings for the issuance of bonds by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the political subdivision or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

(2) If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by eligible electors residing within the jurisdiction seeking to issue the bonds in a number equal to at least three percent of the registered voters of the bond issuer is filed, asking that the question of issuing the bonds be submitted to the registered voters, the governing body shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. The proposition of issuing bonds under this subsection is not approved unless the vote in favor of the proposition is equal to at least sixty percent of the vote cast. If a petition is not filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the governing body acting on behalf of the issuer may proceed with the authorization and issuance of the bonds. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

b. The provisions of chapter 76 apply to the bonds payable as provided in this subsection, except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged designated portion of the local option sales and services tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the bond issuer which levied the tax from the first available designated portion of local option sales and services tax collections received in excess of the requirement for the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes. The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the designated portions of the local option sales and services tax for the last four calendar quarters, as certified by the director of revenue. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of determining the amount of bonds which may be issued. If the local option sales and services tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be adjusted to project the collections of the designated portion for the full year for the purpose of determining the amount of the bonds which may be issued. The provisions

of this section constitute separate authorization for the issuance of bonds and shall prevail in the event of conflict with any other provision of the Code limiting the amount of bonds which may be issued or the source of payment of the bonds. Bonds issued under this section shall not limit or restrict the authority of the bond issuer to issue bonds under other provisions of the Code.

5. A city or county, jointly with one or more other political subdivisions as provided in chapter 28E, may pledge irrevocably any amount derived from the designated portions of the revenues of the local option sales and services tax to the support or payment of bonds of an issuer, issued for one or more purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax or a political subdivision may apply the proceeds of its bonds to the support of any such purpose.

6. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued pursuant to this section are declared to be issued for an essential public and governmental purpose. Bonds issued pursuant to this section shall be authorized by resolution of the governing body and may be issued in one or more series and shall bear the date or dates, be payable on demand or mature at the time or times, bear interest at the rate or rates not exceeding that permitted by chapter 74A, be in the denomination or denominations, be in the form, have the rank or priority, be executed in the manner, be payable in the medium of payment, at the place or places, be subject to the terms of redemption, with or without premium, be secured in the manner, and have the other characteristics, as may be provided by the resolution authorizing their issuance. The bonds may be sold at public or private sale at a price as may be determined by the governing body.

95 Acts, ch 186, §7, 9

CS95, §422B.12

96 Acts, ch 1079, §22, 23; 2001 Acts, ch 56, §35; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §203, 205

C2005, §423B.9

2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 423D

### EQUIPMENT TAX

#### 423D.1 Definitions.

1. For the purposes of this chapter, unless the context otherwise requires:
  - a. “*Construction*” means new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.
  - b. “*Contractor*” includes contractors, subcontractors, and builders, but not owners.
  - c. “*Department*” means the department of revenue.
  - d. “*Equipment*” means self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.
  - e. “*Sales price*” or “*purchase price*” means the same as the term is defined in section 423.1.
2. All other words and phrases used in this chapter and defined in section 423.1 have the meaning given them by section 423.1 for the purposes of this chapter.

2005 Acts, ch 140, §33; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 423F

### STATEWIDE SCHOOL INFRASTRUCTURE FUNDING

Chapter to be repealed December 31, 2029; see §423F.6

#### 423F.5 Contents of financial audit.

1. A school district shall include as part of its financial audit for the budget year beginning July 1, 2007, and for each subsequent budget year the amount received during the year pursuant to chapter 423E or this chapter, as applicable. In addition, the financial audit shall include the amount of bond levies, physical plant and equipment levy, and public educational and recreational levy reduced as a result of the moneys received under chapter 423E or this chapter, as applicable. The amount of the reductions shall be stated in terms of dollars and cents per one thousand dollars of valuation and in total amount of property tax dollars. Also included shall be an accounting of the amount of moneys received which were spent for infrastructure purposes pursuant to chapter 423E or this chapter, as applicable.

2. The auditor of state may prescribe necessary forms and procedures for the consistent collection of the information required by this section.

2008 Acts, ch 1134, §31; 2011 Acts, ch 25, §43

Subsection 1 amended

## CHAPTER 424

### ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION

Legislative findings; legislative intent; conditions upon finding  
of invalidity; 89 Acts, ch 131, §1, 2, 59  
Chapter repealed June 30, 2016; see §424.19

#### 424.2 Definitions.

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

1. “*Board*” means the Iowa comprehensive petroleum underground storage tank board.
2. “*Book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.
3. “*Charge*” means the environmental protection charge imposed upon petroleum diminution pursuant to section 424.3.
4. “*Charge payer*” means a depositor, receiver, or tank owner or operator obligated to pay the environmental protection charge under this chapter.
5. “*Department*” means the department of revenue.
6. “*Depositor*” means the person who deposits petroleum into an underground storage tank subject to regulation under chapter 455G or an aboveground flammable or combustible liquid storage tank as defined in section 101.21, located at a retail motor fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor fuel outlet on a retail basis.
7. “*Diminution*” means the petroleum released into the environment prior to its intended beneficial use.
8. “*Director*” means the director of revenue.
9. “*Fund*” means the Iowa comprehensive petroleum underground storage tank fund.
10. “*Owner or operator*” means “*owner or operator*” of an underground storage tank as used in chapter 455G or the “*owner*” or “*operator*” of an aboveground flammable or combustible liquid storage tank as defined in section 101.21, located at a retail motor fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor fuel outlet on a retail basis.
11. “*Petroleum*” means petroleum as defined in section 455G.2.
12. “*Receiver*” means, if the owner and operator are not the same person, the person who, under a contract between the owner and operator, is responsible for payment for petroleum

deposited into a tank; and if the owner and operator of a tank are the same person, means the owner.

13. “*Tank*” means an underground storage tank subject to regulation under chapter 455G or an aboveground flammable or combustible liquid storage tank as defined in section 101.21, located at a retail motor fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor fuel outlet on a retail basis.

89 Acts, ch 131, §14; 91 Acts, ch 252, §2; 92 Acts, ch 1217, §2; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201; 2003 Acts, ch 145, §286; 2011 Acts, ch 34, §99

Subsections 6, 10, and 13 amended

#### **424.6 Exemption certificates for receivers of petroleum underground storage tanks not subject to financial responsibility rules.**

1. *a.* The department of natural resources shall issue an exemption certificate in the form prescribed by the director of the department of natural resources to an applicant who is an owner or operator of a petroleum underground storage tank which is exempt, deferred, or excluded from regulation under chapter 455G, for that tank. The director of the department of natural resources shall revoke and require the return of an exemption certificate if the petroleum underground storage tank later becomes subject to chapter 455G pursuant to section 455G.1. A tank is subject to chapter 455G when the federal regulation subjecting that tank to financial responsibility becomes effective and not upon the effective compliance date unless the effective compliance date is the effective date of the regulation.

*b.* The department shall permit a credit against the charge due from a person operating an eligible underground bulk storage facility equal to the total volume of petroleum transferred or sold from a tank in bulk quantities and delivered to a person for deposit in a tank which is exempt, deferred, or excluded pursuant to this subsection, multiplied by the diminution rate multiplied by the cost factor, subject to rules adopted by the board. “*Bulk quantities*” as used in this paragraph means at least a portion of a standard tanker truck load. “*Eligible underground bulk storage facility*” means an underground bulk storage facility in operation on or before January 1, 1990.

2. Liability for the charge is upon the depositor and the receiver unless the depositor takes in good faith from the receiver a valid exemption certificate and records the exemption certificate number and related transaction information required by the director and submits such information as part of the environmental protection charge return. If petroleum is deposited into a tank, pursuant to a valid exemption certificate which is taken in good faith by the depositor, and the receiver is liable for the charge, the receiver is solely liable for the charge and shall remit the charge directly to the department and this chapter applies to that receiver as if the receiver were a depositor.

3. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director of the department of natural resources.

4. A valid exemption certificate is taken in good faith by the depositor when the depositor has exercised that caution and diligence which honest persons of ordinary prudence would exercise in handling their own business affairs, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one upon inquiry as to the facts. A depositor has constructive notice of the classes of exempt, deferred, or excluded tanks. In order for a depositor to take a valid exemption certificate in good faith, the depositor must exercise reasonable prudence to determine the facts supporting the valid exemption certificate, and if any facts upon such certificate would lead a reasonable person to further inquiry, then such inquiry must be made with an honest intent to discover the facts.

5. If the circumstances change and the tank becomes subject to financial responsibility regulations, the tank owner or operator is liable solely for the charges and shall remit the charges directly to the department of revenue pursuant to this chapter.

6. The board may waive the requirement for an exemption certificate for one or more classes of exempt, deferred, or excluded tanks, if in the board’s judgment an exemption certificate is not required for effective and efficient collection of the charge. If an exemption certificate is not required for a class pursuant to this subsection, the depositor shall maintain

and file such records and information as may be required by the director regarding deposits into a tank subject to the waiver.

89 Acts, ch 131, §18; 90 Acts, ch 1235, §12; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143  
Code editor directive applied

**424.10 Failure to file return — incorrect return.**

1. As soon as practicable after a return is filed and in any event within three years after the return is filed the department shall examine it, assess and determine the charge due if the return is found to be incorrect, and give notice to the depositor of the assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of the charge is unlimited in the case of a false or fraudulent return made with the intent to evade the charge or in the case of a failure to file a return. If the determination that a return is incorrect is the result of an audit of the books and records of the depositor, the charge, or additional charge, if any is found due, shall be assessed and determined and the notice to the depositor shall be given by the department within one year after the completion of the examination of the books and records.

2. *a.* If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the return is required by notice from the department, the department shall determine the amount of charge due from information as the department may be able to obtain and, if necessary, may estimate the charge on the basis of external indices or factors. The department shall give notice of the determination to the person liable for the charge. The determination shall fix the charge unless the person against whom it is assessed shall, within sixty days after the date of the notice of the determination, apply to the director for a hearing or unless the person against whom it is assessed contests the determination by paying the charge, interest, and penalty and timely filing a claim for refund. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the charge.

*b.* If a depositor's, receiver's, or other person's challenge relates to the diminution rate, the burden of proof upon the challenger shall only be satisfied by clear and convincing evidence.

3. If the amount paid is greater than the correct charge, penalty, and interest due, the department shall refund the excess, with interest, pursuant to rules prescribed by the director. However, the director shall not allow a claim for refund that has not been filed with the department within three years after the charge payment upon which a refund is claimed became due, or one year after the charge payment was made, whichever time is later. A determination by the department of the amount of charge, penalty, and interest due, or the amount of refund for any excess amount paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of charge, penalty, and interest due or refund owing. The director shall grant a hearing, and upon hearing the director shall determine the correct charge, penalty, and interest due or refund owing, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 424.13.

89 Acts, ch 131, §22; 94 Acts, ch 1133, §8, 16; 99 Acts, ch 151, §40, 89; 2001 Acts, ch 116, §18; 2001 Acts, ch 150, §8; 2005 Acts, ch 140, §51; 2011 Acts, ch 25, §143  
Code editor directive applied

## CHAPTER 425

### HOMESTEAD TAX CREDITS AND REIMBURSEMENT

For requirements relating to state funding of property  
tax credits, see §25B.7

#### DIVISION I

#### HOMESTEAD TAX CREDITS

##### **425.1 Homestead credit fund — apportionment — payment.**

1. *a.* A homestead credit fund is created. There is appropriated annually from the general fund of the state to the department of revenue to be credited to the homestead credit fund, an amount sufficient to implement this chapter.

*b.* The director of the department of administrative services shall issue warrants on the homestead credit fund payable to the county treasurers of the several counties of the state under this chapter.

2. The homestead credit fund shall be apportioned each year so as to give a credit against the tax on each eligible homestead in the state in an amount equal to the actual levy on the first four thousand eight hundred fifty dollars of actual value for each homestead.

3. The amount due each county shall be paid in two payments on November 15 and March 15 of each fiscal year, drawn upon warrants payable to the respective county treasurers. The two payments shall be as nearly equal as possible.

4. Annually the department of revenue shall certify to the county auditor of each county the credit and its amount in dollars. Each county auditor shall then enter the credit against the tax levied on each eligible homestead in each county payable during the ensuing year, designating on the tax lists the credit as being from the homestead credit fund, and credit shall then be given to the several taxing districts in which eligible homesteads are located in an amount equal to the credits allowed on the taxes of the homesteads. The amount of credits shall be apportioned by each county treasurer to the several taxing districts as provided by law, in the same manner as though the amount of the credit had been paid by the owners of the homesteads. However, the several taxing districts shall not draw the funds so credited until after the semiannual allocations have been received by the county treasurer, as provided in this chapter. Each county treasurer shall show on each tax receipt the amount of credit received from the homestead credit fund.

5. If the homestead tax credit computed under this section is less than sixty-two dollars and fifty cents, the amount of homestead tax credit on that eligible homestead shall be sixty-two dollars and fifty cents subject to the limitation imposed in this section.

6. The homestead tax credit allowed in this chapter shall not exceed the actual amount of taxes payable on the eligible homestead, exclusive of any special assessments levied against the homestead.

[C35, §6943-f63, -f64; C39, §6943.100, 6943.142; C46, §422.69, 425.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.1; 82 Acts, ch 1186, §2, 5]

83 Acts, ch 172, §3; 86 Acts, ch 1244, §50; 91 Acts, ch 97, §48; 2003 Acts, ch 145, §258, 286; 2005 Acts, ch 140, §52; 2011 Acts, ch 25, §143

Code editor directive applied

##### **425.7 Appeals permitted — disallowed claims and penalty.**

1. Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

2. In the event any claim under this chapter is allowed, any owner of an eligible homestead may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated, by giving written notice of such appeal to the

county auditor of said county and such notice to the owner of said claimed homestead as a judge of the district court shall direct.

3. a. If the director of revenue determines that a claim for homestead credit has been allowed by the board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or board of supervisors may appeal to the state board of tax review pursuant to section 421.1, subsection 5. The claimant or the board of supervisors may seek judicial review of the action of the state board of tax review in accordance with chapter 17A.

b. If a claim is disallowed by the director of revenue and not appealed to the state board of tax review or appealed to the state board of tax review and thereafter upheld upon final resolution, including any judicial review, any amounts of credits allowed and paid from the homestead credit fund including the penalty, if any, become a lien upon the property on which credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona fide purchaser, and any amount so erroneously paid including the penalty, if any, shall be collected by the county treasurer in the same manner as other taxes and the collections shall be returned to the department of revenue and credited to the homestead credit fund. The director of revenue may institute legal proceedings against a homestead credit claimant for the collection of payments made on disallowed credits and the penalty, if any. If a person makes a false claim or affidavit with fraudulent intent to obtain the homestead credit, the person is guilty of a fraudulent practice and the claim shall be disallowed in full. If the credit has been paid, the amount of the credit plus a penalty equal to twenty-five percent of the amount of credit plus interest, at the rate in effect under section 421.7, from the time of payment shall be collected by the county treasurer in the same manner as other property taxes, penalty, and interest are collected and when collected shall be paid to the director of revenue. If a homestead credit is disallowed and the claimant failed to give written notice to the assessor as required by section 425.2 when the property ceased to be used as a homestead by the claimant, a civil penalty equal to five percent of the amount of the disallowed credit is assessed against the claimant.

[C39, §6943.148; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.7; 82 Acts, ch 1246, §4, 11]

89 Acts, ch 251, §33; 97 Acts, ch 158, §26; 2001 Acts, ch 154, §1, 6; 2002 Acts, ch 1151, §15; 2003 Acts, ch 145, §286; 2006 Acts, ch 1010, §106; 2011 Acts, ch 25, §143

Fraudulent practices; §714.8 - 714.14  
Code editor directive applied

#### **425.11 Definitions.**

1. For the purpose of this chapter and wherever used in this chapter:

a. "*Assessed valuation*" means the taxable valuation of the homestead as fixed by the assessor, or by the board of review, under the provisions of section 441.21, without deducting therefrom the exemptions authorized in section 426A.11.

b. "*Book*", "*list*", "*record*", or "*schedule*" kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer, unless the context otherwise requires, means the county system as defined in section 445.1.

c. "*Dwelling house*" shall embrace any building occupied wholly or in part by the claimant as a home.

d. "*Homestead*" shall have the following meaning:

(1) The homestead includes the dwelling house which the owner, in good faith, is occupying as a home on July 1 of the year for which the credit is claimed and occupies as a home for at least six months during the calendar year in which the fiscal year begins, except as otherwise provided.

(a) When any person is inducted into active service under the Selective Training and Service Act of the United States or whose voluntary entry into active service results in a credit

on the quota of persons required for service under the Selective Training and Service Act, or who, being a member of any component part of the military, naval, or air forces or nurse corps of this state or nation, is called or ordered into active service, such person shall be considered as occupying or living on the homestead during such service and, where equitable or legal title of the homestead is in the spouse of the person who is a member of or is inducted into the armed services of the United States, the spouse shall be considered as occupying or living on the homestead during such service.

(b) When any person is confined in a nursing home, extended-care facility, or hospital, such person shall be considered as occupying or living on a homestead where such person is the owner of such homestead and such person maintains such homestead and does not lease, rent, or otherwise receive profits from other persons for the use thereof.

(2) It may contain one or more contiguous lots or tracts of land with the buildings or other appurtenances thereon habitually, and in good faith, used as a part of the homestead.

(3) It must not embrace more than one dwelling house, but where a homestead has more than one dwelling house situated thereon, the credit provided for in this chapter shall apply to the home and buildings used by the owner, but shall not apply to any other dwelling house and buildings appurtenant.

e. “Owner” means the person who holds the fee simple title to the homestead, and in addition shall mean the person occupying as a surviving spouse or the person occupying under a contract of purchase which contract has been recorded in the office of the county recorder of the county in which the property is located; or the person occupying the homestead under devise or by operation of the inheritance laws where the whole interest passes or where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption; or the person occupying the homestead is a shareholder of a family farm corporation that owns the property; or the person occupying the homestead under a deed which conveys a divided interest where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption; or where the person occupying the homestead holds a life estate with the reversion interest held by a nonprofit corporation organized under chapter 504, provided that the holder of the life estate is liable for and pays property tax on the homestead; or where the person occupying the homestead holds an interest in a horizontal property regime under chapter 499B, regardless of whether the underlying land committed to the horizontal property regime is in fee or as a leasehold interest, provided that the holder of the interest in the horizontal property regime is liable for and pays property tax on the homestead; or where the person occupying the homestead is a member of a community land trust as defined in 42 U.S.C. § 12773, regardless of whether the underlying land is in fee or as a leasehold interest, provided that the member of the community land trust is occupying the homestead and is liable for and pays property tax on the homestead. For the purpose of this chapter the word “owner” shall be construed to mean a bona fide owner and not one for the purpose only of availing the person of the benefits of this chapter. In order to qualify for the homestead tax credit, evidence of ownership shall be on file in the office of the clerk of the district court or recorded in the office of the county recorder at the time the owner files with the assessor a verified statement of the homestead claimed by the owner as provided in section 425.2.

2. Where not in conflict with the terms of the definitions set out in subsection 1, the provisions of chapter 561 shall control.

[C39, §6943.152; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.11; 82 Acts, ch 1246, §6, 11]

89 Acts, ch 256, §2; 90 Acts, ch 1087, §2; 90 Acts, ch 1250, §5; 91 Acts, ch 97, §50; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2006 Acts, ch 1158, §56, 69; 2011 Acts, ch 34, §166

2006 amendment to subsection 1, paragraph “e”, takes effect June 1, 2006, and applies to taxes due and payable in fiscal years beginning on or after July 1, 2006; 2006 Acts, ch 1158, §69

Section amended

DIVISION II  
PROPERTY TAX CREDIT OR  
RENT REIMBURSEMENT FOR  
ELDERLY AND DISABLED

**425.17 Definitions.**

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

1. “*Base year*” means the calendar year last ending before the claim is filed.

2. a. “*Claimant*” means either of the following:

(1) A person filing a claim for credit or reimbursement under this division who has attained the age of sixty-five years on or before December 31 of the base year or who is totally disabled and was totally disabled on or before December 31 of the base year and is domiciled in this state at the time the claim is filed or at the time of the person’s death in the case of a claim filed by the executor or administrator of the claimant’s estate.

(2) A person filing a claim for credit or reimbursement under this division who has attained the age of twenty-three years on or before December 31 of the base year or was a head of household on December 31 of the base year, as defined in the Internal Revenue Code, but has not attained the age or disability status described in paragraph “a”, subparagraph (1), and is domiciled in this state at the time the claim is filed or at the time of the person’s death in the case of a claim filed by the executor or administrator of the claimant’s estate, and was not claimed as a dependent on any other person’s tax return for the base year.

b. “*Claimant*” under paragraph “a”, subparagraph (1) or (2), includes a vendee in possession under a contract for deed and may include one or more joint tenants or tenants in common. In the case of a claim for rent constituting property taxes paid, the claimant shall have rented the property during any part of the base year. In the case of a claim for property taxes due, the claimant shall have occupied the property during any part of the fiscal year beginning July 1 of the base year. If a homestead is occupied by two or more persons, and more than one person is able to qualify as a claimant, the persons may each file a claim based upon each person’s income and rent constituting property taxes paid or property taxes due.

3. “*Gross rent*” means rental paid at arm’s length for the right of occupancy of a homestead or manufactured or mobile home, including rent for space occupied by a manufactured or mobile home not to exceed one acre. If the director of revenue determines that the landlord and tenant have not dealt with each other at arm’s length, and the director of revenue is satisfied that the gross rent charged was excessive, the director shall adjust the gross rent to a reasonable amount as determined by the director.

4. “*Homestead*” means the dwelling owned or rented and actually used as a home by the claimant during the period specified in subsection 2, and so much of the land surrounding it including one or more contiguous lots or tracts of land, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. It does not include personal property except that a manufactured or mobile home may be a homestead. Any dwelling or a part of a multidwelling or multipurpose building which is exempt from taxation does not qualify as a homestead under this division. However, solely for purposes of claimants living in a property and receiving reimbursement for rent constituting property taxes paid immediately before the property becomes tax exempt, and continuing to live in it after it becomes tax exempt, the property shall continue to be classified as a homestead. A homestead must be located in this state. When a person is confined in a nursing home, extended-care facility, or hospital, the person shall be considered as occupying or living in the person’s homestead if the person is the owner of the homestead and the person maintains the homestead and does not lease, rent, or otherwise receive profits from other persons for the use of the homestead.

5. “*Household*” means a claimant and the claimant’s spouse if living with the claimant at any time during the base year. “*Living with*” refers to domicile and does not include a temporary visit.

6. “*Household income*” means all income of the claimant and the claimant’s spouse in a

household and actual monetary contributions received from any other person living with the claimant during their respective twelve-month income tax accounting periods ending with or during the base year.

7. “*Income*” means the sum of Iowa net income as defined in section 422.7, plus all of the following to the extent not already included in Iowa net income: capital gains, alimony, child support money, cash public assistance and relief, except property tax relief granted under this division, amount of in-kind assistance for housing expenses, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, payments received under the federal Social Security Act, except child insurance benefits received by a member of the claimant’s household, and all military retirement and veterans’ disability pensions, interest received from the state or federal government or any of its instrumentalities, workers’ compensation and the gross amount of disability income or “loss of time” insurance. “*Income*” does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency. In determining income, net operating losses and net capital losses shall not be considered.

8. “*Property taxes due*” means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant’s homestead in this state, but includes only property taxes for which the claimant is liable and which will actually be paid by the claimant. However, if the claimant is a person whose property taxes have been suspended under sections 427.8 and 427.9, “*property taxes due*” means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant’s homestead in this state, but includes only property taxes for which the claimant is liable and which would have to be paid by the claimant if the payment of the taxes has not been suspended pursuant to sections 427.8 and 427.9. “*Property taxes due*” shall be computed with no deduction for any credit under this division or for any homestead credit allowed under section 425.1. Each claim shall be based upon the taxes due during the fiscal year next following the base year. If a homestead is owned by two or more persons as joint tenants or tenants in common, and one or more persons are not members of claimant’s household, “*property taxes due*” is that part of property taxes due on the homestead which equals the ownership percentage of the claimant and the claimant’s household. The county treasurer shall include with the tax receipt a statement that if the owner of the property is eighteen years of age or over, the person may be eligible for the credit allowed under this division. If a homestead is an integral part of a farm, the claimant may use the total property taxes due for the larger unit. If a homestead is an integral part of a multidwelling or multipurpose building the property taxes due for the purpose of this subsection shall be prorated to reflect the portion which the value of the property that the household occupies as its homestead is to the value of the entire structure. For purposes of this subsection, “*unit*” refers to that parcel of property covered by a single tax statement of which the homestead is a part.

9. “*Rent constituting property taxes paid*” means twenty-three percent of the gross rent actually paid in cash or its equivalent during the base year by the claimant or the claimant’s household solely for the right of occupancy of their homestead in the base year, and which rent constitutes the basis, in the succeeding year, of a claim for reimbursement under this division by the claimant.

10. “*Special assessment*” means an unpaid special assessment certified pursuant to chapter 384, division IV. The claimant may include as a portion of the taxes due during the fiscal year next following the base year an amount equal to the unpaid special assessment installment due, plus interest, during the fiscal year next following the base year.

11. “*Totally disabled*” means the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is reasonably expected to last for a continuous period of not less than twelve months.

[C75, 77, 79, 81, §425.17; 82 Acts, ch 1214, §1, 2, 4]

88 Acts, ch 1139, §2, 3; 89 Acts, ch 233, §1; 90 Acts, ch 1250, §6; 91 Acts, ch 191, §19, 124; 92 Acts, ch 1016, §41; 92 Acts, 2nd Ex, ch 1001, §220, 225; 93 Acts, ch 156, §1, 2; 93 Acts, ch 180, §4, 15, 16, 22, 23; 94 Acts, ch 1125, §1, 2, 5; 94 Acts, ch 1165, §26, 50; 99 Acts, ch 152,

§13, 40; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §89

Subsection 2 amended

**425.23 Schedule for claims for credit or reimbursement.**

The amount of any claim for credit or reimbursement filed under this division shall be determined as provided in this section.

1. a. The tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph “a”, subparagraphs (1) and (2), if no appropriation is made to the fund created in section 425.40 shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
\$ 0 — 8,499.99 .....	100%
8,500 — 9,499.99 .....	85
9,500 — 10,499.99 .....	70
10,500 — 12,499.99 .....	50
12,500 — 14,499.99 .....	35
14,500 — 16,499.99 .....	25

b. If moneys have been appropriated to the fund created in section 425.40, the tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph “a”, subparagraph (2), shall be determined as follows:

(1) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is at least twenty-seven million dollars, the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
\$ 0 — 8,499.99 .....	100%
8,500 — 9,499.99 .....	85
9,500 — 10,499.99 .....	70
10,500 — 12,499.99 .....	50
12,500 — 14,499.99 .....	35
14,500 — 16,499.99 .....	25

(2) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is less than twenty-seven million dollars the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
\$ 0 — 8,499.99 .....	50%
8,500 — 9,499.99 .....	42
9,500 — 10,499.99 .....	35
10,500 — 12,499.99 .....	25
12,500 — 14,499.99 .....	17
14,500 — 16,499.99 .....	12

2. The actual credit for property taxes due shall be determined by subtracting from the tentative credit the amount of the homestead credit under section 425.1 which is allowed as a credit against property taxes due in the fiscal year next following the base year by the claimant or any person of the claimant’s household. If the subtraction produces a negative amount, there shall be no credit but no refund shall be required. The actual reimbursement for rent constituting property taxes paid shall be equal to the tentative reimbursement.

3. a. A person who is eligible to file a claim for credit for property taxes due and who has a household income of eight thousand five hundred dollars or less and who has an unpaid special assessment levied against the homestead may file a claim for a special assessment credit with the county treasurer. The department shall provide to the respective treasurers the forms necessary for the administration of this subsection. The claim shall be filed not later than September 30 of each year. Upon the filing of the claim, interest for late payment shall not accrue against the amount of the unpaid special assessment due and payable. The claim filed by the claimant constitutes a claim for credit of an amount equal to the actual amount due upon the unpaid special assessment, plus interest, payable during the fiscal year for which the claim is filed against the homestead of the claimant. However, where the claimant is an individual described in section 425.17, subsection 2, paragraph “a”, subparagraph (2), and the tentative credit is determined according to the schedule in subsection 1, paragraph “b”, subparagraph (2), of this section, the claim filed constitutes a claim for credit of an amount equal to one-half of the actual amount due and payable during the fiscal year. The treasurer shall certify to the director of revenue not later than October 15 of each year the total amount of dollars due for claims allowed. The amount of reimbursement due each county shall be certified by the director of revenue and paid by the director of the department of administrative services by November 15 of each year, drawn upon warrants payable to the respective treasurer. There is appropriated annually from the general fund of the state to the department of revenue an amount sufficient to carry out the provisions of this subsection. The treasurer shall credit any moneys received from the department against the amount of the unpaid special assessment due and payable on the homestead of the claimant.

b. For purposes of this subsection, in computing household income, a person with a total disability shall deduct all medical and necessary care expenses paid during the twelve-month income tax accounting periods used in computing household income which are attributable to the person’s total disability. “Medical and necessary care expenses” are those used in computing the federal income tax deduction under section 213 of the Internal Revenue Code as defined in section 422.3.

4. a. For the base year beginning in the 1999 calendar year and for each subsequent base year, the dollar amounts set forth in subsections 1 and 3 shall be multiplied by the cumulative adjustment factor for that base year. “Cumulative adjustment factor” means the product of the annual adjustment factor for the 1998 base year and all annual adjustment factors for subsequent base years. The cumulative adjustment factor applies to the base year beginning in the calendar year for which the latest annual adjustment factor has been determined.

b. The annual adjustment factor for the 1998 base year is one hundred percent. For each subsequent base year, the annual adjustment factor equals the annual inflation factor for the

calendar year, in which the base year begins, as computed in section 422.4 for purposes of the individual income tax.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.23]

83 Acts, ch 172, §5; 83 Acts, ch 189, §3, 5, 6; 84 Acts, ch 1305, §35; 88 Acts, ch 1139, §4; 90 Acts, ch 1250, §8, 9; 91 Acts, ch 267, §524; 92 Acts, ch 1016, §13, 42; 92 Acts, 2nd Ex, ch 1001, §221 – 223, 225; 93 Acts, ch 180, §5, 6, 15, 16, 22, 23; 96 Acts, ch 1129, §93; 96 Acts, ch 1167, §4, 8; 98 Acts, ch 1177, §12 – 14, 16; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §49; 2011 Acts, ch 25, §131 – 133

Subsection 1, paragraph a amended

Subsection 1, paragraph b, unnumbered paragraph 1 amended

Subsection 3, paragraph a amended

#### **425.26 Proof of claim.**

1. Every claimant shall give the department of revenue, in support of the claim, reasonable proof of:

- a. Age and total disability, if any.
  - b. Property taxes due or rent constituting property taxes paid, including the name and address of the owner or manager of the property rented and a statement whether the claimant is related by blood, marriage, or adoption to the owner or manager of the property rented.
  - c. Homestead credit allowed against property taxes due.
  - d. Changes of homestead.
  - e. Household membership.
  - f. Household income.
  - g. Size and nature of property claimed as the homestead.
2. The director may require any additional proof necessary to support a claim.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.26]

83 Acts, ch 111, §3, 4; 85 Acts, ch 67, §44; 94 Acts, ch 1125, §4, 5; 94 Acts, ch 1165, §28; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143

Code editor directive applied

#### **425.33 Rent increase — request and order for reduction.**

1. If upon petition by a claimant the department of revenue determines that a landlord has increased the claimant's rent primarily because the claimant is eligible for reimbursement under this division, the department of revenue shall request the landlord by mail to reduce the rent appropriately.

2. In determining whether a landlord has increased a claimant's rent primarily because the claimant is eligible for reimbursement under this division, the department of revenue shall consider the following factors:

- a. The amount of the increase in rent.
- b. If the landlord operates other rental property, whether a similar increase was imposed on the other rental property.
- c. Increased or decreased costs of materials, supplies, services, and taxes in the area.
- d. The time the rent was increased.
- e. Other relevant factors in each particular case.

3. If the landlord fails to comply with the request of the department of revenue within fifteen days after the request is mailed by the department, the department of revenue shall order the rent reduced by an appropriate amount.

[C75, 77, 79, 81, §425.33]

86 Acts, ch 1241, §33; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143

Code editor directive applied

#### **425.39 Fund created — appropriation — priority.**

The elderly and disabled property tax credit and reimbursement fund is created. There is appropriated annually from the general fund of the state to the department of revenue to be credited to the elderly and disabled property tax credit and reimbursement fund, from funds

not otherwise appropriated, an amount sufficient to implement this division for claimants described in section 425.17, subsection 2, paragraph “a”, subparagraph (1).

[C75, 77, 79, 81, §425.39]

86 Acts, ch 1244, §51; 93 Acts, ch 180, §8; 97 Acts, ch 206, §7, 8, 10; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §134

Section amended

## CHAPTER 425A

### FAMILY FARM TAX CREDIT

#### 425A.2 Definitions.

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

1. “*Actively engaged in farming*” means the designated person is personally involved in the production of crops and livestock on the eligible tract on a regular, continuous, and substantial basis. However, a lessor, whether under a cash or a crop share lease, is not actively engaged in farming on the area of the tract covered by the lease. This provision applies to both written and oral leases.

2. “*Agricultural land*” means land in tracts of ten acres or more excluding any buildings or other structures located on the land, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within a school corporation and in good faith used for agricultural or horticultural purposes. Any land in tracts laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and in good faith used for agricultural or horticultural purposes is entitled to the benefits of this chapter.

3. “*Crop*” or “*crop production*” includes pastureland.

4. “*Designated person*” means one of the following:

a. If the owner is an individual, the designated person includes the owner of the tract, the owner’s spouse, the owner’s child or stepchild, and their spouses, or the owner’s relative within the third degree of consanguinity, and the relative’s spouse.

b. If the owner is a partnership, a partner, or the partner’s spouse.

c. If the owner is a family farm corporation, a family member who is a shareholder of the family farm corporation or the shareholder’s spouse.

d. If the owner is a family farm limited liability company, a family member who is a member of the family farm limited liability company or the member’s spouse.

e. If the owner is an authorized farm corporation, a shareholder who owns at least fifty-one percent of the stock of the authorized farm corporation or the shareholder’s spouse.

f. If the owner is an authorized limited liability company, a member who holds at least fifty-one percent of all membership interests in the authorized limited liability company, or the member’s spouse.

g. If the owner is an individual who leases the tract to a family farm corporation, a shareholder of the corporation if the combined stock of the family farm corporation owned by the owner of the tract and persons related to the owner as enumerated in paragraph “a” is equal to at least fifty-one percent of the stock of the family farm corporation.

h. If the owner is an individual who leases the tract to a family farm limited liability company, a member of the family farm limited liability company if the combined interests of the family farm limited liability company held by the owner of the tract and persons related to the owner as enumerated in paragraph “a” is equal to at least fifty-one percent of the interests of the family farm limited liability company.

i. If the owner is an individual who leases the tract to a partnership, a partner if the combined partnership interest owned by a designated person as defined in paragraph “a” is equal to at least fifty-one percent of the ownership interest of the partnership.

5. “Eligible tract” or “eligible tract of agricultural land” means an area of agricultural land which meets all of the following:

a. Is comprised of all of the contiguous tracts under identical legal ownership that are located within the same county.

b. In the aggregate more than half the acres of the contiguous tract is devoted to the production of crops or livestock by a designated person who is actively engaged in farming.

c. For purposes of paragraph “b”, if some or all of the contiguous tract is being farmed under a lease arrangement, the activities of the lessor do not constitute being actively engaged in farming on the areas of the tract covered by the lease. If the lessee is a designated person who is actively engaged in farming, the acres under lease may be considered in determining whether more than half the acres of the contiguous tract are devoted to the production of crops or livestock.

6. “Owner” means any of the following:

a. An individual who holds the fee simple title to the agricultural land.

b. An individual who owns the agricultural land under a contract of purchase which has been recorded in the office of the county recorder of the county in which the agricultural land is located.

c. An individual who owns the agricultural land under devise or by operation of the inheritance laws, where the whole interest passes or where the divided interest is shared only by individuals related or formerly related to each other by blood, marriage, or adoption.

d. An individual who owns the agricultural land under a deed which conveys a divided interest, where the divided interest is shared only by individuals related or formerly related to each other by blood, marriage, or adoption.

e. A partnership where all partners are related or formerly related to each other by blood, marriage, or adoption.

f. A family farm corporation, family farm limited liability company, authorized farm corporation, or authorized limited liability company, as defined in section 9H.1, which owns the agricultural land.

90 Acts, ch 1250, §11; 91 Acts, ch 267, §609 – 611; 96 Acts, ch 1198, §1, 2; 2011 Acts, ch 112, §1 – 3

2011 amendments take effect January 1, 2012, and apply to family farm limited liability company and authorized limited liability company tax credit claims filed on or after that date; 2011 Acts, ch 112, §3

Subsection 4, NEW paragraphs d, f, and h and former paragraphs d, e, and f redesignated as e, g, and i respectively

Subsection 6, paragraph f amended

## CHAPTER 426B

### PROPERTY TAX RELIEF — MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES SERVICES

For specific exceptions to payments and expenditures provided under this chapter, see appropriations and other noncodified enactments in the annual Acts of the general assembly  
For future repeal of this chapter effective July 1, 2013, see §426B.6

#### 426B.5 Funding pools.

1. *Allowed growth funding pool.*

a. An allowed growth funding pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

b. Moneys available in the allowed growth funding pool for a fiscal year are appropriated to the department of human services for distribution as provided in this subsection.

c. The first twelve million dollars credited to the funding pool shall be allocated to counties based upon the county’s relative proportion of the state’s general population.

d. (1) The amount in the funding pool remaining after the allocation made in paragraph “c” shall be allocated to those counties that meet all of the following eligibility requirements:

(a) The county is levying the maximum amount allowed for the county’s mental health,

mental retardation, and developmental disabilities services fund under section 331.424A for the fiscal year in which the funding is distributed.

(b) In the latest fiscal year reported in accordance with section 331.403, the county's mental health, mental retardation, and developmental disabilities services fund ending balance under generally accepted accounting principles was equal to or less than twenty-five percent of the county's actual gross expenditures for that fiscal year.

(2) The amount allocated to a county from the moneys available in the pool under this paragraph "d" shall be determined based upon the county's proportion of the general population of the counties eligible to receive moneys from the pool for that fiscal year.

e. In order to receive an allocation under this section, a county must comply with the filing date requirements under section 331.403. Moneys credited to the allowed growth funding pool which remain unobligated or unexpended at the close of a fiscal year shall remain in the pool for distribution in the succeeding fiscal year.

f. The most recent population estimates issued by the United States bureau of the census shall be applied in determining population for the purposes of this subsection.

g. The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with this subsection. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued in January.

#### 2. Risk pool.

a. For the purposes of this subsection, unless the context otherwise requires, "services fund" means a county's mental health, mental retardation, and developmental disabilities services fund created in section 331.424A.

b. A risk pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

c. A risk pool board is created. The board shall consist of two county supervisors, two county auditors, a member of the mental health and disability services commission who is not a member of a county board of supervisors, a member of the county finance committee created in chapter 333A who is not an elected official, a representative of a provider of mental health or developmental disabilities services selected from nominees submitted by the Iowa association of community providers, and two central point of coordination process administrators, all appointed by the governor, and one member appointed by the director of human services. All members appointed by the governor shall be subject to confirmation by the senate. Members shall serve for three-year terms. A vacancy shall be filled in the same manner as the original appointment. Expenses and other costs of the risk pool board members representing counties shall be paid by the county of origin. Expenses and other costs of risk pool board members who do not represent counties shall be paid from a source determined by the governor. Staff assistance to the board shall be provided by the department of human services and counties. Actuarial expenses and other direct administrative costs shall be charged to the pool.

d. A county must apply to the risk pool board for assistance from the risk pool on or before October 31. The risk pool board shall make its final decisions on or before December 15 regarding acceptance or rejection of the applications for assistance and the total amount accepted shall be considered obligated.

e. Basic eligibility for risk pool assistance requires that a county meet all of the following conditions:

(1) The county is in compliance with the requirements of section 331.439.

(2) The county levied the maximum amount allowed for the county's services fund under section 331.424A for the fiscal year of application for risk pool assistance.

(3) In the fiscal year that commenced two years prior to the fiscal year of application, the county's services fund ending balance under generally accepted accounting principles was equal to or less than twenty percent of the county's actual gross expenditures for that fiscal year.

f. The board shall review the fiscal year-end financial records for all counties that are granted risk pool assistance. If the board determines a county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county, the

county shall refund the difference between the amount of assistance granted and the actual need. The county shall submit the refund within thirty days of receiving notice from the board. Refunds shall be credited to the risk pool. The mental health and disability services commission shall adopt rules pursuant to chapter 17A providing criteria for the purposes of this lettered paragraph and as necessary to implement the other provisions of this subsection.

g. The board shall determine application requirements to ensure prudent use of risk pool assistance. The board may accept or reject an application for assistance in whole or in part. The decision of the board is final.

h. The total amount of risk pool assistance shall be limited to the amount available in the risk pool for a fiscal year. Any unobligated balance in the risk pool at the close of a fiscal year shall remain in the risk pool for distribution in the succeeding fiscal year.

i. Risk pool assistance shall only be made available to address one or more of the following circumstances:

(1) Continuing support for mandated services.

(2) Avoiding the need for reduction or elimination of critical services when the reduction or elimination places consumers' health or safety at risk.

(3) Avoiding the need for reduction or elimination of a mobile crisis team or other critical emergency services when the reduction or elimination places the public's health or safety at risk.

(4) Avoiding the need for reduction or elimination of the services or other support provided to entire disability populations.

(5) Avoiding the need for reduction or elimination of services or other support that maintain consumers in a community setting, creating a risk that the consumers would be placed in more restrictive, higher cost settings.

j. Subject to the amount available and obligated from the risk pool for a fiscal year, the department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with the board's decisions and that amount is appropriated from the risk pool to the department for payment of the moneys due. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued on or before January 1.

k. On or before March 1 and September 1 of each fiscal year, the department of human services shall provide the risk pool board with a report of the financial condition of each funding source administered by the board. The report shall include but is not limited to an itemization of the funding source's balances, types and amount of revenues credited, and payees and payment amounts for the expenditures made from the funding source during the reporting period.

l. If the board has made its decisions but has determined that there are otherwise qualifying requests for risk pool assistance that are beyond the amount available in the risk pool fund for a fiscal year, the board shall compile a list of such requests and the supporting information for the requests. The list and information shall be submitted to the mental health and disability services commission, the department of human services, and the general assembly.

### 3. *Incentive pool.*

a. An incentive pool is created in the property tax relief fund. The incentive pool shall consist of the moneys credited to the incentive pool by law.

b. Moneys available in the incentive pool for a fiscal year shall be distributed to those counties that either meet or show progress toward meeting the purposes described in section 331.439, subsection 1, paragraph "c". The moneys received by a county from the incentive pool shall be used to build community capacity to support individuals covered by the county's management plan approved under section 331.439, in meeting such purposes.

98 Acts, ch 1213, §8, 9; 2000 Acts, ch 1090, §4, 6; 2000 Acts, ch 1232, §2, 3, 9, 10; 2001 Acts, ch 155, §4 – 8, 11; 2002 Acts, ch 1050, §36; 2002 Acts, ch 1146, §20; 2003 Acts, ch 179, §1; 2004 Acts, ch 1090, §32; 2006 Acts, ch 1115, §11, 12; 2007 Acts, ch 218, §82, 89, 92; 2008 Acts, ch 1043, §1 – 4; 2009 Acts, ch 182, §53; 2010 Acts, ch 1031, §389

Confirmation, see §2.32

Subsection 3 is first applicable for allowed growth funding distributed in the fiscal year beginning July 1, 2008; 2006 Acts, ch 1115, §12  
Section not amended; footnote deleted

#### **426B.6 Future repeal.**

This chapter is repealed July 1, 2013.

2011 Acts, ch 123, §26, 27

NEW section

## CHAPTER 427

### PROPERTY EXEMPT AND TAXABLE

See chapter 437A for assessment and taxation of certain property associated with the production, generation, transmission, or delivery of electricity or natural gas

#### **427.1 Exemptions.**

The following classes of property shall not be taxed:

1. *Federal and state property.*

a. The property of the United States and this state, including state university, university of science and technology, and school lands, except as otherwise provided in this subsection. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment.

b. Property of the state operated pursuant to section 904.302, 904.705, or 904.706 that is leased to an entity other than an entity which is exempt from property taxation under this section shall be subject to property taxation for the term of the lease. Property taxes levied against such leased property shall be paid from the revolving farm fund created in section 904.706. The lessor shall file a copy of the lease with the county assessor of the county where the property is located.

2. *Municipal and military property.* The property of a county, township, city, school corporation, levee district, drainage district, or the Iowa national guard, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F or 476A that shall be subject to taxation under chapter 437A and facilities of a municipal utility that are used for the provision of local exchange services pursuant to chapter 476, but only to the extent such facilities are used to provide such services, which shall be subject to taxation under chapter 433, except that section 433.11 shall not apply. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes, or leased from the city or county by the Iowa national guard or by a federal agency for the benefit of the Iowa national guard when devoted for public use and not for pecuniary profit. Food and beverages may be served at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county. The exemption for property owned by a city or county also applies to property which is located at an airport and leased to a fixed base operator providing aeronautical services to the public.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of

the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire company buildings and grounds.* The publicly owned buildings and grounds used exclusively for keeping fire engines and implements for extinguishing fires and for meetings of fire companies.

5. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit. The operation of bingo games on property of such organization shall not adversely affect the exemption of that property under this subsection if all proceeds, in excess of expenses, are used for the legitimate purposes of the organization.

6. *Property of cemetery associations.* Burial grounds, mausoleums, buildings and equipment owned and operated by cemetery associations and used exclusively for the maintenance and care of the cemeteries devoted to interment of human bodies and human remains. The exemption granted by this subsection shall not apply to any property used for the practice of mortuary science.

7. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit. Claims for exemption for libraries and art galleries owned and kept by private individuals, associations, or corporations for public use and not for private profit must be filed with the local assessor by February 1 of the first year the exemption is requested. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of claims as long as the property continues to be used as a library or art gallery for public use and not for private profit.

8. *Property of religious, literary, and charitable societies.* All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. However, an organization mentioned in this subsection whose primary objective is to preserve land in its natural state may own or lease land not exceeding three hundred twenty acres in each county for its appropriate objects. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment. All such property shall be listed upon the tax rolls of the district or districts in which it is located and shall have ascribed to it an actual fair market value and an assessed or taxable value, as contemplated by section 441.21, whether such property be subject to a levy or be exempted as herein provided and such information shall be open to public inspection.

9. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district in which the real property is located. The property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All the property shall be listed on the assessment rolls in the district in which the property is located and an actual fair market value and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this subsection may be or is affirmed, and the information shall be open to public inspection; it being the intent of this section that the property be valued whether or not it be subject to a levy. Every educational institution claiming an exemption under this subsection shall file with the assessor not later than February 1 of the year for which the exemption is requested, a statement upon forms to be prescribed by the director of revenue, describing and locating the property upon which exemption is claimed. Property which is located on the campus grounds and used for student union purposes may

serve food and beverages without affecting its exemption received pursuant to subsection 8 or this subsection.

10. *Homes for soldiers.* The buildings and grounds of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

11. *Agricultural produce.* Growing agricultural and horticultural crops except commercial orchards and vineyards.

12. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

13. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

14. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 5, 8, or 33 shall file with the assessor not later than February 1 a statement upon forms to be prescribed by the director of revenue, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases, or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred.

a. The assessor, in arriving at the valuation of any property of the society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased or rented and is used regularly for commercial purposes for a profit to a party or individual. If a portion of the property is used regularly for commercial purposes, an exemption shall not be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. However, the board of trustees or the board of directors of a hospital, as defined in section 135B.1, may permit use of a portion of the hospital for commercial purposes, and the hospital is entitled to full exemption for that portion used for nonprofit health-related purposes, upon compliance with the filing requirements of this subsection. The property of a nursing facility, as defined in section 135C.1, subsection 13, which is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and otherwise qualified, is entitled to the full exemption of the property regardless of the proportion of residents of the facility for whom the cost of care is privately paid or paid under Tit. XIX of the federal Social Security Act, upon compliance with the filing requirements of this subsection.

b. An exemption shall not be granted upon property upon or in which persistent violations of the laws of the state are permitted. A claimant of an exemption shall, under oath, declare that no violations of law will be knowingly permitted or have been permitted on or after January 1 of the year in which a tax exemption is requested. Claims for exemption shall be verified under oath by the president or other responsible head of the organization. A society or organization which ceases to use the property for the purposes stated in the claim shall provide written notice to the assessor of the change in use.

15. *Mandatory denial.* No exemption shall be granted upon any property which is the location of federally licensed devices not lawfully permitted to operate under the laws of the state.

16. *Revoking or modifying exemption.* Any taxpayer or any taxing district may make application to the director of revenue for revocation or modification of any exemption, based upon alleged violations of this chapter. The director of revenue may also on the director's own motion set aside or modify any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue shall give notice by

mail to the taxpayer or taxing district applicant and to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue, and shall hold a hearing prior to issuing any order for revocation or modification. An order made by the director of revenue revoking or modifying an exemption shall be applicable to the tax year commencing with the tax year in which the application is made to the director or the tax year commencing with the tax year in which the director's own motion is filed. An order made by the director of revenue revoking or modifying an exemption is subject to judicial review in accordance with chapter 17A, the Iowa administrative procedure Act. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court having jurisdiction in the county in which the property is located, and must be filed within thirty days after any order revoking or modifying an exemption is made by the director of revenue.

17. *Rural water sales.* The real property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

18. *Assessed value of exempt property.* Each county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within the assessor's jurisdiction. A summary report of tax exempt property shall be filed with the director of revenue and the local board of review on or before April 16 of each year on forms prescribed by the director of revenue.

19. *Pollution control and recycling.* Pollution-control or recycling property as defined in this subsection shall be exempt from taxation to the extent provided in this subsection, upon compliance with the provisions of this subsection.

a. (1) This exemption shall apply to new installations of pollution-control or recycling property beginning on January 1 after the construction or installation of the property is completed. This exemption shall apply beginning on January 1, 1975, to existing pollution-control property if its construction or installation was completed after September 23, 1970, and this exemption shall apply beginning January 1, 1994, to recycling property.

(2) This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control or recycling property. If the pollution-control or recycling property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control or recycling property, determined as of the assessment date.

b. (1) Application for this exemption shall be filed with the assessing authority not later than the first of February of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific pollution-control or recycling property to be exempted.

(2) The application for a specific pollution-control or recycling property shall be accompanied by a certificate of the department of natural resources certifying that the primary use of the pollution-control property is to control or abate pollution of any air or water of this state or to enhance the quality of any air or water of this state or, if the property is recycling property, that the primary use of the property is for recycling.

c. A taxpayer may seek judicial review of a determination of the department or, on appeal, of the environmental protection commission in accordance with the provisions of chapter 17A.

d. The environmental protection commission of the department of natural resources shall adopt rules relating to certification under this subsection and information to be submitted for evaluating pollution-control or recycling property for which a certificate is requested. The department of revenue shall adopt any rules necessary to implement this subsection, including rules on identification and valuation of pollution-control or recycling property. All rules adopted shall be subject to the provisions of chapter 17A.

e. (1) For the purposes of this subsection, "*pollution-control property*" means personal property or improvements to real property, or any portion thereof, used primarily to control or abate pollution of any air or water of this state or used primarily to enhance the quality of any air or water of this state and "*recycling property*" means personal property or improvements to real property or any portion of the property, used primarily in the manufacturing process and resulting directly in the conversion of waste glass, waste plastic, wastepaper products,

waste paperboard, or waste wood products into new raw materials or products composed primarily of recycled material. In the event such property shall also serve other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation under this subsection.

(2) For the purposes of this subsection, “*pollution*” means air pollution as defined in section 455B.131 or water pollution as defined in section 455B.171. “*Water of the state*” means the water of the state as defined in section 455B.171. “*Enhance the quality*” means to diminish the level of pollutants below the air or water quality standards established by the environmental protection commission of the department of natural resources.

20. *Impoundment structures.*

a. The impoundment structure and any land underlying an impoundment located outside an incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year not later than February 1 for the exemption. The application shall be made on forms prescribed by the department of revenue. The first application shall be accompanied by a copy of the water storage permit approved by the director of the department of natural resources or the director’s designee, and a copy of the plan for the construction of the impoundment structure and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommendation of the soil and water conservation district commissioners, to the board of supervisors for approval or denial. An applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court.

b. As used in this subsection, “*impoundment*” means a reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; “*storage capacity*” means the total area below the crest elevation of the principal spillway including the volume of any excavation in the area; and “*impoundment structure*” means a dam, earthfill, or other structure used to create an impoundment.

21. *Low-rent housing.* The property owned and operated or controlled by a nonprofit organization, as recognized by the internal revenue service, providing low-rent housing for persons who are elderly and persons with physical and mental disabilities. For the purposes of this subsection, the controlling nonprofit entity may serve as a general partner or managing member of a limited liability company or limited liability partnership which owns the property. The exemption granted under the provisions of this subsection shall apply only until the final payment due date of the borrower’s original low-rent housing development mortgage or until the borrower’s original low-rent housing development mortgage is paid in full or expires, whichever is sooner, subject to the provisions of subsection 14. However, if the borrower’s original low-rent housing development mortgage is refinanced, the exemption shall apply only until the date that would have been the final payment due date under the terms of the borrower’s original low-rent housing development mortgage or until the refinanced mortgage is paid in full or expires, whichever is sooner, subject to the provisions of subsection 14.

21A. *Dwelling unit property owned by community housing development organization.* Dwelling unit property owned and managed by a community housing development organization, as recognized by the state of Iowa and the federal government pursuant to criteria for community housing development organization designation contained in the HOME program of the federal National Affordable Housing Act of 1990, if the organization is also a nonprofit organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and owns and manages more than one hundred fifty dwelling units that are located in a city with a population of more than one hundred ten

thousand. For the 2005 and 2006 assessment years, an application is not required to be filed to receive the exemption. For the 2007 and subsequent assessment years, an application for exemption must be filed with the assessing authority not later than February 1 of the assessment year for which the exemption is sought. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property continues to qualify for the exemption.

22. *Natural conservation or wildlife areas.* Recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983, the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is granted. A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

a. Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, not later than February 1 of the assessment year, on forms provided by the department of revenue. The application shall describe and locate the property to be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie that has been restored or reestablished, the property shall be inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application.

b. Upon receipt of the application, the commissioners shall certify whether the property is eligible to receive the exemption. The commissioners shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

c. In the case of an open prairie that has been restored or reestablished and that does not receive the certification as provided by the county board of supervisors as it relates to the ground cover, the applicant shall be notified of the availability of resource enhancement and protection fund cost-share moneys and soil and conservation technological assistance for reestablishing native vegetation.

d. Before the board of supervisors may designate real property for the exemption, it shall establish priorities for the types of real property for which an exemption may be granted and the amount of acreage. These priorities may be the same as or different than those for previous years. The board of supervisors shall get the approval of the governing body of the city before an exemption may be granted to real property located within the corporate limits of that city. A public hearing shall be held with notice given as provided in section 73A.2 at which the proposed priority list shall be presented. However, no public hearing is required if the proposed priorities are the same as those for the previous year. After the public hearing, the board of supervisors shall adopt by resolution the proposed priority list or another priority list. Property upon which are located abandoned buildings or structures shall have the lowest

priority on the list adopted, except where the board of supervisors determines that a structure has historic significance. The board of supervisors shall also provide for a procedure where the amount of acres for which exemptions are sought exceeds the amount the priority list provides for that type or in the aggregate for all types.

e. After receipt of an application with its accompanying certification and affidavit and the establishment of the priority list, the board of supervisors may grant a tax exemption under this subsection using the established priority list as a mandate. Real property designated for the tax exemption shall be designated by May 15 of the assessment year in which begins the fiscal year for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

f. The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is recreational lakes, forest cover, river and stream, river and stream banks, or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested, is eligible for the exemption under this subsection. However, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil and water conservation district in which it is located. In the case of an open prairie that has been restored or reestablished, the property shall be inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

(1) "*Open prairies*" includes hillsides and gully areas which have a permanent grass cover but does not include native prairies meeting the criteria of the natural resource commission.

(2) "*Forest cover*" means land which is predominantly wooded.

(3) "*Recreational lake*" means a body of water, which is not a river or stream, owned solely by a nonprofit organization and primarily used for boating, fishing, swimming, and other recreational purposes.

(4) "*Used for economic gain*" includes, but is not limited to, using property for the storage of equipment, machinery, or crops.

g. Notwithstanding other requirements under this subsection, the owner of any property lying between a river or stream and a dike which is required to be set back three hundred feet or less from the river or stream shall automatically be granted an exemption for that property upon submission of an application accompanied by an affidavit signed by the applicant that if the exemption is granted the property will not be used for economic gain during the period of exemption. The exemption shall continue from year to year for as long as the property qualifies and is not used for economic gain, without need for filing additional applications or affidavits. Property exempted pursuant to this paragraph is in addition to the maximum acreage applicable to other exemptions under this subsection.

23. *Native prairie and wetland.* Land designated as native prairie or land designated as a protected wetland by the department of natural resources pursuant to section 456B.12.

a. Application for the exemption shall be made on forms provided by the department of revenue. Land designated as a protected wetland shall be assessed at a value equal to the average value of the land where the wetland is located and which is owned by the person granted the exemption. The application forms shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested.

The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate from the department of natural resources stating that the land is native prairie or protected wetland. The department of natural resources shall issue a certificate for the native prairie exemption if the department finds that the land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the natural resource commission for native prairie. The department of natural resources shall issue a certificate for the wetland exemption if the department finds the land is a protected wetland, as defined under section 456B.1, or if the wetland was previously drained and cropped but has been restored under a nonpermanent restoration agreement with the department or other county, state, or federal agency or private conservation group. A taxpayer may seek judicial review of a decision of the department according to chapter 17A. The natural resource commission shall adopt rules to implement this subsection.

b. The assessing authority each year may submit to the department a claim for reimbursement of tax revenue lost from the exemption. Upon receipt of the claim, the department shall reimburse the assessing authority an amount equal to the lost tax revenue based on the value of the protected wetland as assessed by the authority, unless the department reimburses the authority based upon a departmental assessment of the protected wetland. The authority may contest the department's assessment as provided in chapter 17A. The department is not required to honor a claim submitted more than sixty days after the authority has assessed land where the protected wetland is located and which is owned by the person granted the exemption.

24. *Land certified as a wildlife habitat.*

a. The owner of agricultural land may designate not more than two acres of the land for use as a wildlife habitat. After inspection, if the land meets the standards established by the natural resource commission for a wildlife habitat under section 483A.3, and, in the case of a wildlife habitat that has been restored or reestablished, is inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water, the department of natural resources shall certify the designated land as a wildlife habitat and shall send a copy of the certification to the appropriate assessor not later than February 1 of the assessment year for which the exemption is requested. The department of natural resources may subsequently withdraw certification of the designated land if it fails to meet the established standards for a wildlife habitat and the ground cover requirement and the assessor shall be given written notice of the decertification.

b. In the case where the property is a restored or reestablished wildlife habitat and does not receive the certification as provided by the county board of supervisors as it relates to the ground cover, the owner shall be notified of the availability of resource enhancement and protection fund cost-share moneys and soil and conservation technological assistance for reestablishing native vegetation.

25. Reserved.

26. *Public television station.* All grounds and buildings used or under construction for a public television station and not leased or otherwise used or under construction for pecuniary profit.

27. *Speculative shell buildings of certain organizations.*

a. New construction of shell buildings by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities for speculative purposes as provided in this subsection.

b. The exemption shall be for one of the following:

(1) The value added by new construction of a shell building or addition to an existing

building or structure by a community development organization, not-for-profit cooperative association under chapter 499, or for-profit entity.

(2) The value of an existing building being reconstructed or renovated, and the value of the land on which the building is located, if the reconstruction or renovation constitutes complete replacement or refitting of the existing building or structure, by a community development organization, not-for-profit cooperative association under chapter 499, or for-profit entity.

c. The exemption or partial exemption shall be allowed only pursuant to ordinance of a city council or board of supervisors, which ordinance shall specify if the exemption will be available for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities. If the exemption is for a project described in paragraph “b”, subparagraph (1), the exemption shall be effective for the assessment year in which the building is first assessed for property taxation or the assessment year in which the addition to an existing building first adds value. If the exemption is for a project described in paragraph “b”, subparagraph (2), the exemption shall be effective for the assessment year following the assessment year in which the project commences. An exemption allowed under this subsection shall be allowed for all subsequent years until the property is leased or sold or for a specific time period stated in the ordinance or until the exemption is terminated by ordinance of the city council or board of supervisors which approved the exemption. Eligibility for an exemption as a speculative shell building shall be determined as of January 1 of the assessment year. However, an exemption shall not be granted a speculative shell building of a not-for-profit cooperative association under chapter 499 or a for-profit entity if the building is used by the cooperative association or for-profit entity, or a subsidiary or majority owners thereof for other than as a speculative shell building. If the shell building or any portion of the shell building is leased or sold, the portion of the shell building which is leased or sold, and a proportionate share of the land on which it is located if applicable, shall not be entitled to an exemption under this subsection for subsequent years. Upon the sale of the shell building, the shell building shall be considered new construction for purposes of section 427B.1 if used for purposes set forth in section 427B.1.

d. (1) If the speculative shell building project is a speculative shell building project described in paragraph “b”, subparagraph (1), an application shall be filed pursuant to section 427B.4 for each such project for which an exemption is claimed.

(2) If the speculative shell building project is a speculative shell building project described in paragraph “b”, subparagraph (2), an application shall be filed by the owner of the property with the local assessor by February 1 of the assessment year in which the project commences. Applications for exemption shall be made on forms prescribed by the director of revenue and shall contain information pertaining to the nature of the improvement, its cost, and other information deemed necessary by the director of revenue. The city council or the board of supervisors, by ordinance, shall give its approval of a tax exemption for the project if the project is in conformance with the zoning plans for the city or county. The approval shall also be subject to the hearing requirements of section 427B.1. Approval under this subparagraph (2) entitles the owner to exemption from taxation beginning in the assessment year following the assessment year in which the project commences. However, if the tax exemption for the building and land is not approved, the person may submit an amended proposal to the city council or board of supervisors to approve or reject.

e. For purposes of this subsection the following definitions apply:

(1) (a) “Community development organization” means an organization, which meets the membership requirements of subparagraph division (b), formed within a city or county or multicommunity group for one or more of the following purposes:

(i) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the community, area, or region and its citizens.

(ii) To encourage and assist the location of new business and industry.

(iii) To rehabilitate and assist existing business and industry.

(iv) To stimulate and assist in the expansion of business activity.

(b) For purposes of this definition, a community development organization must have at least fifteen members with representation from the following:

(i) A representative from government at the level or levels corresponding to the community development organization's area of operation.

(ii) A representative from a private sector lending institution.

(iii) A representative of a community organization in the area.

(iv) A representative of business in the area.

(v) A representative of private citizens in the community, area, or region.

(2) "*New construction*" means new buildings or structures and includes new buildings or structures which are constructed as additions to existing buildings or structures. "*New construction*" also includes reconstruction or renovation of an existing building or structure which constitutes complete replacement of an existing building or structure or refitting of an existing building or structure, if the reconstruction or renovation of the existing building or structure is required due to economic obsolescence, if the reconstruction or renovation is necessary to implement recognized industry standards for the manufacturing or processing of products, and the reconstruction or renovation is required in order to competitively manufacture or process products or for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities to market a building or structure as a speculative shell building, which determination must receive prior approval from the city council of the city or county board of supervisors of the county.

(3) "*Speculative shell building*" means a building or structure owned and constructed or reconstructed by a community development organization, a not-for-profit cooperative association under chapter 499, or a for-profit entity without a tenant or buyer for the purpose of attracting an employer or user which will complete the building to the employer's or user's specification for manufacturing, processing, or warehousing the employer's or user's product line.

28. *Joint water utilities.* The property of a joint water utility established under chapter 389, when devoted to public use and not held for pecuniary profit.

29. *Methane gas conversion.* Methane gas conversion property shall be exempt from taxation.

a. For purposes of this subsection, "*methane gas conversion property*" means personal property, real property, and improvements to real property, and machinery, equipment, and computers assessed as real property pursuant to section 427A.1, subsection 1, paragraphs "e" and "j", used in an operation to decompose waste and convert the waste to gas, to collect methane gas or other gases produced as a by-product of waste decomposition and to convert the gas to energy, or to collect waste in order to decompose the waste to produce methane gas or other gases and to convert the gas to energy.

b. If the property used to convert the gas to energy also burns another fuel, the exemption shall apply to that portion of the value of such property which equals the ratio that its use of methane gas bears to total fuel consumed.

c. Application for this exemption shall be filed with the assessing authority not later than February 1 of each year for which the exemption is requested on forms provided by the department of revenue. The application shall describe and locate the specific methane gas conversion property to be exempted. If the property consuming methane gas also consumes another fuel, the first year application shall contain a statement to that effect and shall identify the other fuel and estimate the ratio that the methane gas consumed bears to the total fuel consumed. Subsequent year applications shall identify the actual ratio for the previous year which ratio shall be used to calculate the exemption for that assessment year.

d. With respect to methane gas conversion property other than that used in an operation connected with, or in conjunction with, a publicly owned sanitary landfill, the exemption pursuant to this subsection shall be limited to property originally placed in operation on or after January 1, 2008, and on or before December 31, 2012, and shall be available for the ten-year period following the date the property was originally placed in operation.

30. *Manufactured home community or mobile home park storm shelter.* A structure constructed as a storm shelter at a manufactured home community or mobile home park as defined in section 435.1. An application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the

storm shelter to be exempted. If the storm shelter structure is used exclusively as a storm shelter, all of the structure's assessed value shall be exempt from taxation. If the storm shelter structure is not used exclusively as a storm shelter, the storm shelter structure shall be assessed for taxation at fifty percent of its value as commercial property.

31. *Barn preservation.* The increase in assessed value added to a farm structure constructed prior to 1937 as a result of improvements made to the farm structure for purposes of preserving the integrity of the internal and external features of the structure as a barn is exempt from taxation. To be eligible for the exemption, the structure must have been first placed in service as a barn prior to 1937. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a barn.

a. For purposes of this subsection, "*barn*" means an agricultural structure, in whatever shape or design, which is used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

b. Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific structure for which the added value is requested to be exempt.

c. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure continues to be used as a barn. The taxpayer shall notify the assessing authority when the structure ceases to be used as a barn.

32. *One-room schoolhouse preservation.* The increase in assessed value added to a one-room schoolhouse as a result of improvements made to the structure for purposes of preserving the integrity of the internal and external features of the structure as a one-room schoolhouse is exempt from taxation. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a one-room schoolhouse.

a. Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific one-room schoolhouse for which the added value is requested to be exempt.

b. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure is not used for dwelling purposes and the structure is preserved as a one-room schoolhouse. The taxpayer shall notify the assessing authority when the structure ceases to be eligible. The exemption in this subsection applies even though the one-room schoolhouse is no longer used for instructional purposes.

33. *Indian housing authority property.*

a. Property owned and operated by an Indian housing authority, as defined in 24 C.F.R. § 950.102, created under Indian law, if a cooperative agreement has been made with the local governing body agreeing to the exemption. The exemption in this subsection is subject to the provisions of subsection 14.

b. For purposes of this subsection:

(1) "*Indian law*" means the code of an Indian tribe recognized as eligible for services provided to Indians by the United States secretary of the interior.

(2) "*Local governing body*" means the county board of supervisors if the property is located outside an incorporated city or the governing body of the city in which the property is located.

34. *Port authority property.* The property of a port authority created pursuant to section 28J.2, when devoted to public use and not held for pecuniary profit.

35. *Web search portal business property.*

a. Property, other than land and buildings and other improvements, that is utilized by a web search portal business as defined in and meeting the requirements of section 423.3, subsection 92, including computers and equipment that are necessary for the maintenance and operation of a web search portal and other property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers,

and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under chapter 437A; racking systems, cabling, and trays; and backup power generation systems, battery systems, and related infrastructure all of which are necessary for the maintenance and operation of the web search portal site.

b. This exemption applies beginning with the assessment year the investment in or construction of the facility utilizing the materials, equipment, and systems set forth in paragraph “a” are first assessed. For purposes of claiming this exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business’s affiliates as allowed under section 423.3, subsection 92. This exemption applies to affiliates of the web search portal business.

36. *Web search property.*

a. Property, other than land and buildings and other improvements, that is utilized by a web search portal business as defined in and meeting the requirements of section 423.3, subsection 93, including computers and equipment that are necessary for the maintenance and operation of a web search portal business and other property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under chapter 437A; racking systems, cabling, and trays; and backup power generation systems, battery systems, and related infrastructure all of which are necessary for the maintenance and operation of the web search portal business.

b. This web search portal business exemption applies beginning with the assessment year the investment in or construction of the facility utilizing the materials, equipment, and systems set forth in paragraph “a” are first assessed. For purposes of claiming this web search portal business exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business’s affiliates as allowed under section 423.3, subsection 93. This exemption applies to affiliates of the web search portal business.

37. *Data center business property.*

a. Property, other than land and buildings and other improvements, that is utilized by a data center business as defined in and meeting the requirements of section 423.3, subsection 95, including computers and equipment that are necessary for the maintenance and operation of a data center business and other property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under chapter 437A; racking systems, cabling, and trays; and backup power generation systems, battery systems, and related infrastructure all of which are necessary for the maintenance and operation of the data center business.

b. This data center business exemption applies beginning with the assessment year the investment in or construction of the facility utilizing the materials, equipment, and systems set forth in paragraph “a” are first assessed.

1. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

2. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1; 81 Acts, ch 31, §8]

3, 4. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

5. [SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

6. [C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**7, 8, 9, 10.** [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1; 82 Acts, ch 1247, §1]

**11.** [C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**12.** [C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**13.** [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**14.** [C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**15.** [C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**16.** [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**17.** [R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**18.** [SS15, §1304; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**19.** [C51, §468, 469; R60, §723, 724; C73, §815, 816; C97, §1318, 1319, 1323; S13, §1330-g, 1342-g, 1346-g; SS15, §1346-s; C24, 27, 31, 35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**20.** [C35, 39, §6944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**21.** [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**22.** [C62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**23.** [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**24, 25.** [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**26.** [C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**27.** [C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**28.** [C62, 66, 71, 73, 75, 77, 79, 81, §427.1]

**29.** [C66, 71, 73, 75, 77, 79, 81, §427.1]

**30.** [C71, 73, 75, 77, 79, 81, §427.1]

**31.** [C73, 75, 77, 79, 81, §427.1; 82 Acts, ch 1034, §1]

**32.** [C75, 77, 79, 81, §427.1; 82 Acts, ch 1199, §92, 93, 96]

**33.** [C75, 77, 79, 81, §427.1; 82 Acts, ch 1199, §69, 96]

**34.** [C77, 79, 81, §427.1]

**35.** [C79, 81, §427.1]

**36.** [82 Acts, ch 1247, §2]

**37.** [82 Acts, ch 1247, §2]

**38.** [82 Acts, ch 1247, §2]

83 Acts, ch 121, §8; 83 Acts, ch 133, §1, 2; 83 Acts, ch 178, §1; 84 Acts, ch 1222, §5, 6, 7; 85 Acts, ch 32, §102; 86 Acts, ch 1113, §1, 2; 86 Acts, ch 1200, §8; 86 Acts, ch 1241, §35; 87 Acts, ch 23, §12 – 14; 87 Acts, ch 233, §495; 88 Acts, ch 1134, §81; 89 Acts, ch 296, §43, 44; 90 Acts, ch 1006, §1; 90 Acts, ch 1199, §5 – 8; 91 Acts, ch 97, §52, 53; 91 Acts, ch 168, §8; 92 Acts, ch 1073, §10, 11; 92 Acts, ch 1225, §3, 4; 93 Acts, ch 121, §1; 93 Acts, ch 159, §1; 95 Acts, ch 83, §19; 95 Acts, ch 84, §1 – 3; 96 Acts, ch 1034, §39; 96 Acts, ch 1129, §94; 96 Acts, ch 1167, §5; 97 Acts, ch 158, §30; 98 Acts, ch 1194, §28, 40; 99 Acts, ch 63, §5, 8; 99 Acts, ch 151, §41, 42, 89; 99 Acts, ch 152, §17, 40; 99 Acts, ch 186, §3 – 5; 99 Acts, ch 208, §56; 2000 Acts, ch 1058, §39; 2000 Acts, ch 1194, §15, 17; 2000 Acts, ch 1205, §1; 2001 Acts, ch 59, §1, 3; 2001 Acts, ch 116, §20; 2001 Acts, ch 139, §1, 2, 4; 2001 Acts, ch 150, §11 – 14, 26; 2001 Acts, ch 153, §16; 2001 Acts, 1st Ex, ch 4, §4, 36; 2002 Acts, ch 1119, §55, 56; 2002 Acts, ch 1151, §19; 2002 Acts, ch 1162, §39, 40; 2003 Acts, ch 121, §1 – 3; 2003 Acts, ch 130, §1, 2, 5; 2003 Acts, ch 136, §1, 3; 2003 Acts, ch 145, §286; 2005 Acts, ch 122, §1, 2; 2005 Acts, ch 150, §118; 2005 Acts, ch 179, §67 – 69, 84, 86, 87; 2006 Acts, ch 1125, §1, 2; 2006 Acts, ch 1158, §57; 2006 Acts, ch 1182, §62; 2006 Acts, ch 1185, §84, 89; 2007 Acts, ch 199, §3; 2008 Acts, ch 1006, §2, 3; 2008 Acts, ch 1143, §1, 2; 2008 Acts, ch 1184, §61; 2009 Acts, ch 41, §263; 2009 Acts, ch 97, §13; 2009 Acts, ch 179, §200, 223, 224, 227; 2011 Acts, ch 25, §44, 45; 2011 Acts, ch 130, §31, 71

Federally owned lands, §1.4 et seq.

Leased church property, §565.1

Contracts with city or county for services, see §364.19

2006 amendment to subsection 19 applies to taxes due and payable in fiscal years beginning on or after July 1, 2007; 2006 Acts, ch 1125, §2

2006 amendment to subsection 21A concerning the filing of applications takes effect June 2, 2006, and applies retroactively to January 1, 2005, for assessment years beginning on or after that date; 2006 Acts, ch 1185, §89

2008 amendment to subsection 27 takes effect May 7, 2008, and applies retroactively to January 1, 2007, for projects approved by a city council or board of supervisors prior to that date; claims for exemption for the 2007, 2008, or 2009 assessment years shall be filed with the appropriate governing body on or before October 1, 2008; 2008 Acts, ch 1143, §2

2009 amendments to subsection 29 take effect May 26, 2009, and apply retroactively to assessment years beginning on or after January 1, 2008; exemption claims for 2008 and 2009 assessment years to be filed on or before June 30, 2009; 2009 Acts, ch 179, §227

Deadline for filing an exemption claim under subsection 14 is extended to May 1, 2009, for property located in a county declared a disaster area in 2008 if a society or organization was unable to file due to the need to respond to a natural disaster occurring in calendar year 2008; 2009 Acts, ch 179, §100, 153

Subsection 21 amended

Subsection 35, paragraph a amended

Subsection 36, paragraph a amended

### **427.12 Suspended tax record.**

1. The county treasurer shall maintain within the county system, as defined in section 445.1, the official record of suspended taxes, special assessments, and rates or charges, the collection of which has been suspended by order of the board of supervisors. The record shall include, but is not limited to, the following information:

a. A governmental or platted description of the parcel on which the tax, special assessment, rate, or charge has been levied or on which it is a lien.

b. The name of the owner of the parcel.

c. The amount and year of the tax, special assessment, rate or charge.

d. The date the suspension was ordered.

2. The county system, as defined in section 445.1, shall be such that all entries of taxes, special assessments, rates, or charges against the parcel shall be separate from the entry of taxes, special assessments, rates, or charges against all other parcels.

3. If a suspended tax, special assessment, or rate or charge in the county system is paid, or subsequently abated, the treasurer shall enter in the county system a notification of payment or abatement.

4. When a suspension ordered by the board of supervisors for any reason provided by law, has been entered in the county system, the entry, on and after its date, is a lien and shall serve as notice of a lien in accordance with section 445.10.

[C31, 35, §6952-d1; C39, §6952.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.12]

84 Acts, ch 1219, §35; 91 Acts, ch 191, §24; 2011 Acts, ch 25, §143

For definitions applicable to this section, see §445.1

Code editor directive applied

## **CHAPTER 427B**

### **SPECIAL TAX PROVISIONS**

#### **DIVISION I**

#### **INDUSTRIAL PROPERTY AND CATTLE FACILITIES ACTUAL VALUE ADDED EXEMPTION**

### **427B.1 Actual value added exemption from tax — public hearing.**

1. A city council, or a county board of supervisors as authorized by section 427B.2, may provide by ordinance for a partial exemption from property taxation of the actual value added to industrial real estate by the new construction of industrial real estate, research-service facilities, warehouses, distribution centers and the acquisition of or improvement to machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph “e”. “*New construction*” means new buildings and

structures and includes new buildings and structures which are constructed as additions to existing buildings and structures. “*New construction*” does not include reconstruction of an existing building or structure which does not constitute complete replacement of an existing building or structure or refitting of an existing building or structure, unless the reconstruction of an existing building or structure is required due to economic obsolescence and the reconstruction is necessary to implement recognized industry standards for the manufacturing and processing of specific products and the reconstruction is required for the owner of the building or structure to continue to competitively manufacture or process those products which determination shall receive prior approval from the city council of the city or the board of supervisors of the county upon the recommendation of the economic development authority. The exemption shall also apply to new machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph “e”, unless the machinery or equipment is part of the normal replacement or operating process to maintain or expand the existing operational status. “*Research-service facilities*” means a building or group of buildings devoted primarily to research and development activities, including, but not limited to, the design and production or manufacture of prototype products for experimental use, and corporate-research services which do not have a primary purpose of providing on-site services to the public. “*Warehouse*” means a building or structure used as a public warehouse for the storage of goods pursuant to chapter 554, article 7, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. “*Distribution center*” means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. “*Distribution center*” does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods.

2. The ordinance may be enacted not less than thirty days after a public hearing is held in accordance with section 335.6 in the case of a county, or section 362.3 in the case of a city. The ordinance shall designate the length of time the partial exemption shall be available and may provide for an exemption schedule in lieu of that provided in section 427B.3. However, an alternative exemption schedule adopted shall not provide for a larger tax exemption in a particular year than is provided for that year in the schedule contained in section 427B.3.

[C81, §427B.1; 82 Acts, ch 1104, §20]

84 Acts, ch 1232, §2; 85 Acts, ch 232, §1; 2011 Acts, ch 118, §85, 89

Contracts with city or county for services; see §364.19

Code editor directive applied

Unnumbered paragraphs 1 and 2 editorially renumbered as subsections 1 and 2

### **427B.3 Period of partial exemption.**

1. “*Actual value added*”, as used in this chapter, means the actual value added as of the first year for which the exemption is received, except that actual value added by improvements to machinery and equipment means the actual value as determined by the assessor as of January 1 of each year for which the exemption is received.

2. The actual value added to industrial real estate for the reasons specified in section 427B.1 is eligible to receive a partial exemption from taxation for a period of five years. However, if property ceases to be classified as industrial real estate or ceases to be used as a warehouse or distribution center, the partial exemption for the value added shall not be allowed for subsequent assessment years.

3. *a.* The amount of actual value added which is eligible to be exempt from taxation shall be as follows:

- (1) For the first year, seventy-five percent.
- (2) For the second year, sixty percent.
- (3) For the third year, forty-five percent.
- (4) For the fourth year, thirty percent.
- (5) For the fifth year, fifteen percent.

*b.* This schedule shall be followed unless an alternative schedule is adopted by the city council of a city or the board of supervisors of a county in accordance with section 427B.1.

4. However, the granting of the exemption under this section for new construction constituting complete replacement of an existing building or structure shall not result in the assessed value of the industrial real estate being reduced below the assessed value of the industrial real estate before the start of the new construction added.

[C81, §427B.3]

84 Acts, ch 1232, §3; 2011 Acts, ch 34, §167

Section amended

### DIVISION III

#### SPECIAL VALUATION FOR MACHINERY, EQUIPMENT, AND COMPUTERS — STATE REPLACEMENT FUNDS

##### **427B.17 Property subject to special valuation.**

1. For property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, the taxpayer’s valuation shall be limited to thirty percent of the net acquisition cost of the property, except as otherwise provided in subsections 2 and 3. For purposes of this section, “*net acquisition cost*” means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

2. Property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, which is first assessed for taxation in this state on or after January 1, 1995, shall be exempt from taxation.

3. Property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, and assessed under subsection 1 of this section, shall be valued by the local assessor as follows for the following assessment years:

a. For the assessment year beginning January 1, 1999, at twenty-two percent of the net acquisition cost.

b. For the assessment year beginning January 1, 2000, at fourteen percent of the net acquisition cost.

c. For the assessment year beginning January 1, 2001, at six percent of the net acquisition cost.

d. For the assessment year beginning January 1, 2002, and succeeding assessment years, at zero percent of the net acquisition cost.

4. Property assessed pursuant to this section shall not be eligible to receive a partial exemption under sections 427B.1 to 427B.6.

5. This section shall not apply to property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433, 434, 437, 437A, and 438, and such property shall not receive the benefits of this section.

Any electric power generating plant which operated during the preceding assessment year at a net capacity factor of more than twenty percent, shall not receive the benefits of this section or of section 15.332. For purposes of this section, “*electric power generating plant*” means any nameplate rated electric power generating plant, in which electric energy is produced from other forms of energy, including all taxable land, buildings, and equipment used in the production of such energy. “*Net capacity factor*” means net actual generation divided by the product of net maximum capacity times the number of hours the unit was in the active state during the assessment year. Upon commissioning, a unit is in the active state until it is decommissioned. “*Net actual generation*” means net electrical megawatt hours produced by the unit during the preceding assessment year. “*Net maximum capacity*” means the capacity the unit can sustain over a specified period when not restricted by ambient conditions or equipment deratings, minus the losses associated with station service or auxiliary loads.

6. For the purpose of dividing taxes under section 260E.4, the employer’s or business’s valuation of property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, and used to fund a new jobs training project which project’s first written agreement providing for a division of taxes as provided in section 403.19 is approved on or before June 30, 1995, shall

be limited to thirty percent of the net acquisition cost of the property. The community college shall notify the assessor by February 15 of each assessment year if taxes levied against such property of an employer or business will be used to finance a project in the following fiscal year. In any fiscal year in which the community college does rely on taxes levied against an employer's or business's property defined in section 427A.1, subsection 1, paragraph "e" or "j", to finance a project, such property shall not be valued pursuant to subsection 2 or 3, whichever is applicable, for that fiscal year. An employer's or business's taxable property used to fund a new jobs training project shall not be valued pursuant to subsection 2 or 3, whichever is applicable, until the assessment year following the calendar year in which the certificates or other funding obligations have been retired or escrowed. If the certificates issued, or other funding obligations incurred, between January 1, 1982, and June 30, 1995, are refinanced or refunded after June 30, 1995, the valuation of such property shall then be the valuation specified in subsection 2 or 3, whichever is applicable, for the applicable assessment year beginning with the assessment year following the calendar year in which those certificates or other funding obligations are refinanced or refunded after June 30, 1995.

7. Notwithstanding subsection 5 or any other provision to the contrary, this section shall be applicable to a new cogeneration facility subject to the assessed value provisions of section 437A.16A, but the exemptions provided in this section shall be reduced by an amount bearing the same ratio to the value of the property that is exempt pursuant to this section as the allowable credit under section 437A.16A, subsection 1, bears to the assessable value of the entire new cogeneration facility before the application of any abatements, credits, or exemptions against that value.

85 Acts, ch 32, §109; 93 Acts, ch 180, §12; 95 Acts, ch 206, §29; 96 Acts, ch 1049, §2, 3, 9; 96 Acts, ch 1180, §18; 97 Acts, ch 66, §1, 2; 2002 Acts, ch 1150, §11; 2003 Acts, ch 145, §286; 2005 Acts, ch 150, §64, 69; 2011 Acts, ch 104, §1, 2

2005 amendment to subsection 5 applies to tax years ending on or after July 1, 2005; 2005 Acts, ch 150, §69

Subsection 7 takes effect May 3, 2011, and applies retroactively to January 1, 2010, for tax years beginning on or after that date; 2011 Acts, ch 104, §2

NEW subsection 7

## CHAPTER 432

### INSURANCE COMPANIES TAX

#### **432.12M Innovation fund investment tax credit.**

The taxes imposed under this chapter shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

2011 Acts, ch 130, §44, 47, 71

Section applies retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 130, §47

NEW section

## CHAPTER 435

### PROPERTY TAXES ON MANUFACTURED AND MOBILE HOMES

This chapter not enacted as a part of this title;  
transferred from chapter 135D in Code 1993

#### **435.22 Annual tax — credit.**

1. The owner of each mobile home or manufactured home located within a manufactured home community or mobile home park shall pay to the county treasurer an annual tax. However, when the owner is any educational institution and the home is used solely for student housing or when the owner is the state of Iowa or a subdivision of the state, the owner shall be exempt from the tax. The annual tax shall be computed as follows:

a. Multiply the number of square feet of floor space each home contains when parked and in use by twenty cents. In computing floor space, the exterior measurements of the home shall be used as shown on the certificate of title, but not including any area occupied by a hitching device.

b. (1) If the owner of the home is an Iowa resident, has attained the age of twenty-three years on or before December 31 of the base year, and has an income when included with that of a spouse which is less than eight thousand five hundred dollars per year, the annual tax shall not be imposed on the home. If the income is eight thousand five hundred dollars or more but less than sixteen thousand five hundred dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
\$ 8,500 — 9,499.99	3.0 cents
9,500 — 10,499.99	6.0
10,500 — 12,499.99	10.0
12,500 — 14,499.99	13.0
14,500 — 16,499.99	15.0

(2) For purposes of this paragraph “b”, “income” means income as defined in section 425.17, subsection 7, and “base year” means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The home reduced rate of tax shall only be allowed on the home in which the claimant is residing at the time the claim for a reduced rate of tax is filed or was residing at the time of the claimant’s death in the case of a claim filed on behalf of a deceased claimant by the claimant’s legal guardian, spouse, or attorney, or by the executor or administrator of the claimant’s estate.

(3) Beginning with the 1998 base year, the income dollar amounts set forth in this paragraph “b” shall be multiplied by the cumulative adjustment factor for that base year as determined in section 425.23, subsection 4.

2. The amount thus computed shall be the annual tax for all homes, except as follows:

a. For the sixth through ninth years after the year of manufacture the annual tax is ninety percent of the tax computed according to subsection 1, paragraph “a” or “b”, whichever is applicable.

b. For all homes ten or more years after the year of manufacture the annual tax is eighty percent of the tax computed according to subsection 1, paragraph “a” or “b”, whichever is applicable.

3. The tax shall be figured to the nearest even whole dollar.

4. a. A claim for credit for manufactured or mobile home tax due shall not be paid or allowed unless the claim is actually filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the home taxes are due. However, in case of sickness, absence, or other disability of the claimant, or if in the judgment of the county treasurer good cause exists, the county treasurer may extend the time for filing a claim for credit through September 30 of the same calendar year. The county treasurer shall certify to the director of revenue on or before November 15 each year the total dollar amount due for claims allowed.

b. The forms for filing the claim shall be provided by the department of revenue. The forms shall require information as determined by the department.

c. In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for credit or reimbursement. However, any further time granted shall not extend beyond December 31 of the year in which the claim was required to be filed. Claims filed as a result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

d. The director of revenue shall certify the amount due to each county, which amount shall

be the dollar amount which will not be collected due to the granting of the reduced tax rate under subsection 1, paragraph “b”.

e. The amounts due each county shall be paid by the department of revenue on December 15 of each year, drawn upon warrants payable to the respective county treasurers. The county treasurer in each county shall apportion the payment in accordance with section 435.25.

f. There is appropriated annually from the general fund of the state to the department of revenue an amount sufficient to carry out this subsection.

[C66, §135D.22; C71, 73, 75, §135D.22, 135D.28; C77, 79, 81, §135D.22; 82 Acts, ch 1251, §1]

83 Acts, ch 172, §2; 83 Acts, ch 189, §1, 2, 4, 6; 86 Acts, ch 1244, §26; 87 Acts, ch 198, §1; 87 Acts, ch 210, §1; 88 Acts, ch 1139, §1; 89 Acts, ch 190, §1; 90 Acts, ch 1250, §1; 91 Acts, ch 267, §513; 92 Acts, 2nd Ex, ch 1001, §215, 216, 225

C93, §435.22

94 Acts, ch 1110, §7 – 9, 24; 94 Acts, ch 1165, §30, 50; 96 Acts, ch 1167, §7, 8; 98 Acts, ch 1107, §19, 33; 98 Acts, ch 1177, §15, 16; 99 Acts, ch 152, §19, 20, 40; 2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §90

Section amended

### **435.23 Exemptions — prorating tax.**

1. The manufacturer’s and retailer’s inventory of mobile homes, manufactured homes, or modular homes not in use as a place of human habitation shall be exempt from the annual tax. All travel trailers shall be exempt from this tax. The homes and travel trailers in the inventory of manufacturers and retailers shall be exempt from personal property tax.

2. The homes coming into Iowa from out of state and located in a manufactured home community or mobile home park shall be liable for the tax computed pro rata to the nearest whole month, for the time the home is actually situated in Iowa.

[C66, 71, 73, 75, 77, 79, 81, §135D.23]

87 Acts, ch 210, §2

C93, §435.23

94 Acts, ch 1110, §10, 24; 2001 Acts, ch 153, §16; 2010 Acts, ch 1108, §11, 15; 2011 Acts, ch 25, §46

See §435.2

Section amended

### **435.26A Surrender of title.**

1. A person who owns a manufactured home that is located in a manufactured home community and is installed on a permanent foundation may surrender the manufactured home’s certificate of title to the county treasurer for the purpose of assuring eligibility for funds available from mortgage lending programs sponsored by the federal national mortgage association, the federal home loan mortgage corporation, the United States department of agriculture, or any other federal governmental agency or instrumentality that has similar requirements for mortgage lending programs.

2. a. Upon receipt of a certificate of title from a manufactured home owner, a county treasurer shall notify the state department of transportation that the certificate of title has been surrendered, remove the registration of title from the county treasurer’s records, and destroy the certificate of title.

b. The manufactured home owner or the owner’s representative shall provide to the county recorder the identifying data of the manufactured home, including the owner’s name, the name of the manufacturer, the model name, the year of manufacture, and the serial number of the home, along with the legal description of the real estate on which the manufactured home is located. In addition, evidence shall be provided of the surrender of the certificate of title. After the surrender of the certificate of title of a manufactured home under this section, conveyance of an interest in the manufactured home shall not require transfer of title so long as the manufactured home remains on the same real estate site.

3. After the surrender of a manufactured home’s certificate of title under this section, the manufactured home shall continue to be taxed under section 435.22 and is not eligible for the homestead tax credit or the military service tax exemption. A foreclosure action on a

manufactured home whose title has been surrendered under this section shall be conducted as a real estate foreclosure. A tax lien and its priority shall remain the same on a manufactured home after its certificate of title has been surrendered.

4. The certificate of title of a manufactured home shall not be surrendered under this section if an unreleased security interest is noted on the certificate of title.

5. An owner of a manufactured home who has surrendered a certificate of title under this section and requires another certificate of title for the manufactured home is required to apply for a certificate of title under chapter 321. If supporting documents for the reissuance of a title are not available or sufficient, the procedure for the reissuance of a title specified in the rules of the state department of transportation shall be used.

2003 Acts, ch 24, §7, 10; 2003 Acts, ch 179, §128, 159; 2003 Acts, 1st Ex, ch 2, §26, 209; 2011 Acts, ch 25, §143

Code editor directive applied

### **435.27 Reconversion.**

1. A mobile home or manufactured home converted to real estate under section 435.26 may be reconverted to a home as provided in this section when it is moved to a manufactured home community or mobile home park or a manufactured or mobile home retailer's inventory. When the home is located within a manufactured home community or mobile home park, the home shall be taxed pursuant to section 435.22, subsection 1, paragraph "a".

2. *a.* If the vehicular frame of the home can be modified to return it to the status of a mobile home or manufactured home, the owner or a secured party holding a mortgage or certificate of title pursuant to section 435.26 who has obtained possession of the home may apply to the county treasurer as provided in section 321.20 for a certificate of title for the home. If a mortgage exists on the real estate, a security interest in the home shall be given to a secured party not applying for reconversion and noted on the certificate of title with the same priority or a higher priority than the secured party's mortgage interest. A reconversion shall not occur without the written consent of every secured party holding a mortgage or certificate of title.

*b.* If the secured party has elected to retain the home vehicle title pursuant to section 435.26, subsection 2, paragraph "b", an owner applying for reconversion shall present to the county treasurer written consent to the reconversion from all secured parties and an affirmation from the secured party holding the title that the title is in its possession and is intact. Upon receipt of the affirmation, the county treasurer shall notify the assessor of the reconversion, which notification constitutes compliance by the owner with subsection 3.

3. After compliance with subsection 2 and receipt of the title, the owner shall notify the assessor of the reconversion. The assessor shall remove the assessed valuation of the home from assessment rolls as of the succeeding January 1 when the home becomes subject to taxation as provided under section 435.24.

85 Acts, ch 98, §1

CS85, §135D.27

89 Acts, ch 260, §2

C93, §435.27

94 Acts, ch 1110, §15, 24; 98 Acts, ch 1107, §22, 33; 2001 Acts, ch 153, §16, 18; 2002 Acts, ch 1119, §57; 2011 Acts, ch 25, §135, 143

Code editor directive applied

Subsection 1 amended

## CHAPTER 437A

## TAXES ON ELECTRICITY AND NATURAL GAS PROVIDERS

Legislative findings; 98 Acts, ch 1194, §1

## SUBCHAPTER I

## INTRODUCTORY PROVISIONS

**437A.3 Definitions.**

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

1. *a.* “Assessed value” means the base year assessed value, as adjusted by section 437A.19, subsection 2.

(1) “Base year assessed value”, for a taxpayer other than an electric company, natural gas company, or electric cooperative, means the value attributable to property identified in section 427A.1, subsection 1, paragraph “h”, certified by the department of revenue to the county auditors for the assessment date of January 1, 1997, and the value attributable to property identified in section 427A.1 and section 427B.17, subsection 5, as certified by the local assessors to the county auditors for the assessment date of January 1, 1997, provided, that for a taxpayer subject to section 437A.17A, such value shall be the value certified by the department of revenue and local assessors to the county auditors for the assessment date of January 1, 1998.

(2) However, “base year assessed value”, for purposes of property of a taxpayer that is a municipal utility, if the property is not a major addition, and the property was initially assessed to the taxpayer as of January 1, 1998, and is not located in a county where the taxpayer had property that was assessed for purposes of this chapter as of January 1, 1997, means the value attributable to such property for the assessment date of January 1, 1998.

(3) For taxpayers that are electric companies, natural gas companies, and electric cooperatives, “base year assessed value” means the average of the total of these values for each taxpayer for the assessment dates of January 1, 1993, through January 1, 1997, allocated among taxing districts in proportion to the allocation of the taxpayer’s January 1, 1998, assessed value among taxing districts.

(4) “Base year assessed value” does not include value attributable to steam-operating property.

*b.* For new cogeneration facilities, the assessed value shall be determined as provided in section 437A.16A.

2. “Book”, “list”, “record”, or “schedule” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. “Centrally assessed property tax” means property tax imposed with respect to the value of property determined by the director pursuant to section 427.1, subsection 2, Code 1997, section 428.29, Code 1997, and chapters 437 and 438, Code 1997, and allocated to electric service and natural gas service. For purposes of this subsection, “natural gas service” means such service provided by natural gas pipelines permitted pursuant to chapter 479.

4. *a.* “Cogeneration facility” means a facility with a capacity of two hundred megawatts or less that uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy and, except for ownership, meets the criteria to be a qualifying cogeneration facility as defined in the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 et seq., and related federal regulations.

*b.* “New cogeneration facility” means any of the following:

(1) A cogeneration facility, regardless of capacity, which is first placed into service on or after January 1, 2009, that uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy and meets the criteria to be a qualifying cogeneration facility as defined in the federal

Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 et seq., and related federal regulations.

(2) A cogeneration facility in service prior to January 1, 2009, that became subject to the replacement generation tax under section 437A.6 for the first time on or after January 1, 2009.

5. “*Consumer*” means an end user of electricity or natural gas used or consumed within this state. “*Consumer*” includes any master-metered facility even though the electricity or natural gas delivered to such facility may ultimately be used by another person. A person to whom electricity or natural gas is delivered by a master-metered facility is not a consumer. A “*master-metered facility*” means any multi-occupancy premises where units are separately rented or owned and where electricity or natural gas is used in centralized heating, cooling, water-heating, or ventilation systems, where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

6. “*Delivery*” means the physical transfer of electricity or natural gas to a consumer. Physical transfer to a consumer occurs when transportation of electricity or natural gas ends and such electricity or natural gas becomes available for use or consumption by a consumer.

7. “*Director*” means the director of revenue.

8. “*Electric company*” means a person engaged primarily in the production, delivery, service, or sales of electric energy whether formed or organized under the laws of this state or elsewhere. “*Electric company*” includes a combination natural gas company and electric company. “*Electric company*” does not include an electric cooperative or a municipal utility.

9. “*Electric competitive service area*” means an electric service area assigned by the utilities board under chapter 476 as of January 1, 1999, including utility property and facilities described in section 476.23, subsection 3, which were owned and served by the electric company, electric cooperative, or municipal utility serving such area on January 1, 1999.

10. “*Electric cooperative*” means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An electric cooperative shall also include an incorporated city utility provider. “*Generation and transmission electric cooperative*” means an electric cooperative which owns both transmission lines and property which is used to generate electricity. “*Distribution electric cooperative*” means an electric cooperative other than a generation and transmission electric cooperative or a municipal electric cooperative association.

11. a. “*Electric power generating plant*” means a nameplate rated electric power generating plant, which produces electric energy from other forms of energy, including all taxable land, buildings, and equipment used in the production of such electric energy.

b. “*New electric power generating plant*” means any of the following:

(1) An electric power generating plant that is owned by or leased to an electric company, electric cooperative, municipal utility, or any other taxpayer, and that initially generates electricity subject to replacement generation tax under section 437A.6 on or after January 1, 2003.

(2) An electric power generating plant that is owned by or leased to an electric company, electric cooperative, municipal utility, or any other taxpayer, that initially generated electricity subject to replacement generation tax under section 437A.6 before January 1, 2003, and that is sold, leased, or transferred, in full or in part, on or after January 1, 2003. If any portion of an electric power generating plant is sold, the entire plant shall be treated as if it were a new electric power generating plant.

12. “*Incorporated city utility provider*” means a corporation with assets worth one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land which it owns, and which provides electricity to ten thousand or fewer customers.

13. “*Lease*” means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to transmit or deliver electricity or natural gas using operating property

within this state is not a lease. “*Capital lease*” means a lease classified as a capital lease under generally accepted accounting principles.

14. “*Local amount*” means the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the acquisition cost of any major addition which is an electric power generating plant and the total acquisition cost of any other major addition.

“*Local amount*” for the purposes of determining the local taxable value for a new electric power generating plant shall annually be determined to be equal up to the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the taxable value of the new electric power generating plant. “*Local amount*” for the purposes of determining the local assessed value for a new electric power generating plant shall be annually determined to be the percentage share of the taxable value of the new electric power generating plant allocated as the local amount multiplied by the total assessed value of the new electric power generating plant.

15. “*Local taxing authority*” means a city, county, community college, school district, or other taxing authority located in this state and authorized to certify a levy on property located within such authority for the payment of bonds and interest or other obligations of such authority.

16. “*Local taxing district*” means a geographic area with a common consolidated property tax rate.

17. “*Low capacity factor electric power generating plant*” means, for any tax year, an electric power generating plant, with the exception of an electric power generating plant owned or leased by an electric company, an electric cooperative, or a municipal utility, which operated during the preceding calendar year at a net capacity factor of twenty percent or less. “*Net capacity factor*” means net actual generation during the preceding calendar year divided by the product of nameplate capacity times the number of hours the plant was in the active state during the preceding calendar year. Upon commissioning, a plant is in the active state until it is decommissioned. “*Net actual generation*” means net electrical megawatt hours produced by a plant during the preceding calendar year.

18. “*Major addition*” means either of the following:

a. Any acquisition on or after January 1, 1998, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

(1) A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

(2) An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, “*electric power generating plant*” means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F or 476A in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

(3) Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

(4) Any property described in section 437A.16 in this state acquired by a person not previously subject to taxation under this chapter.

b. Any acquisition on or after January 1, 2004, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in electric transmission operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

19. “*Municipal electric cooperative association*” means an electric cooperative, the membership of which is composed entirely of municipal utilities.

20. “*Municipal utility*” means all or part of an electric light and power plant system or a natural gas system, either of which is owned by a city, including all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the municipal utility.

21. “*Natural gas company*” means a person that owns, operates, or is engaged primarily

in operating or utilizing pipelines for the purpose of distributing natural gas to consumers located within this state, excluding a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. “Natural gas company” includes a combination natural gas company and electric company. “Natural gas company” does not include a municipal utility.

22. a. “Natural gas competitive service area” means any of the fifty-two natural gas competitive service areas described as follows:

- (1) Each of the following municipal natural gas competitive service areas:
  - (a) Taylor county, except for those areas of Taylor county which are contained within another municipal natural gas competitive service area as described in this subsection.
  - (b) The city of Brighton in Washington county and the area within two miles of the city limits plus sections 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30 in Brighton township; sections 19, 30, and 33 in Franklin township; sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36 in Dutch Creek township; and sections 25, 26, 35, and 36 in Seventy-Six township.
  - (c) Davis county.
  - (d) The city of Brooklyn in Poweshiek county and the area within two miles of the city limits.
  - (e) The city of Cascade in Dubuque county and the area within two miles of the city limits.
  - (f) The city of Cedar Falls in Black Hawk county and the area within one mile of the city limits, not including any part of the city of Waterloo.
  - (g) The city of Clearfield in Taylor county and the area within two miles of the city limits and sections 20, 21, 26, and 27 of Platte township, Grant township in Taylor county, and Grant township in Ringgold county.
  - (h) The south half of Carroll county and sections 3 and 4 of Orange township in Guthrie county.
  - (i) Adams county, except those areas of Adams county which are contained within another municipal natural gas competitive service area as defined in this subsection.
  - (j) The city of Emmetsburg in Palo Alto county and the area within two miles of the city limits.
  - (k) The city of Everly in Clay county and the area within two miles of the city limits.
  - (l) The city of Fairbank and the area within two miles of the city limits plus the area one-quarter mile on either side of the county line road, Highway 281, from Fairbank to the intersection of Outer road and Tenth street, proceeding twenty-eight hundredths of a mile north in Buchanan and Fayette counties.
  - (m) The city of Gilmore City in Pocahontas and Humboldt counties and the area within two miles of the city limits.
  - (n) The city of Graettinger in Palo Alto county and the area within two miles of the city limits.
  - (o) The city of Guthrie Center in Guthrie county and the area within one mile of the city limits.
  - (p) The city of Harlan in Shelby county and the area within two miles of the city limits.
  - (q) The city of Hartley in O’Brien county and the area within one mile of the city limits, except the eastern one-half of section four in Omega township.
  - (r) The city of Hawarden in Sioux county and the area within two miles of the city limits.
  - (s) The city of Lake Park plus Silver Lake township in Dickinson county.
  - (t) Fayette and New Buda townships in Decatur county.
  - (u) The city of Lenox in Taylor county including section 1 of Platte township in Taylor county and the townships of Carl, Grant, Mercer, Colony, Union, and Prescott in Adams county.
  - (v) Grand River township in Wayne county.
  - (w) New Hope township in Union county and Monroe township in Madison county.
  - (x) Ewoldt and Eden townships in Carroll county and Iowa township in Crawford county.
  - (y) The city of Montezuma in Poweshiek county and the area within two miles of the city limits plus Jackson township in Poweshiek county except the city of Barnes City, Pleasant Grove and Monroe townships in Mahaska county except the city of Barnes City.
  - (z) Morning Sun township in Louisa county.

- (aa) Wells and Washington townships in Appanoose county.
- (ab) The city of Osage in Mitchell county and the area within two miles of the city limits.
- (ac) The city of Prescott in Adams county and the area within two miles of the city limits.
- (ad) The city of Preston in Jackson county and the area within two miles of the city limits.
- (ae) The city of Remsen in Plymouth county and the area within two miles of the city limits.
- (af) The city of Rock Rapids in Lyon county and the area within two miles of the city limits.
- (ag) The city of Rolfe in Pocahontas county and the area within two miles of the city limits.
- (ah) The city of Sabula in Jackson county and the area within two miles of the city limits.
- (ai) The city of Sac City in Sac county and the area within two miles of the city limits.
- (aj) The city of Sanborn in O'Brien county and the area within two miles of the city limits.
- (ak) The city of Sioux Center in Sioux county and the area within two miles of the city limits.
- (al) The city of Tipton in Cedar county and the area within two miles of the city limits.
- (am) The city of Waukee in Dallas county and the area within two miles of the city limits of Waukee as of January 1, 1999, not including any part of the cities of Clive, Urbandale, or West Des Moines.
- (an) The city of Wayland plus Jefferson and Trenton townships in Henry county.
- (ao) Seventy-Six and Lime Creek townships in Washington county except for those areas of Seventy-Six township which are contained within another municipal natural gas competitive service area as defined in this subsection.
- (ap) The city of West Bend in Kossuth and Palo Alto counties and the area within two miles of the city limits.
- (aq) The city of Whittemore in Kossuth county and the area within two miles of the city limits.
- (ar) Scott, Canaan, and Wayne townships in Henry county.
- (as) The city of Woodbine in Harrison county and the area within two miles of the city limits.
- (at) Nishnabotna township in Crawford county.
- (2) The natural gas competitive service area, excluding any municipal natural gas competitive service area described in subparagraph (1) and consisting of Sioux county; Plymouth county; Woodbury county; Ida county; Harrison county; Shelby county; Audubon county; Palo Alto county; Humboldt county; Mahaska county; Scott county; Lyon county except Wheeler, Dale, Liberal, Grant, Midland, and Elgin townships; O'Brien county except Union, Dale, Summit, Highland, Franklin, and Center townships; Cherokee county except Cherokee and Pilot townships; Monona county except Franklin township and the south half of Ashton township; Pottawattamie county except Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships; Mills county except Glenwood and Center townships; Montgomery county except Douglas, Washington, and East townships; Page county except Valley, Douglas, Nodaway, Nebraska, Harlan, East River, Amity, and Buchanan townships; Fremont county except Green, Scott, Sidney, Benton, Washington, and Madison townships; Brighton and Pleasant townships in Cass county; Sac county except Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships; Newell township in Buena Vista county; Calhoun county except Reading township; Denmark township in Emmet county; Kossuth county except Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Seneca, Greenwood, Ramsey, and German townships; Webster county except Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Hardin townships; Guthrie county except Grant, Thompson, and Beaver townships; Union township in Union county; Madison county except Ohio and New Hope townships; Warren county except Virginia, Squaw, Liberty, and White Breast townships; Cedar, Union, Bluff Creek, and Pleasant townships in Monroe county; Marion county except Lake Prairie, Knoxville, Summit, and Union townships; Dallas county except Des Moines and Grant townships; Polk county except sections 4, 5, 6, 7, 8, 9, 16, 17, and 18 in Lincoln township and the city of Grimes, and sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 in Union township; Poweshiek, Washington, Mound Prairie, Des Moines, Elk Creek, and Fairview townships in Jasper county; Wright county except Belmond and Pleasant townships; Geneseo township in Cerro Gordo county; Franklin county except Wisner

and Scott townships and the city of Coulter; Butler county except Bennezette, Coldwater, Dayton, and Fremont townships; Floyd county except Rock Grove, Rudd, Rockford, Ulster, Scott, and Union townships; Branford township in Chickasaw county; Bremer county except Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships; Perry, Washington, Westburg, and Sumner townships in Buchanan county; Black Hawk county except Big Creek township; Fremont township in Benton county; Wapello county except Washington township; Benton and Steady Run townships in Keokuk county; the city of Barnes City in Poweshiek county; Iowa township in Washington county; Johnson county except Fremont township; Linn county except Franklin, Grant, Spring Grove, Jackson, Boulder, Washington, Otter Creek, Maine, Buffalo, and Fayette townships; Monroe township west and north of Otter Creek to its intersection with County Home road, and north of County Home road in Linn county; the city of Walford in Linn county; Farmington township in Cedar county; Wapsinonoc, Goshen, Moscow, Wilton, and Fulton townships in Muscatine county; and Lee county except Des Moines, Montrose, Keokuk, and Jackson townships.

(3) The natural gas competitive service area, excluding any municipal natural gas competitive service areas described in subparagraph (1) and consisting of that part of Kossuth county not described in subparagraph (2); Lincoln and Buffalo townships in Winnebago county; Worth county except Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships; Cerro Gordo county except Grimes, Pleasant Valley, and Dougherty townships; Rock Grove and Rudd townships in Floyd county; Eden, Camanche, and Hampshire townships and the city of Clinton in Clinton county; and Stacyville and Union townships in Mitchell county.

(4) The natural gas competitive service area, excluding any municipal natural gas service areas described in subparagraph (1) and consisting of Franklin township and the south half of Ashton township in Monona county; Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships in Pottawattamie county; Glenwood and Center townships in Mills county; Green, Scott, Sidney, Benton, Washington, and Madison townships in Fremont county; Cass, Bear Grove, Union, Noble, Edna, Victoria, Massena, Lincoln, and Grant townships in Cass county; Glidden township in Carroll county; Summit township in Adair county; Grant township in Guthrie county; Crawford county except Nishnabotna township; Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships in Sac county; Reading township in Calhoun county; Marshall, Sherman, Roosevelt, Dover, Grant, Lincoln, and Cedar townships in Pocahontas county; Union, Dale, Summit, Highland, Franklin, and Center townships in O'Brien county; the north half of Clay county plus Clay township; Dickinson county; Emmet county except Denmark, Armstrong Grove, and Iowa Lake townships; Greene county except Bristol, Hardin, Jackson, and Grant townships; Boone county except Worth, Colfax, Des Moines, Jackson, Dodge, and Harrison townships; Des Moines and Grant townships in Dallas county; Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Newark townships in Webster county; Clear Lake, Hamilton, Webster, Freedom, Independence, Cass, and Fremont townships in Hamilton county; Ell, Madison, and Ellington townships in Hancock county; Winnebago county except Lincoln and Buffalo townships; Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships in Worth county; Etna township in Hardin county; Lafayette township and the west one-half of Howard township in Story county; the city of Grimes in Polk county; Independence, Malaka, Mariposa, Hickory Grove, Rock Creek, Kellogg, Newton, Sherman, Palo Alto, Buena Vista, and Richland townships in Jasper county; Palermo, Grant, and Fairfield townships in Grundy county; Bennezette, Coldwater, Dayton, and Fremont townships in Butler county; Rockford, Ulster, Scott, and Union townships in Floyd county; St. Ansgar and Mitchell townships in Mitchell county; Howard county; Chickasaw county except Branford township; Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships in Bremer county; Big Creek township in Black Hawk county; Brown township in Linn county; Madison township and the east half of Buffalo township in Buchanan county; Fayette county except Harlan, Fremont, Oran, and Jefferson townships; Winneshiek county; Allamakee county; Clayton county; Delaware county except Adams and Hazel Green townships; Dubuque county; Jones county except Rome, Hale, Oxford, and the east half of Greenfield townships; and Jackson county.

(5) The natural gas competitive service area consisting of Des Moines, Montrose, Keokuk, and Jackson townships in Lee county.

(6) The natural gas competitive service area consisting of the city of Allerton and the area within two miles of the city limits.

(7) The natural gas competitive service area consisting of all of Iowa not contained in any of the other natural gas competitive service areas described in this paragraph.

b. “*Township*” includes any city or part of a city located within the exterior boundaries of that township.

c. References to city limits contained in this subsection mean those city limits as they existed on January 1, 1999.

23. “*Operating property*” means all property owned by or leased to an electric company, electric cooperative, municipal utility, or natural gas company, not otherwise taxed separately, which is necessary to and without which the company could not perform the activities of an electric company, electric cooperative, municipal utility, or natural gas company.

24. “*Pole miles*” means miles measured along the line of poles, structures, or towers carrying electric conductors regardless of the number of conductors or circuits carried, and miles of conduit bank, regardless of number of conduits or ducts, of all sizes and types, including manholes and handholes. “*Conduit bank*” means a length of one or more underground conduits or ducts, whether or not enclosed in concrete, designed to contain underground cables, including a gallery or cable tunnel for power cables.

25. “*Purchasing member*” means a municipal utility which purchases electricity from a municipal electric cooperative association of which it is a member.

26. “*Replacement tax*” means the excise tax imposed on the generation, transmission, delivery, consumption, or use of electricity or natural gas under section 437A.4, 437A.5, 437A.6, or 437A.7.

27. “*Self-generator*” means a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, who generates, by means of an on-site facility wholly owned by or leased in its entirety to such person, electricity solely for its own consumption, except for inadvertent unscheduled deliveries to the electric utility furnishing electric service to that self-generator. A person who generates electricity which is consumed by any other person, including any owner, shareholder, member, beneficiary, partner, or associate of the person who generates electricity, is not a self-generator. For purposes of this subsection, “*on-site facility*” means an electric power generating plant that is wholly owned by or leased in its entirety to a person and used to generate electricity solely for consumption by such person on the same parcel of land on which such plant is located or on a contiguous parcel of land. For purposes of this subsection, “*parcel of land*” includes each separate parcel of land shown on the tax list.

28. “*Statewide amount*” means the acquisition cost of any major addition which is not a local amount.

29. “*Taxable value*” means as defined in section 437A.19, subsection 2, paragraph “e”.

30. “*Taxpayer*” means an electric company, natural gas company, electric cooperative, municipal utility, or other person subject to the replacement tax imposed under section 437A.4, 437A.5, 437A.6, or 437A.7.

31. “*Tax year*” means a calendar year beginning January 1 and ending December 31.

32. “*Transfer replacement tax*” means the excise tax imposed in a competitive service area of a municipal utility which replaces transfers made by the municipal utility in accordance with section 384.89.

33. “*Transmission line*” means a line, wire, or cable which is capable of operating at an electric voltage of at least thirty-four and one-half kilovolts.

34. “*Utilities board*” means the utilities board created in section 474.1.

98 Acts, ch 1194, §4, 40; 99 Acts, ch 114, §27; 99 Acts, ch 152, §21 – 23, 40; 2000 Acts, ch 1114, §2, 18; 2000 Acts, ch 1148, §1; 2001 Acts, ch 145, §1, 2, 13; 2001 Acts, 1st Ex, ch 4, §5, 36; 2002 Acts, ch 1119, §58, 200, 201; 2003 Acts, ch 106, §2 – 6, 15; 2003 Acts, ch 145, §286;

2004 Acts, ch 1096, §1, 4; 2006 Acts, ch 1010, §112; 2007 Acts, ch 150, §1; 2009 Acts, ch 133, §148; 2010 Acts, ch 1161, §1 – 3, 11; 2011 Acts, ch 25, §91

2010 amendments to subsections 1, 4, and 11 apply retroactively to tax years beginning on or after January 1, 2010; 2010 Acts, ch 1161, §11

Subsection 1 amended

## SUBCHAPTER II

### GENERATION, TRANSMISSION, AND DELIVERY TAXES

#### **437A.4 Replacement tax imposed on delivery of electricity.**

1. A replacement delivery tax is imposed on every person who makes a delivery of electricity to a consumer within this state. The replacement delivery tax imposed by this section is equal to the sum of the following:

a. The number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric replacement delivery tax rate in effect for each such electric competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph “a”, the number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric transfer replacement tax rate for each such electric competitive service area.

2. If electricity is consumed in this state, whether such electricity is purchased, transferred, or self-generated, and the delivery, purchase, transference, or self-generation of such electricity is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Electric replacement delivery tax rates shall be calculated by the director for each electric competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to electric service is the centrally assessed property tax liability of such municipal utility allocated to electric service for the 1997 assessment year based on property tax payments made.

b. The director shall determine, for each taxpayer, the number of kilowatt-hours of electricity generated which would have been subject to taxation under section 437A.6, the number of pole miles which would have been subject to taxation under section 437A.7, and the number of kilowatt-hours of electricity delivered to consumers which would have been subject to taxation under this section in calendar year 1998, had such sections been in effect for calendar year 1998.

c. The director shall determine the electric generation, transmission, and delivery tax components of the average centrally assessed property tax liability determined in paragraph “a” for each electric competitive service area as follows:

(1) The electric generation tax component for an electric competitive service area shall be computed by multiplying the tax rate set forth in section 437A.6 by the number of kilowatt-hours of electricity generated by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.6 in calendar year 1998, had that section been in effect for calendar year 1998.

(2) The electric transmission tax component for an electric competitive service area shall be computed by multiplying the tax rates set forth in section 437A.7 by the number of pole miles for each line voltage owned or leased by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.7 on December 31, 1998, had that section been in effect for calendar year 1998.

(3) The electric delivery tax component for an electric competitive service area shall be the

average centrally assessed property tax liability allocated to electric service of the taxpayer principally serving such electric competitive service area less the electric generation and transmission tax components computed for such electric competitive service area.

(4) The electric delivery tax component for each electric competitive service area shall be adjusted, as necessary, to assign the excess property tax liability of each generation and transmission electric cooperative to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such assignment of excess property tax liability of each such generation and transmission electric cooperative shall be made in proportion to the appropriate wholesale rate charges in calendar year 1998 to its distribution electric cooperative members and municipal electric cooperative association members which purchased electricity from the generation and transmission electric cooperative. Any amount assignable to a municipal electric cooperative association shall be reassigned to the electric competitive service areas served by such association's purchasing municipal utility members and shall be allocated among them in proportion to the appropriate wholesale rate charges in calendar year 1998 by such municipal electric cooperative association to its purchasing municipal utility members. For purposes of this subsection, "*excess property tax liability*" means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such generation and transmission electric cooperative under sections 437A.6 and 437A.7 for calendar year 1998, had such taxes been in effect for calendar year 1998. An electric cooperative described in section 437A.7, subsection 3, paragraph "c", is deemed not to have any excess property tax liability.

d. The director shall determine an electric delivery tax rate for each electric competitive service area by dividing the electric delivery tax component for the electric competitive service area, as adjusted by paragraph "c", subparagraph (4), by the number of kilowatt-hours delivered by the taxpayer principally serving the electric competitive service area to consumers in calendar year 1998, which would have been subject to taxation under this section if this section had been in effect for calendar year 1998.

4. Municipal electric transfer replacement tax rates shall be calculated annually by the city council of each city located within an electric competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of electric-related transfers made pursuant to section 384.89 by the municipal utility serving the electric competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years by the number of kilowatt-hours of electricity delivered to consumers in the electric competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal electric transfer replacement tax equal to the average amount of electric-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. The following are not subject to the replacement delivery tax imposed by subsections 1 and 2:

a. Delivery of electricity generated by a low capacity factor electric power generating plant.

b. Delivery of electricity to a city from such city's municipal utility, provided such electricity is used by the city for the public purposes of the city.

c. Electricity consumed by a state university or university of science and technology, provided such electricity was generated by property described in section 427.1, subsection 1.

d. Electricity generated and consumed by a self-generator.

7. Notwithstanding subsection 1, the electric delivery tax rate applied to kilowatt-hours of electricity delivered by a taxpayer to utility property and facilities which are placed in service on or after January 1, 1999, and are owned by or leased to and initially served by such taxpayer shall be the electric delivery tax rate in effect for the electric competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another electric competitive service area.

8. a. If for any tax year after calendar year 1998, the total taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any electric competitive service area, increases or decreases by more than the threshold percentage from the average of the base year amounts for that electric competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph "a", and subsection 2, for that tax year shall be recalculated by the director for that electric competitive service area so that the total of the replacement electric delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph "e", for that electric competitive service area with respect to the tax imposed under subsection 1, paragraph "a", and subsection 2, shall be as follows:

(1) If the number of kilowatt-hours of electricity required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

(2) If the number of kilowatt-hours of electricity required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

b. For purposes of paragraph "a", subparagraphs (1) and (2), in computing the tax rate under subsection 1, paragraph "a", and subsection 2, for tax year 1999, the director shall use the electric delivery tax component computed for the electric competitive service area pursuant to subsection 3, paragraph "c", in lieu of the taxes required to be reported for that electric competitive service area for the immediately preceding tax year.

c. The threshold percentage shall be determined annually and shall be eight percent for any electric competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed three billion kilowatt-hours, and ten percent for all other electric competitive service areas.

d. Any such recalculation of an electric delivery tax rate, if required, shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph "a", and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph "e", to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new electric delivery tax rate shall apply prospectively, until such time as further adjustment is required.

e. For purposes of this section, "base year amount" means for calendar years prior to tax year 1999, the sum of the kilowatt-hours of electricity delivered to consumers within an electric competitive service area by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any electric competitive service area.

9. a. After calendar year 1998, if a municipal electric cooperative association ceases to purchase electricity from the generation and transmission electric cooperative from which it purchased electricity in 1998, and for a period of one hundred eighty days after such purchases cease, no municipal utility member of such association purchases electricity from such generation and transmission electric cooperative, the excess property tax

liability assigned pursuant to subsection 3, paragraph “c”, subparagraph (4), to the electric competitive service areas principally served by the municipal utility members on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

b. After calendar year 1998, if a municipal utility ceases to be a purchasing member of a municipal electric cooperative association which purchased electricity in calendar year 1998 from a generation and transmission electric cooperative, and for a period of one hundred eighty days after the municipal utility ceases to be a purchasing member of such association such municipal utility does not purchase electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph “c”, subparagraph (4), to the electric competitive service area principally served by the municipal utility on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

c. If a recalculation has previously been made by the director pursuant to subsection 8 for an electric competitive service area described in this subsection, the recalculation required by this subsection shall be made by the director by modifying the most recent recalculation under subsection 8 to eliminate the excess property tax liability originally allocated to such electric competitive service area under subsection 3, paragraph “c”, subparagraph (4).

d. Any recalculation required by this subsection shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by May 31 of the calendar year during which the events described in paragraphs “a” and “b” are reported as provided in section 437A.8, subsection 1, paragraph “f”. The new electric delivery tax rate shall be effective January 1 of the tax year in which it is published and shall apply prospectively, until such time as further adjustment is required.

10. The electric delivery tax rate in effect for each electric competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

98 Acts, ch 1194, §5, 40; 2011 Acts, ch 25, §92

Subsection 8 amended

#### **437A.5 Replacement tax imposed on delivery of natural gas.**

1. A replacement delivery tax is imposed on every person who makes a delivery of natural gas to a consumer within this state. The replacement delivery tax imposed by this section shall be equal to the sum of the following:

a. The number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the natural gas delivery tax rate in effect for each such natural gas competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph “a”, the number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the municipal natural gas transfer replacement tax rate for each such natural gas competitive service area.

c. (1) Notwithstanding paragraphs “a” and “b”, a natural gas delivery rate of one and eleven-hundredths of a cent (.0111) per therm of natural gas is imposed on all natural gas delivered to or consumed by a new electric power generating plant for purposes of generating electricity within the state during the tax year. However, if a new electric power generating plant is exempt from a replacement generation tax pursuant to section 437A.6, subsection 1, paragraph “b”, the natural gas delivery rate for the municipal service area that the new plant serves shall instead apply for deliveries of natural gas by the municipal gas utility.

(2) The provisions of subsection 8 shall not apply to the therms of natural gas subject to the delivery tax set forth in this paragraph.

(3) If the new electric power generating plant is part of a cogeneration facility or new cogeneration facility, the natural gas delivery rate for that plant shall be the lesser of the natural gas delivery rate established in this paragraph “c” or the rate per therm of natural

gas as in effect at the time of the initial natural gas deliveries to the plant for the natural gas competitive service area where the new electric power generating plant is located.

2. If natural gas is consumed in this state, whether such natural gas is purchased or transferred, and the delivery, purchase, or transference of such natural gas is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Natural gas delivery tax rates shall be calculated by the director for each natural gas competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to natural gas service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to natural gas service is the centrally assessed property tax liability of such municipal utility allocated to natural gas service for the 1997 assessment year based on property tax payments made. For purposes of this subsection, taxpayer does not include a pipeline company defined in section 479A.2.

b. The director shall determine for each taxpayer the number of therms of natural gas delivered to consumers which would have been subject to taxation under this section in calendar year 1998 had this section been in effect for calendar year 1998.

c. The director shall determine a natural gas delivery tax rate for each natural gas competitive service area by dividing the average centrally assessed property tax liability allocated to natural gas service of the taxpayer principally serving the natural gas competitive service area by the number of therms of natural gas delivered by such taxpayer to consumers in calendar year 1998 which would have been subject to taxation under this section had such section been in effect for calendar year 1998.

4. Municipal natural gas transfer replacement tax rates shall be calculated annually by the city council of each city located within a natural gas competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of natural gas-related transfers made pursuant to section 384.89 by the municipal utility serving the natural gas competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years, by the number of therms of natural gas delivered to consumers in the natural gas competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal natural gas transfer replacement tax equal to the average amount of natural gas-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. a. Notwithstanding subsection 1, the natural gas delivery tax rate applied to therms of natural gas delivered by a taxpayer to utility property and facilities that are placed in service on or after January 1, 1999, and that are owned by or leased to and initially served by such taxpayer shall be the natural gas delivery tax rate in effect for the natural gas competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another natural gas competitive service area.

b. This subsection shall not apply to natural gas delivered to or consumed by new electric power generating plants.

7. a. Delivery of natural gas to a city from such city's municipal utility is not subject to

the replacement delivery tax imposed under subsection 1, paragraph “a”, and subsection 2, provided such natural gas is used by the city for the public purposes of the city.

b. Subsection 2 does not apply to natural gas consumed by a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, acquired by means of facilities owned by or leased to such person on January 1, 1999, which were physically attached to pipelines that are not permitted pursuant to chapter 479 and used by such person for the purpose of bypassing the local natural gas company or municipal utility.

c. Subsection 1 does not apply to natural gas which is delivered, by a pipeline that is not permitted pursuant to chapter 479, into a facility owned by or leased to a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, if the person who consumes the gas uses the gas for the purpose of bypassing the local natural gas company or municipal utility, regardless of whether such facility existed on January 1, 1999.

8. If, for any tax year after calendar year 1998, the total taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs “a” and “b”, with respect to any natural gas competitive service area increases or decreases by more than the threshold percentage from the average of the base year amounts for that natural gas competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph “a”, and subsection 2 for that tax year shall be recalculated by the director for that natural gas competitive service area so that the total of the replacement natural gas delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph “e”, for that natural gas competitive service area with respect to the tax imposed under subsection 1, paragraph “a”, and subsection 2 shall be as follows:

a. If the number of therms of natural gas required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

b. If the number of therms of natural gas required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

c. (1) For purposes of paragraphs “a” and “b”, in computing the tax rate under subsection 1, paragraph “a”, and subsection 2 for calendar year 1999, the director shall use the average centrally assessed property tax liability allocated to natural gas service computed for the natural gas competitive service area pursuant to subsection 3, paragraph “a”, in lieu of the taxes required to be reported for that natural gas competitive service area for the immediately preceding tax year.

(2) The threshold percentage shall be determined annually and shall be eight percent for any natural gas competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed two hundred fifty million therms, and ten percent for all other natural gas competitive service areas.

(3) Recalculation of a natural gas delivery tax rate, if required, shall be made and the new rate published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph “a”, and subsection 2 required to be shown on any affected taxpayer’s return pursuant to section 437A.8, subsection 1, paragraph “e”, to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new natural gas delivery tax rate shall apply prospectively, until such time as further adjustment is required.

(4) For purposes of this subsection, “base year amount” means for calendar years prior to tax year 1999, the sum of the therms of natural gas delivered to consumers within a natural gas competitive service area by the taxpayer principally serving such natural gas competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs “a” and “b”, with respect to any natural gas competitive service area.

9. The natural gas delivery tax rate in effect for each natural gas competitive service area

shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

98 Acts, ch 1194, §6, 40; 2000 Acts, ch 1114, §3, 4, 17, 18; 2003 Acts, ch 106, §7, 8, 15; 2010 Acts, ch 1161, §4, 11; 2011 Acts, ch 25, §93, 143

2010 amendment to subsection 1, paragraph c, subparagraph (3), applies retroactively to tax years beginning on or after January 1, 2010; 2010 Acts, ch 1161, §11

Code editor directive applied

Subsection 8, paragraph c amended

#### **437A.7 Replacement tax imposed on electric transmission.**

1. *a.* A replacement transmission tax is imposed on every person owning or leasing transmission lines within this state and shall be equal to the sum of all of the following:

(1) Five hundred fifty dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

(2) Three thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred kilovolts but not exceeding one hundred fifty kilovolts.

(3) Seven hundred dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

(4) Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than three hundred kilovolts.

*b.* The replacement transmission tax shall be calculated on the basis of pole miles of transmission line owned or leased by the taxpayer on the last day of the tax year.

2. In lieu of the replacement transmission tax imposed in subsection 1, a municipal utility whose replacement transmission tax liability for the tax year 1999 was limited to the tax imposed by this section and whose anticipated tax revenues from a taxpayer, as defined in section 437A.15, subsection 4, for the tax year 1999, exceeded its replacement transmission tax by more than one hundred thousand dollars shall be subject to replacement transmission tax on all transmission lines owned by or leased to the municipal utility as of the last day of the tax year 2000 as follows:

*a.* Three thousand twenty-five dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

*b.* Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

3. The following shall not be subject to the replacement transmission tax:

*a.* Transmission lines owned by or leased to a municipal utility when devoted to public use and not for pecuniary profit, except transmission lines of a municipally owned electric utility held under joint ownership and transmission lines of an electric power facility financed under chapter 28F or 476A.

*b.* Transmission lines owned by or leased to a lessor when the transmission lines are subject to the replacement transmission tax payable by the lessee or sublessee.

*c.* Any electric cooperative which owns, leases, or owns and leases in total less than seven hundred fifty pole miles of transmission lines in this state. Chapter 437 shall apply to such electric cooperatives.

*d.* Transmission lines owned by or leased to a state university or university of science and technology, provided such transmission lines are used exclusively for the transmission of electricity consumed by such state university or university of science and technology.

*e.* Transmission lines owned by or leased to a person, other than a public utility, for which a franchise is not required under chapter 478.

4. For purposes of this section, if a transmission line is jointly owned or leased, the taxpayer shall compute the number of pole miles subject to the replacement transmission tax by multiplying the taxpayer's percentage interest in the jointly held transmission lines by the number of pole miles of such lines.

98 Acts, ch 1194, §8, 40; 99 Acts, ch 152, §24, 40; 2001 Acts, ch 145, §4, 13; 2001 Acts, 1st Ex, ch 4, §7, 36; 2003 Acts, ch 106, §9, 15; 2011 Acts, ch 25, §143

Code editor directive applied

**437A.14 Correction of errors — refunds or credits of replacement tax paid — information confidential — penalty.**

1. *a.* If an amount of replacement tax, penalty, or interest has been paid which was not due under this chapter, a city's chief financial officer or county treasurer to whom such erroneous payment was made shall do one of the following:

(1) Credit the amount of the erroneous payment against any replacement tax due, or to become due, from the taxpayer on the books of the city or county.

(2) Refund the amount of the erroneous payment to the taxpayer.

*b.* (1) Claims for refund or credit of replacement taxes paid shall be filed with the director. A claim for refund or credit that is not filed with the director within three years after the replacement tax payment upon which a refund or credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later, shall not be allowed. A claim for refund or credit of tax alleged to be unconstitutional not filed with the director within ninety days after the replacement tax payment upon which a refund or credit is claimed became due shall not be allowed. As a precondition for claiming a refund or credit of alleged unconstitutional taxes, such taxes must be paid under written protest which specifies the particulars of the alleged unconstitutionality. Claims for refund or credit may only be made by, and refunds or credits may only be made to, the person responsible for paying the replacement tax, or such person's successors. The director shall notify affected county treasurers of the acceptance or denial of any refund claim. Section 421.10 applies to claims denied by the director.

(2) If an amount of overpaid replacement tax is attributable to payment of excess property tax liability as described in section 437A.15, subsection 3, paragraph "b", a claim for refund or credit may only be made by, and a refund or credit shall only be made to, the person who made such excess payment. Such claim shall not be made by the person who collected the tax from another person.

2. It is unlawful for any present or former officer or employee of the state to divulge or to make known in any manner to any person the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information. A person who violates this section is guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person, in addition to any other penalty, shall also be dismissed from office or discharged from employment. This section does not prohibit turning over to duly authorized officers of the United States or tax officials of other states such kilowatt-hours or therms pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

3. Unless otherwise expressly permitted by a section referencing this chapter, the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area shall not be divulged to any person or entity, other than the taxpayer, the department, or the internal revenue service for use in a matter unrelated to tax administration. This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department. A subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service, for use in a nontax proceeding is void.

4. *a.* Notwithstanding subsections 2 and 3, the chief financial officer of any local taxing authority and any designee of such officer shall have access to any computations made by the director pursuant to the provisions of this chapter, and any tax return or other information used by the director in making such computations, which affect the replacement tax owed by any such taxpayer.

*b.* Notwithstanding this section, providing information relating to the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area to the task force established in section 437A.15, subsection 7, is not a violation of this section.

5. Local taxing authority employees are deemed to be officers and employees of the state for purposes of subsection 2.

6. Claims for refund or credit of municipal transfer replacement tax shall be filed with

the appropriate city's chief financial officer. Subsection 1 applies with respect to the transfer replacement tax and the city's chief financial officer shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

7. Claims for refund or credit of special utility property tax levies shall be filed with the appropriate county treasurer. Subsection 1 applies with respect to the special utility property tax levy and the county treasurer shall have the same authority as is granted to the director under this section.

98 Acts, ch 1194, §15, 40; 99 Acts, ch 152, §26, 27, 40; 2000 Acts, ch 1114, §9, 17, 18; 2009 Acts, ch 133, §246; 2011 Acts, ch 25, §94, 143

Code editor directive applied  
Subsection 3 amended

#### **437A.15 Allocation of revenue.**

1. The director and the department of management shall compute the allocation of all replacement tax revenues other than transfer replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. a. (1) All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the taxable value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to section 437A.19, subsection 2. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

(2) When allocating natural gas delivery taxes on deliveries of natural gas to a new electric power generating plant, ten percent of those natural gas delivery taxes shall be allocated over new gas property built to directly serve the new electric power generating plant and ninety percent of those natural gas delivery taxes shall be allocated to the general property tax equivalents of all gas property within the natural gas competitive service area or areas where the new gas property is located.

b. Notwithstanding other provisions of this section, if excess property tax liability has been assigned pursuant to section 437A.4, subsection 3, paragraph "c", subparagraph (4), and has not been removed, the allocation of electric delivery replacement tax attributable to the excess property tax liability shall be made by the director and the department of management so as to allocate the electric delivery replacement tax attributable to the excess property tax liability among those local taxing districts in which the property associated with the excess property tax liability is located. In order to ensure that the electric delivery replacement tax attributable to the excess property tax liability is paid to the appropriate county treasurer for disposition to the local taxing districts, each distribution electric cooperative member and each municipal utility purchasing member subject to section 437A.4, subsection 3, paragraph "c", subparagraph (4), shall pay to the appropriate generation and transmission electric cooperative the electric delivery replacement tax attributable to the excess property tax liability by September 10. The amount of electric delivery replacement tax attributable to the excess property tax liability shall equal that percentage of total electric delivery replacement tax liability that the excess property tax liability bears to the total property tax liability contained in the electric delivery tax component. The generation and transmission electric cooperative shall pay the electric

delivery replacement tax attributable to the excess property tax liability to the appropriate county treasurer.

c. If paragraph “b” is applicable, on or before August 1, the director shall notify each distribution electric cooperative member, each municipal utility purchasing member, and each generation and transmission electric cooperative of the amount of electric delivery replacement tax to be paid to the generation and transmission electric cooperative. On or before August 1, the director shall notify the generation and transmission electric cooperative of the amount of replacement tax liability attributable to the excess property tax liability that is payable to each county treasurer. The director shall determine the amount of any special utility property tax levy or tax credit attributable to the excess property tax liability which shall be reflected in the amount required to be paid by each distribution electric cooperative member and each municipal utility purchasing member to the generation and transmission electric cooperative.

d. If, during the tax year, a taxpayer transferred operating property or an interest in operating property to another taxpayer, the transferee taxpayer’s replacement tax associated with that property shall be allocated, for the tax year in which the transfer occurred, under this section in accordance with the general allocation formula on the basis of the general property tax equivalents of the transferor taxpayer.

e. Notwithstanding the provisions of this section, if during the tax year a person who was not a taxpayer during the prior tax year acquires a new major addition, as defined in section 437A.3, subsection 18, paragraph “a”, subparagraph (4), the replacement tax associated with that major addition shall be allocated, for that tax year, under this section in accordance with the general allocating formula on the basis of the general property tax equivalents established under paragraph “a” of this subsection, except that the levy rates established and reported to the department of management on or before June 30 following the tax year in which the major addition was acquired shall be applied to the prorated assessed value of the major addition. For purposes of this paragraph, “*prorated assessed value of the major addition*” means the assessed value of the major addition as of January 1 of the year following the tax year in which the major addition was acquired multiplied by the percentage derived by dividing the number of months that the major addition existed during the tax year by twelve, counting any portion of a month as a full month.

f. Notwithstanding the provisions of this section, if a taxpayer is a municipal utility or a municipal owner of an electric power facility financed under the provisions of chapter 28F or 476A, the assessed value, other than the local amount, of a new electric power generating plant shall be allocated to each taxing district in which the municipal utility or municipal owner is serving customers and has electric meters in operation in the ratio that the number of operating electric meters of the municipal utility or municipal owner located in the taxing district bears to the total number of operating electric meters of the municipal utility or municipal owner in the state as of January 1 of the tax year. If the municipal utility or municipal owner of an electric power facility financed under the provisions of chapter 28F or 476A has a new electric power generating plant but the municipal utility or municipal owner has no operating electric meters in this state, the municipal utility or municipal owner shall pay the replacement generation tax associated with the new electric power generating plant allocation of the local amount to the county treasurer of the county in which the local amount is located and shall remit the remaining replacement generation tax, if any, to the director at the times contained in section 437A.8, subsection 4, for remittance of the tax to the county treasurers. All remaining replacement generation tax revenues received by the director shall be deposited in the property tax relief fund created in section 426B.1, and shall be distributed as provided in section 426B.2.

4. a. On or before August 31 following tax years 1999, 2000, and 2001, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer’s total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated

tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437A.8, subsection 4. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437A.8, subsection 7. A recalculation of a special utility property tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437A.8, subsection 7, or adjustment to assessed value under section 437A.19, subsection 2, paragraph "a", subparagraph (6). "*Anticipated tax revenues from a taxpayer*" means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437A.11. If a special utility property tax levy payment becomes delinquent, the delinquent payment shall accrue interest and penalty in the same manner and amount as the replacement tax under section 437A.13.

b. It is the intent of the general assembly that the general assembly evaluate the impact of the imposition of the replacement tax for purposes of determining whether this subsection shall remain in effect and whether a determination shall be made as to the necessity of a recalculation as provided in this subsection for tax years beginning after tax year 2000.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disposed of by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any affected taxing entity, as defined in section 403.17, subsection 1, which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such affected taxing entity under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437A.16 included in such area on January 1, 1997, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. a. The department of management, in consultation with the department of revenue, shall coordinate the utility replacement tax task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of management, department of revenue, electric companies, natural gas companies, municipal utilities, electric cooperatives, counties, cities, school boards, and industrial, commercial, and residential consumers, and other appropriate stakeholders. The director of the department of management and the director of revenue shall serve as co-chairpersons of the task force.

b. The task force shall study the effects of the replacement tax on local taxing authorities, local taxing districts, consumers, and taxpayers through January 1, 2013. If the task force

recommends modifications to the replacement tax that will further the purposes of tax neutrality for local taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter, the department of management shall transmit those recommendations to the general assembly.

98 Acts, ch 1194, §16, 40; 99 Acts, ch 152, §28, 40; 2000 Acts, ch 1114, §10, 11, 17, 18; 2001 Acts, ch 145, §9; 2002 Acts, ch 1050, §37; 2003 Acts, ch 106, §11 – 13, 15; 2003 Acts, ch 145, §286; 2004 Acts, ch 1096, §2, 4; 2005 Acts, ch 25, §1; 2006 Acts, ch 1010, §113; 2007 Acts, ch 150, §2; 2009 Acts, ch 133, §149, 150; 2010 Acts, ch 1161, §6, 11; 2011 Acts, ch 25, §143

2010 amendment to subsection 7, paragraph b, applies retroactively to tax years beginning on or after January 1, 2010; 2010 Acts, ch 1161, §11

Code editor directive applied

## CHAPTER 441

### ASSESSMENT AND VALUATION OF PROPERTY

#### **441.5 Examination and certification of applicants — incumbents.**

1. For the purpose of examining and certifying candidates for the positions of assessor and deputy assessor, the director of revenue shall prepare and administer a written examination. The examinations shall be administered twice each year in the city of Des Moines. Notification of the time, place and date of the examinations shall be mailed to each city and county assessor, county auditor and chairperson of each city and county conference board at least thirty days prior to the date of the examination.

2. These examinations shall be conducted by the director of revenue in the same manner as other similar examinations, including secrecy regarding questions prior to the examination and in accordance with other rules as may be prescribed by the director of revenue. The examination shall cover the following and related subjects:

a. Laws pertaining to the assessment of property for taxation, with emphasis on market value assessment as provided in this chapter.

b. Laws on tax exemption.

c. Assessment of real estate and personal property, including market value assessment in accordance with this chapter and including fundamental principles and practices of property appraisal and valuation which are consistent with market value assessment as provided in this chapter.

d. The rights of taxpayers and property owners related to the assessment of property for taxation.

e. The duties of the assessor.

f. Other items related to the position of assessor.

3. Only individuals who possess a high school diploma or its equivalent are eligible to take the examination. A person desiring to take the examination shall complete an application prior to the administration of the examination.

4. The director of revenue shall grade the examination taken. The director shall notify, in writing, each applicant of the score attained by the applicant on the examination. An individual who attains a score of seventy percent or greater on the examination is eligible to be certified by the director of revenue as a candidate for any assessor position. Any person who passes the examination and who possesses at least two years of appraisal related experience as determined by the director of revenue shall be granted regular certification and become eligible for appointment to a six-year term as assessor. Any person who passes the examination but who lacks such experience shall be granted temporary certification, and shall be eligible for a provisional appointment as assessor.

5. Any person possessing temporary certification who receives a provisional appointment as assessor shall, during the person's first eighteen months in office, be required to complete a course of study prescribed and administered by the director of revenue. Upon the successful completion of this course of study, the assessor shall be granted regular certification and shall

be eligible to remain in office for the balance of the assessor's six-year term. All expenses incurred in obtaining regular certification shall be defrayed by the assessment expense fund.

6. Following the administration of the examination, the director of revenue shall establish a register containing the names, in alphabetical order, of all individuals who are eligible for appointment as assessor. The test scores of individuals on the register shall be given to a city or county conference board upon request. All eligible individuals shall remain on the register for a period of two years following the date of certification granted by the director.

7. Incumbent assessors who have served six consecutive years shall be placed on the register of individuals eligible for appointment as assessor. In order to be appointed to the position of assessor, the assessor shall comply with the continuing education requirements. The number of credits required for certification as eligible for appointment as assessor in a jurisdiction other than where the assessor is currently serving shall be prorated according to the percentage of the assessor's term which is covered by the continuing education requirements of section 441.8. The credit necessary for certification for appointment is the product of one hundred fifty multiplied by the quotient of the number of months served of an assessor's term covered by the continuing education requirements of section 441.8 divided by seventy-two. If the number of credits necessary for certification for appointment as determined under this subsection results in a partial credit hour, the credit hour shall be rounded to the nearest whole number.

[C46, §405.3; C50, 54, 58, §405.3, 441.2, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.5]

88 Acts, ch 1228, §1; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §95

Section amended

#### **441.8 Term — continuing education — filling vacancy.**

1. The term of office of an assessor appointed under this chapter shall be for six years. Appointments for each succeeding term shall be made in the same manner as the original appointment except that not less than ninety days before the expiration of the term of the assessor the conference board shall hold a meeting to determine whether or not it desires to reappoint the incumbent assessor to a new term. The conference board shall have the power to reappoint the incumbent assessor only if the incumbent assessor has satisfactorily completed the continuing education program provided for in this section. If the decision is made not to reappoint the assessor, the assessor shall be notified, in writing, of such decision not less than ninety days prior to the expiration of the assessor's term of office. Failure of the conference board to provide timely notification of the decision not to reappoint the assessor shall result in the assessor being reappointed.

2. *a.* The director of revenue shall develop and administer a program of continuing education which shall emphasize assessment and appraisal procedures, and the assessment laws of this state, and which shall include the subject matter specified in section 441.5.

*b.* The director of revenue shall establish, designate, or approve courses, workshops, seminars, or symposiums to be offered as part of the continuing education program, the content of these courses, workshops, seminars, or symposiums and the number of hours of classroom instruction for each. The director of revenue may provide that no more than thirty hours of tested credit may be received for the submission of a narrative appraisal approved by a professional appraisal society designated by the director. At least once each year the director of revenue shall evaluate the continuing education program and make necessary changes in the program.

3. Upon the successful completion of courses, workshops, seminars, a narrative appraisal or symposiums contained in the program of continuing education, as demonstrated by attendance at sessions of the courses, workshops, seminars or symposiums and, in the case of a course designated by the director of revenue, attaining a grade of at least seventy percent on an examination administered at the conclusion of the course, or the submission of proof that a narrative appraisal has been approved by a professional appraisal society designated by the director of revenue the assessor or deputy assessor shall receive credit equal to the number of hours of classroom instruction contained in those courses, workshops, seminars, or symposiums or the number of hours of credit specified by the director of revenue for a narrative appraisal. An assessor or deputy assessor shall not be allowed to obtain credit for

a course, workshop, seminar, or symposium for which the assessor or deputy assessor has previously received credit during the current term or appointment except for those courses, workshops, seminars, or symposiums designated by the director of revenue. Only one narrative appraisal may be approved for credit during the assessor's or deputy assessor's current term or appointment and credit shall not be allowed for a narrative appraisal approved by a professional appraisal society prior to the beginning of the assessor's or deputy assessor's current term or appointment. The examinations shall be confidential, except that the director of revenue and persons designated by the director may have access to the examinations.

4. Upon receiving credit equal to one hundred fifty hours of classroom instruction during the assessor's current term of office of which at least ninety of the one hundred fifty hours are from courses requiring an examination upon conclusion of the course, the director of revenue shall certify to the assessor's conference board that the assessor is eligible to be reappointed to the position. For persons appointed to complete an unexpired term, the number of credits required to be certified as eligible for reappointment shall be prorated according to the amount of time remaining in the present term of the assessor. If the person was an assessor in another jurisdiction, the assessor may carry forward any credit hours received in the previous position in excess of the number that would be necessary to be considered current in that position. Upon written request by the person seeking a waiver of the continuing education requirements, the director may waive the continuing education requirements if the director determines good cause exists for the waiver.

5. Within each six-year period following the appointment of a deputy assessor, the deputy assessor shall comply with this section except that upon the successful completion of ninety hours of classroom instruction of which at least sixty of the ninety hours are from courses requiring an examination upon conclusion of the course, the deputy assessor shall be certified by the director of revenue as being eligible to remain in the position. If a deputy assessor fails to comply with this section, the deputy assessor shall be removed from the position until successful completion of the required hours of credit. If a deputy is appointed to the office of assessor, the hours of credit obtained as deputy pursuant to this section shall be credited to that individual as assessor and for the individual to be reappointed at the expiration of the term as assessor, that individual must obtain the credits which are necessary to total the number of hours for reappointment. Upon written request by the person seeking a waiver of the continuing education requirements, the director may waive the continuing education requirements if the director determines good cause exists for the waiver.

6. Each conference board shall include in the budget for the operation of the assessor's office funds sufficient to enable the assessor and any deputy assessor to obtain certification as provided in this section. The conference board shall also allow the assessor and any deputy assessor sufficient time off from their regular duties to obtain certification. The director of revenue shall adopt rules pursuant to chapter 17A to implement and administer this section.

7. If the incumbent assessor is not reappointed as provided in this section, then not less than sixty days before the expiration of the term of said assessor, a new assessor shall be selected as provided in section 441.6.

8. In the event of the removal, resignation, death, or removal from the county of the said assessor, the conference board shall proceed to fill the vacancy by appointing an assessor to serve the unexpired term in the manner provided in section 441.6. Until the vacancy is filled, the chief deputy shall act as assessor, and in the event there be no deputy, in the case of counties the auditor shall act as assessor and in the case of cities having an assessor the city clerk shall act as assessor.

[C46, §405.6; C50, 54, 58, §405.6, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.8; 81 Acts, ch 143, §1]

86 Acts, ch 1245, §449; 87 Acts, ch 198, §6; 97 Acts, ch 158, §37; 2003 Acts, ch 145, §286; 2005 Acts, ch 140, §55, 56; 2011 Acts, ch 34, §100

Section amended

#### **441.16 Budget.**

1. All expenditures under this chapter shall be paid as hereinafter provided.

2. Not later than January 1 of each year the assessor, the examining board, and the board of review shall each prepare a proposed budget of all expenses for the ensuing fiscal year. The assessor shall include in the proposed budget the probable expenses for defending assessment appeals. Said budgets shall be combined by the assessor and copies thereof forthwith filed by the assessor in triplicate with the chairperson of the conference board.

3. The combined budgets shall contain an itemized list of the proposed salaries of the assessor and each deputy, the amount required for field personnel and other personnel, their number and their compensation; the estimated amount needed for expenses, printing, mileage and other expenses necessary to operate the assessor's office, the estimated expenses of the examining board and the salaries and expenses of the local board of review.

4. Each fiscal year the chairperson of the conference board shall, by written notice, call a meeting of the conference board to consider the proposed budget and to comply with section 24.9.

5. At such meeting the conference board shall authorize:

a. The number of deputies, field personnel, and other personnel of the assessor's office.

b. The salaries and compensation of members of the board of review, the assessor, chief deputy, other deputies, field personnel, and other personnel, and determine the time and manner of payment.

c. The miscellaneous expenses of the assessor's office, the board of review and the examining board, including office equipment, records, supplies, and other required items.

d. The estimated expense of assessment appeals. All such expense items shall be included in the budget adopted for the ensuing year.

6. All tax levies and expenditures provided for herein shall be subject to the provisions of chapter 24 and the conference board is hereby declared to be the certifying board.

7. Any tax for the maintenance of the office of assessor and other assessment procedure shall be levied only upon the property in the area assessed by said assessor and such tax levy shall not exceed forty and one-half cents per thousand dollars of assessed value in assessing areas where the valuation upon which the tax is levied does not exceed ninety-two million, six hundred thousand dollars; thirty-three and three-fourths cents per thousand dollars of assessed value in assessing areas where the valuation upon which the tax is levied exceeds ninety-two million, six hundred thousand dollars and does not exceed one hundred eleven million, one hundred twenty thousand dollars; twenty-seven cents per thousand dollars of assessed value in assessing areas where the valuation upon which the tax is levied exceeds one hundred eleven million, one hundred twenty thousand dollars. The county treasurer shall credit the sums received from such levy to a separate fund to be known as the "assessment expense fund" and from which fund all expenses incurred under this chapter shall be paid. In the case of a county where there is more than one assessor the treasurer shall maintain separate assessment expense funds for each assessor.

8. The county auditor shall keep a complete record of said funds and shall issue warrants thereon only on requisition of the assessor.

9. The assessor shall not issue requisitions so as to increase the total expenditures budgeted for the operation of the assessor's office. However, for purposes of promoting operational efficiency, the assessor shall have authority to transfer funds budgeted for specific items for the operation of the assessor's office from one unexpended balance to another; such transfer shall not be made so as to increase the total amount budgeted for the operation of the office of assessor, and no funds shall be used to increase the salary of the assessor or the salaries of permanent deputy assessors. The assessor shall issue requisitions for the examining board and for the board of review on order of the chairperson of each board and for costs and expenses incident to assessment appeals, only on order of the city legal department, in the case of cities and of the county attorney in the case of counties.

10. Unexpended funds remaining in the assessment expense fund at the end of a year shall be carried forward into the next year.

[R60, §730; C73, §390, 3810; C97, §592, 661, 674; S13, §592, 661, 674; SS15, §1056-b18; C24, 27, 31, 35, 39, §5573, 5656, 5669, 6652, 6653; C46, §359.48, 363.29, 363.43, 405.18, 419.38,

419.39, 441.5; C50, 54, 58, §405.18, 405A.4, 441.5, 442.12; C62, 66, 71, 73, 75, 77, 79, 81, §441.16; 82 Acts, ch 1079, §8]

2011 Acts, ch 25, §96

Section amended

#### **441.17 Duties of assessor.**

The assessor shall:

1. Devote full time to the duties of the assessor's office and shall not engage in any occupation or business interfering or inconsistent with such duties. This subsection does not preclude an assessor from being a candidate for elective office during the term of appointment as assessor. If an assessor is elected to a city or county office, to a statewide elective office, or to the general assembly, the assessor shall resign as assessor before the beginning of the term of the office to which the assessor was elected.

2. Cause to be assessed, in accordance with section 441.21, all the property in the assessor's county or city, except property exempt from taxation, or the assessment of which is otherwise provided for by law.

3. Have access to all public records of the county and, so far as practicable, make or cause to be made a careful examination of all such records and files in order to obtain all available information which may contribute to the accurate listing at its taxable value, and to the proper persons, of all property subject to assessment by the assessor.

4. Cooperate with the director of revenue as may be necessary or required, and obey and execute all orders, directions, and instructions of the director of revenue, insofar as the same may be required by law.

5. *a.* Have power to apply to the district court of the county for an order to examine witnesses and requiring the production of books and records of any person, firm, association or corporation within the county, whenever the assessor has reason to believe that such person, firm, association or corporation has not listed property as provided by law. The proceeding for the examination of witnesses and examination of the books and records of any such taxpayer, to determine the existence of taxable property, shall be instituted and conducted in the manner provided for the discovery of property under the provisions of chapter 630. The court shall make an appropriate finding as to the existence of taxable property not listed. All taxable property discovered thereby shall thereupon be assessed by the assessor in the manner provided by law.

*b.* In all cases where the court finds that the taxpayer has not listed the taxpayer's property, as provided by law, and in all hearings where the court decides a matter against the taxpayer, the costs shall be paid by the taxpayer, otherwise they shall be paid out of the assessment expense fund. The fees and mileage to be paid witnesses shall be the same as prescribed by law in proceedings in the district courts of this state in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said taxpayer and the taxpayer's property and shall be collected in the same manner as are other taxes.

6. Make up all assessor's books and records as prescribed by the director of revenue, turn the completed assessor's books and records required for the preparation of the tax list over to the county auditor each year when the board of review has concluded its hearings and the county auditor shall proceed with the preparation of the current year tax list and the assessor shall cooperate with the auditor in the preparation of the tax lists.

7. Submit on or before May 1 of each year completed assessment rolls to the board of review.

8. Lay before the board of review such information as the assessor may possess which will aid said board in performing its duties in adjusting the assessments to the valuations required by law.

9. Furnish to the director of revenue any information which the assessor may have relative to the ownership of any property that may be assessable within this state, but not assessable or subject to being listed for taxation by the assessor.

10. Measure the exterior length and exterior width of all mobile homes and manufactured homes except those for which measurements are contained in the manufacturer's and

importer's certificate of origin, and report the information to the county treasurer. Check all manufactured or mobile homes for inaccuracy of measurements as necessary or upon written request of the county treasurer and report the findings immediately to the county treasurer. The assessor shall make frequent inspections and checks within the assessor jurisdiction of all manufactured or mobile homes and manufactured home communities or mobile home parks and make all the required and needed reports to carry out the purposes of this section.

11. Cause to be assessed for taxation property which the assessor believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

[C51, §474, 475; R60, §735, 736; C73, §824, 825; C97, §1355, 1359, 1366; S13, §1355, 1366; C24, 27, 31, 35, 39, §7108, 7114, 7122, 7123; C46, §441.3, 441.9, 441.17, 441.18; C50, 54, 58, §405A.8, 441.4, 441.9, 441.12; C62, 66, 71, 73, 75, 77, 79, 81, §441.17]

83 Acts, ch 64, §2; 87 Acts, ch 84, §1; 89 Acts, ch 296, §61; 94 Acts, ch 1110, §20, 24; 2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80; 2002 Acts, ch 1088, §1, 2; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143

Code editor directive applied

#### **441.21 Actual, assessed, and taxable value.**

1. a. All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.

b. (1) The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

(2) The actual value of special purpose tooling, which is subject to assessment and taxation as real property under section 427A.1, subsection 1, paragraph "e", but which can be used only to manufacture property which is protected by one or more United States or foreign patents, shall not exceed the fair and reasonable exchange value between a willing buyer and a willing seller, assuming that the willing buyer is purchasing only the special purpose tooling and not the patent covering the property which the special purpose tooling is designed to manufacture nor the rights to manufacture the patented property. For purposes of this subparagraph, special purpose tooling includes dies, jigs, fixtures, molds, patterns, and similar property. The assessor shall not take into consideration the special value or use value to the present owner of the special purpose tooling which is designed and intended solely for the manufacture of property protected by a patent in arriving at the actual value of the special purpose tooling.

c. In assessing and determining the actual value of special purpose industrial property having an actual value of five million dollars or more, the assessor shall equalize the values of such property with the actual values of other comparable special purpose industrial property in other counties of the state. Such special purpose industrial property includes, but is not limited to chemical plants. If a variation of ten percent or more exists between the actual values of comparable industrial property having an actual value of five million dollars or more

located in separate counties, the assessors of the counties shall consult with each other and with the department of revenue to determine if adequate reasons exist for the variation. If no adequate reasons exist, the assessors shall make adjustments in the actual values to provide for a variation of ten percent or less. For the purposes of this paragraph, special purpose industrial property includes structures which are designed and erected for operation of a unique and special use, are not rentable in existing condition, and are incapable of conversion to ordinary commercial or industrial use except at a substantial cost.

d. Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

e. The actual value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property determined on the basis of its use for agricultural purposes capitalized at a rate of seven percent and applied uniformly among counties and among classes of property. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule.

f. In counties or townships in which field work on a modern soil survey has been completed since January 1, 1949, the assessor shall place emphasis upon the results of the survey in spreading the valuation among individual parcels of such agricultural property.

g. Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value, except agricultural property which shall be valued exclusively as provided in paragraph "e" of this subsection.

h. The assessor shall determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the real property appraisal manual prepared by the department as updated from time to time. Such rules, forms, and guidelines shall not be inconsistent with or change the means, as provided in this section, of determining the actual, market, taxable, and assessed values.

i. (1) If the department finds that a city or county assessor is not in compliance with the rules of the department relating to valuation of property or has disregarded the forms and guidelines contained in the real property appraisal manual, the department shall notify the assessor and each member of the conference board for the appropriate assessing jurisdiction. The notice shall be mailed by restricted certified mail. The notice shall specify the areas of noncompliance and the steps necessary to achieve compliance. The notice shall also inform the assessor and conference board that if compliance is not achieved, a penalty may be imposed.

(2) The conference board shall respond to the department within thirty days of receipt of the notice of noncompliance. The conference board may respond to the notice by asserting that the assessor is in compliance with the rules, guidelines, and forms of the department or by informing the department that the conference board intends to submit a plan of action to achieve compliance. If the conference board responds to the notification by asserting that the assessor is in compliance, a hearing before the director of revenue shall be scheduled on the matter.

(3) A plan of action shall be submitted within sixty days of receipt of the notice of noncompliance. The plan shall contain a time frame under which compliance shall be achieved which shall be no later than January 1 of the following assessment year. The plan of action shall contain the signature of the assessor and of the chairperson of the conference board. The department shall review the plan to determine whether the plan is sufficient to achieve compliance. Within thirty days of receipt of the plan, the department shall notify the assessor and the chairperson of the conference board that it has accepted the plan or that it is necessary to submit an amended plan of action.

(4) By January 1 of the assessment year following the calendar year in which the plan was submitted to the department, the conference board shall submit a report to the department indicating that the plan of action was followed and compliance has been achieved. The

department may conduct a field inspection to ensure that the assessor is in compliance. By January 31, the department shall notify the assessor and the conference board, by restricted certified mail, either that compliance has been achieved or that the assessor remains in noncompliance. If the department determines that the assessor remains in noncompliance, the department shall take steps to withhold up to five percent of the reimbursement payment authorized in section 425.1 until the director of revenue determines that the assessor is in compliance.

(5) If the conference board disputes the determination of the department, the chairperson of the conference board may appeal the determination to the state board of tax review.

(6) The department shall adopt rules relating to the administration of this paragraph "i".

2. In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the goodwill or value of a business which uses the property as distinguished from the value of the property as property. However, in assessing property that is rented or leased to low-income individuals and families as authorized by section 42 of the Internal Revenue Code, as amended, and which section limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property. The assessor shall not consider any tax credit equity or other subsidized financing as income provided to the property in determining the assessed value. The property owner shall notify the assessor when property is withdrawn from section 42 eligibility under the Internal Revenue Code. The property shall not be subject to section 42 assessment procedures for the assessment year for which section 42 eligibility is withdrawn. This notification must be provided to the assessor no later than March 1 of the assessment year or the owner will be subject to a penalty of five hundred dollars for that assessment year. The penalty shall be collected at the same time and in the same manner as regular property taxes. Upon adoption of uniform rules by the department of revenue or succeeding authority covering assessments and valuations of such properties, the valuation on such properties shall be determined in accordance with such rules and in accordance with forms and guidelines contained in the real property appraisal manual prepared by the department as updated from time to time for assessment purposes to assure uniformity, but such rules, forms, and guidelines shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

3. "Actual value", "taxable value", or "assessed value" as used in other sections of the Code in relation to assessment of property for taxation shall mean the valuations as determined by this section; however, other provisions of the Code providing special methods or formulas for assessing or valuing specified property shall remain in effect, but this section shall be applicable to the extent consistent with such provisions. The assessor and department of revenue shall disclose at the written request of the taxpayer all information in any formula or method used to determine the actual value of the taxpayer's property.

The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable, or capricious; however, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

4. For valuations established as of January 1, 1979, the percentage of actual value at which agricultural and residential property shall be assessed shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall

be the dividend as determined for each class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus six percent of the amount so determined. However, if the difference between the dividend so determined for either class of property and the dividend for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is less than six percent, the 1979 dividend for the other class of property shall be the dividend as determined for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus a percentage of the amount so determined which is equal to the percentage by which the dividend as determined for the other class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is increased in arriving at the 1979 dividend for the other class of property. The divisor for each class of property shall be the total actual value of all such property in the state in the preceding year, as reported by the assessors on the abstracts of assessment submitted for 1978, plus the amount of value added to said total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. The director shall utilize information reported on abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, and each year thereafter, the percentage of actual value as equalized by the director of revenue as provided in section 441.49 at which agricultural and residential property shall be assessed shall be calculated in accordance with the methods provided herein including the limitation of increases in agricultural and residential assessed values to the percentage increase of the other class of property if the other class increases less than the allowable limit adjusted to include the applicable and current values as equalized by the director of revenue, except that any references to six percent in this subsection shall be four percent.

5. For valuations established as of January 1, 1979, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 8, shall be assessed as a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the total actual valuation for each class of property established for 1978, plus six percent of the amount so determined. The divisor for each class of property shall be the valuation for each class of property established for 1978, as reported by the assessors on the abstracts of assessment for 1978, plus the amount of value added to the total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. For valuations established as of January 1, 1979, property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be considered as one class of property and shall be assessed as a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1978 by the department of revenue, plus ten percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be the valuation established for 1978, plus the amount of value added to the total actual value by the revaluation of the

property by the department of revenue as of January 1, 1979. For valuations established as of January 1, 1980, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 8, shall be assessed at a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1979, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1979, plus four percent of the amount so determined. The divisor for each class of property shall be the total actual value of all such property in 1979, as equalized by the director of revenue pursuant to section 441.49, plus the amount of value added to the total actual value by the revaluation of existing properties in 1980. The director shall utilize information reported on the abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be assessed at a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1979 by the department of revenue, plus eight percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be the valuation established for 1979, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1980. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value as equalized by the director of revenue as provided in section 441.49 at which commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 8, shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to six percent in this subsection shall be four percent. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value at which property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to ten percent in this subsection shall be eight percent. Beginning with valuations established as of January 1, 1979, and each year thereafter, property valued by the department of revenue pursuant to chapter 434 shall also be assessed at a percentage of its actual value which percentage shall be equal to the percentage determined by the director of revenue for commercial property, industrial property, or property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438, whichever is lowest.

6. Beginning with valuations established as of January 1, 1978, the assessors shall report the aggregate taxable values and the number of dwellings located on agricultural land and the aggregate taxable value of all other structures on agricultural land. Beginning with valuations established as of January 1, 1981, the agricultural dwellings located on agricultural land shall be valued at their market value as defined in this section and agricultural dwellings shall be valued as rural residential property and shall be assessed at the same percentage of actual value as is all other residential property.

7. For the purpose of computing the debt limitations for municipalities, political subdivisions and school districts, the term "*actual value*" means the "*actual value*" as determined by subsections 1 to 3 of this section without application of any percentage reduction and entered opposite each item, and as listed on the tax list as provided in section 443.2 as "*actual value*".

Whenever any board of review or other tribunal changes the assessed value of property, all applicable records of assessment shall be adjusted to reflect such change in both assessed value and actual value of such property.

8. *a.* Any normal and necessary repairs to a building, not amounting to structural replacements or modification, shall not increase the taxable value of the building. This paragraph applies only to repairs of two thousand five hundred dollars or less per building per year.

*b.* Notwithstanding paragraph “*a*”, any construction or installation of a solar energy system on property classified as agricultural, residential, commercial, or industrial property shall not increase the actual, assessed and taxable values of the property for five full assessment years.

*c.* As used in this subsection, “*solar energy system*” means either of the following:

(1) A system of equipment capable of collecting and converting incident solar radiation or wind energy into thermal, mechanical or electrical energy and transforming these forms of energy by a separate apparatus to storage or to a point of use which is constructed or installed after January 1, 1978.

(2) A system that uses the basic design of the building to maximize solar heat gain during the cold season and to minimize solar heat gain in the hot season and that uses natural means to collect, store, and distribute solar energy which is constructed or installed after January 1, 1981.

*d.* In assessing and valuing the property for tax purposes, the assessor shall disregard any market value added by a solar energy system to a building. The director of revenue shall adopt rules, after consultation with the economic development authority, specifying the types of equipment and structural components to be included under the guidelines provided in this subsection.

9. Not later than November 1, 1979, and November 1 of each subsequent year, the director shall certify to the county auditor of each county the percentages of actual value at which residential property, agricultural property, commercial property, industrial property, and property valued by the department of revenue pursuant to chapters 428, 433, 434, 437, and 438 in each assessing jurisdiction in the county shall be assessed for taxation. The county auditor shall proceed to determine the assessed values of agricultural property, residential property, commercial property, industrial property, and property valued by the department of revenue pursuant to chapters 428, 433, 434, 437, and 438 by applying such percentages to the current actual value of such property, as reported to the county auditor by the assessor, and the assessed values so determined shall be the taxable values of such properties upon which the levy shall be made.

10. The percentage of actual value computed by the director for agricultural property, residential property, commercial property, industrial property and property valued by the department of revenue pursuant to chapters 428, 433, 434, 437, and 438 and used to determine assessed values of those classes of property does not constitute a rule as defined in section 17A.2, subsection 11.

11. Beginning with valuations established on or after January 1, 1995, as used in this section, “*residential property*” includes all land and buildings of multiple housing cooperatives organized under chapter 499A and includes land and buildings used primarily for human habitation which land and buildings are owned and operated by organizations that have received tax-exempt status under section 501(c)(3) of the Internal Revenue Code and rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A.

12. Beginning with valuations established on or after January 1, 2002, as used in this section, “*agricultural property*” includes the real estate of a vineyard and buildings used in connection with the vineyard, including any building used for processing wine if such building is located on the same parcel as the vineyard.

[C97, §1305; S13, §1305; C24, 27, 31, 35, 39, §7109; C46, §441.4; C50, 54, 58, §441.13; C62, 66, 71, 73, 75, 77, 79, 81, §441.21; 81 Acts, ch 144, §1; 82 Acts, ch 1100, §22, ch 1159, §1 – 3, ch 1186, §4, 5]

83 Acts, ch 202, §22, 23; 84 Acts, ch 1223, §1; 88 Acts, ch 1116, §1; 89 Acts, ch 176, §1; 89 Acts, ch 296, §63; 95 Acts, ch 83, §28; 95 Acts, ch 157, §1; 96 Acts, ch 1034, §40; 97 Acts, ch 23, §51; 99 Acts, ch 114, §28; 2001 Acts, ch 119, §1; 2002 Acts, ch 1150, §13; 2002 Acts, ch

1153, §1, 2; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §29; 2005 Acts, ch 150, §124, 125; 2009 Acts, ch 108, §16, 41; 2011 Acts, ch 25, §97, 143; 2011 Acts, ch 118, §50, 89

Code editor directives applied  
Subsection 1, paragraph b amended

**441.26 Assessment rolls and books.**

1. The director of revenue shall each year prescribe the form of assessment roll to be used by all assessors in assessing property, in this state, also the form of pages of the assessor’s assessment book. The assessment rolls shall be in a form that will permit entering, separately, the names of all persons assessed, and shall also contain a notice in substantially the following form:

If you are not satisfied that the foregoing assessment is correct, you may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment, such protest to be confined to the grounds specified in section 441.37.

Dated: ..... day of ..... (month), ..... (year)

.....

County/City Assessor.

2. The notice in 1981 and each odd-numbered year thereafter shall contain a statement that the assessments are subject to equalization pursuant to an order issued by the director of revenue, that the county auditor shall give notice on or before October 15 by publication in an official newspaper of general circulation to any class of property affected by the equalization order, and that the board of review shall be in session from October 15 to November 15 to hear protests of affected property owners or taxpayers whose valuations have been adjusted by the equalization order.

3. The assessment rolls shall be used in listing the property and showing the values affixed to the property of all persons assessed. The rolls shall be made in duplicate. The duplicate roll shall be signed by the assessor, detached from the original and delivered to the person assessed if there has been an increase or decrease in the valuation of the property. If there has been no change in the valuation, the information on the roll may be printed on computer stock paper and preserved as required by this chapter. If the person assessed requests in writing a copy of the roll, the copy shall be provided to the person. The pages of the assessor’s assessment book shall contain columns ruled and headed for the information required by this chapter and that which the director of revenue deems essential in the equalization work of the director. The assessor shall return all assessment rolls and schedules to the county auditor, along with the completed assessment book, as provided in this chapter, and the county auditor shall carefully keep and preserve the rolls, schedules, and book for a period of five years from the time of its filing in the county auditor’s office.

4. Beginning with valuations for January 1, 1977, and each succeeding year, for each parcel of property entered in the assessment book, the assessor shall list the classification of the property.

[C51, §471, 473; R60, §732, 733; C73, §821; C97, §1360, 1361; S13, §1360, 1361; C24, 27, 31, 35, 39, §7115, 7116, 7117, 7118; C46, §405.20, 441.10, 441.11, 441.13; C50, 54, 58, §405.20, 441.18, 441.19, 441.20, 441.21; C62, 66, 71, 73, 75, 77, 79, 81, §441.26]

86 Acts, ch 1107, §1; 89 Acts, ch 296, §65; 2000 Acts, ch 1058, §56; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §58; 2011 Acts, ch 25, §143

Code editor directive applied

**441.35 Powers of review board.**

1. The board of review shall have the power:

a. To equalize assessments by raising or lowering the individual assessments of real property, including new buildings, made by the assessor.

b. To add to the assessment rolls any taxable property which has been omitted by the assessor.

c. To add to the assessment rolls for taxation property which the board believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

2. In any year after the year in which an assessment has been made of all of the real estate in any taxing district, the board of review shall meet as provided in section 441.33, and where the board finds the same has changed in value, the board shall revalue and reassess any part or all of the real estate contained in such taxing district, and in such case, the board shall determine the actual value as of January 1 of the year of the revaluation and reassessment and compute the taxable value thereof. Any aggrieved taxpayer may petition for a revaluation of the taxpayer's property, but no reduction or increase shall be made for prior years. If the assessment of any such property is raised, or any property is added to the tax list by the board, the clerk shall give notice in the manner provided in section 441.36. However, if the assessment of all property in any taxing district is raised, the board may instruct the clerk to give immediate notice by one publication in one of the official newspapers located in the taxing district, and such published notice shall take the place of the mailed notice provided for in section 441.36, but all other provisions of that section shall apply. The decision of the board as to the foregoing matters shall be subject to appeal to the property assessment appeal board within the same time and in the same manner as provided in section 441.37A and to the district court within the same time and in the same manner as provided in section 441.38.

[C35, §7129-e1; C39, §7129.1; C46, 50, 54, 58, §405.21, 442.2; C62, 66, 71, 73, 75, 77, 79, 81, §441.35]

87 Acts, ch 84, §2; 89 Acts, ch 296, §66; 2005 Acts, ch 150, §127; 2011 Acts, ch 25, §143

For future repeal, effective July 1, 2013, of 2005 amendments to subsection 2, see 2005 Acts, ch 150, §134

Code editor directive applied

#### **441.37 Protest of assessment — grounds.**

1. a. Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment. In any county which has been declared to be a disaster area by proper federal authorities after March 1 and prior to May 20 of said year of assessment, the board of review shall be authorized to remain in session until June 15 and the time for filing a protest shall be extended to and include the period from May 25 to June 5 of such year. Said protest shall be in writing and signed by the one protesting or by the protester's duly authorized agent. The taxpayer may have an oral hearing thereon if request therefor in writing is made at the time of filing the protest. Said protest must be confined to one or more of the following grounds:

(1) That said assessment is not equitable as compared with assessments of other like property in the taxing district. When this ground is relied upon as the basis of a protest the legal description and assessments of a representative number of comparable properties, as described by the aggrieved taxpayer shall be listed on the protest, otherwise said protest shall not be considered on this ground.

(2) That the property is assessed for more than the value authorized by law, stating the specific amount which the protesting party believes the property to be overassessed, and the amount which the party considers to be its actual value and the amount the party considers a fair assessment.

(3) That the property is not assessable, is exempt from taxes, or is misclassified and stating the reasons for the protest.

(4) That there is an error in the assessment and state the specific alleged error.

(5) That there is fraud in the assessment which shall be specifically stated.

b. In addition to the above, the property owner may protest annually to the board of review under the provisions of section 441.35, but such protest shall be in the same manner and upon the same terms as heretofore prescribed in this section.

c. The property owner or aggrieved taxpayer may combine on one form protests of assessment on parcels separately assessed if the same grounds are relied upon as the basis for protesting each separate assessment. If an oral hearing is requested on more than one of

such protests, the person making the combined protests may request that the oral hearings be held consecutively.

2. *a.* A property owner or aggrieved taxpayer who finds that a clerical or mathematical error has been made in the assessment of the owner's or taxpayer's property may file a protest against that assessment in the same manner as provided in this section, except that the protest may be filed for previous years. The board may correct clerical or mathematical errors for any assessment year in which the taxes have not been fully paid or otherwise legally discharged.

*b.* Upon the determination of the board that a clerical or mathematical error has been made the board shall take appropriate action to correct the error and notify the county auditor of the change in the assessment as a result of the error and the county auditor shall make the correction in the assessment and the tax list in the same manner as provided in section 443.6.

*c.* The board shall not correct an error resulting from a property owner's or taxpayer's inaccuracy in reporting or failure to comply with section 441.19.

3. After the board of review has considered any protest filed by a property owner or aggrieved taxpayer and made final disposition of the protest, the board shall give written notice to the property owner or aggrieved taxpayer who filed the protest of the action taken by the board of review on the protest. The written notice to the property owner or aggrieved taxpayer shall also specify the reasons for the action taken by the board of review on the protest. If protests of assessment on multiple parcels separately assessed were combined, the written notice shall state the action taken, and the reasons for the action, for each assessment protested.

[R60, §740; C73, §831; C97, §1373; S13, §1373; C24, 27, 31, 35, 39, §7132; C46, 50, 54, 58, §405.22, 442.5; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.37; 81 Acts, ch 145, §2]

86 Acts, ch 1028, §1; 88 Acts, ch 1251, §2; 2005 Acts, ch 140, §57, 58, 73; 2011 Acts, ch 25, §143

Code editor directive applied

#### **441.45 Abstract to state department of revenue.**

1. The county assessor of each county and each city assessor shall, on or before July 1 of each year, make out and transmit to the department of revenue an abstract of the real property in the assessor's county or city, as the case may be, and file a copy of the abstract with the county auditor, in which the assessor shall set forth:

*a.* The number of acres of land and the aggregate taxable values of the land, exclusive of city lots, returned by the assessors, as corrected by the board of review.

*b.* The aggregate taxable values of real estate by class in each township and city in the county, returned as corrected by the board of review.

*c.* Other facts required by the director of revenue.

2. If a board of review continues in session beyond June 1, under sections 441.33 and 441.37, the abstract of the real property shall be made out and transmitted to the department of revenue within fifteen days after the date of final adjournment by the board.

[R60, §741; C73, §833; C97, §1377; S13, §1361; C24, 27, 31, 35, 39, §7117, 7139; C46, 50, 54, 58, §441.20, 442.14; C62, 66, 71, 73, 75, 77, 79, 81, §441.45]

83 Acts, ch 140, §1; 89 Acts, ch 296, §67; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143

Code editor directive applied

#### **441.49 Adjustment by auditor.**

1. *a.* The director shall keep a record of the review and adjustment proceedings and finish the proceedings on or before October 1 unless for good cause the proceedings cannot be completed by that date. The director shall notify each county auditor by mail of the final action taken at the proceedings and specify any adjustments in the valuations of any class of property to be made effective for the jurisdiction.

*b.* However, an assessing jurisdiction may request the director to permit the use of an alternative method of applying the equalization order to the property values in the assessing jurisdiction, provided that the final valuation shall be equivalent to the director's equalization order. The assessing jurisdiction shall notify the county auditor of the request for the use of an alternative method of applying the equalization order and the director's disposition

of the request. The request to use an alternative method of applying the equalization order, including procedures for notifying affected property owners and appealing valuation adjustments, shall be made within ten days from the date the county auditor receives the equalization order and the valuation adjustments, and appeal procedures shall be completed by November 30 of the year of the equalization order. Compliance with the provisions of section 441.21 is sufficient grounds for the director to permit the use of an alternative method of applying the equalization order.

2. a. On or before October 15 the county auditor shall cause to be published in official newspapers of general circulation the final equalization order. The publication shall include, in type larger than the remainder of the publication, the following statement:

Assessed values are equalized by the department of revenue every two years. Local taxing authorities determine the final tax levies and may reduce property tax rates to compensate for any increase in valuation due to equalization.

b. Failure to publish the equalization order has no effect upon the validity of the orders.

3. The county auditor shall add to or deduct from the valuation of each class of property in the county the required percentage, rejecting all fractions of fifty cents or less in the result, and counting all fractions over fifty cents as one dollar. For any special charter city that levies and collects its own tax based on current year assessed values, the equalization percentage shall be applied to the following year's values, and shall be considered the equalized values for that year for purposes of this chapter.

4. The local board of review shall reconvene in special session from October 15 to November 15 for the purpose of hearing the protests of affected property owners or taxpayers within the jurisdiction of the board whose valuation of property if adjusted pursuant to the equalization order issued by the director of revenue will result in a greater value than permitted under section 441.21. The board of review shall accept protests only during the first ten days following the date the local board of review reconvenes. The board of review shall limit its review to only the timely filed protests. The board of review may adjust all or a part of the percentage increase ordered by the director of revenue by adjusting the actual value of the property under protest to one hundred percent of actual value. Any adjustment so determined by the board of review shall not exceed the percentage increase provided for in the director's equalization order. The determination of the board of review on filed protests is final, subject to appeal to the property assessment appeal board. A final decision by the local board of review, or the property assessment appeal board, if the local board's decision is appealed, is subject to review by the director of revenue for the purpose of determining whether the board's actions substantially altered the equalization order. In making the review, the director has all the powers provided in chapter 421, and in exercising the powers the director is not subject to chapter 17A. Not later than fifteen days following the adjournment of the board, the board of review shall submit to the director of revenue, on forms prescribed by the director, a report of all actions taken by the board of review during this session.

5. Not later than ten days after the date the final equalization order is issued, the city or county officials of the affected county or assessing jurisdiction may appeal the final equalization order to the state board of tax review. The appeal shall not delay the implementation of the equalization orders.

6. Tentative and final equalization orders issued by the director of revenue are not rules as defined in section 17A.2, subsection 7.

[C51, §483; R60, §743; C73, §836; C97, §1382; S13, §1382; C24, 27, 31, 35, 39, §7143; C46, 50, 54, 58, §442.18; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.49; 81 Acts, ch 145, §3]

99 Acts, ch 167, §1; 2003 Acts, ch 145, §286; 2005 Acts, ch 150, §132; 2011 Acts, ch 25, §47

For future repeal, effective July 1, 2013, of 2005 amendments to subsection 4, see 2005 Acts, ch 150, §134  
Section amended

#### **441.72 Assessment of platted lots.**

1. Except as provided in subsection 2, when a subdivision plat is recorded pursuant to

chapter 354, the individual lots within the subdivision plat shall not be assessed in excess of the total assessment of the land as acreage or unimproved property for five years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in chapter 428 and this chapter.

2. For subdivision plats recorded pursuant to chapter 354 on or after January 1, 2004, but before January 1, 2011, the individual lots within the subdivision plat shall not be assessed in excess of the total assessment of the land as acreage or unimproved property for eight years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in chapter 428 and this chapter.

3. This section does not apply to special assessment levies.

90 Acts, ch 1236, §50; 2011 Acts, ch 131, §155, 157

2011 amendments to this section take effect July 27, 2011, and apply to assessment years beginning on or after January 1, 2012; amendments do not require refund or modification of property taxes attributable to, or the adjustment of property assessments for, assessments years beginning before January 1, 2012; 2011 Acts, ch 131, §156, 157

Section amended

## CHAPTER 445

### TAX COLLECTION

#### 445.5 Statement and receipt.

1. As soon as practicable after receiving the tax list prescribed in chapter 443, the treasurer shall deliver to the titleholder, by regular mail, or if requested by the titleholder, by electronic transmission, a statement of taxes due and payable which shall include the following information:

- a. The year of tax.
- b. A description of the parcel.
- c. The assessed value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year as valued by the assessor after application of any equalization orders.
- d. The taxable value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year after application of any equalization orders, assessment limitations, and itemized valuation exemptions.
- e. The complete name of all taxing authorities receiving a tax distribution, the amount of the distribution, and the percentage distribution for each named authority, listed from the highest to the lowest distribution percentage.
- f. The consolidated levy rate for one thousand dollars of taxable valuation multiplied by the taxable valuation to produce the gross taxes levied before application of credits against levied taxes for the previous and current fiscal years.
- g. The itemized credits against levied taxes deducted from the gross taxes levied in order to produce the net taxes owed for the previous and current fiscal years.
- h. The amount of property tax dollars reduced on each parcel as a result of the moneys received from the property tax relief fund pursuant to section 426B.2, subsections 1 and 2.
- i. The total amount of taxes levied by each taxing authority in the previous fiscal year and the current fiscal year and the difference between the two amounts, expressed as a percentage increase or decrease.

2. a. The county treasurer shall each year, upon request, deliver to the following persons or entities, or their duly authorized agents, a copy of the tax statement or tax statement information:

- (1) Contract purchaser.

- (2) Lessee.
- (3) Mortgagee.
- (4) Financial institution organized or chartered or holding an authorization certificate pursuant to chapter 524, 533, or 534.
- (5) Federally chartered financial institution.

b. The treasurer may negotiate and charge a reasonable fee not to exceed the cost of producing the information for a requester described in paragraph “a”, subparagraphs (3) through (5), for a tax statement or tax statement information provided by the treasurer.

3. A person other than those listed in subsection 2, who requests a tax statement or tax statement information, shall pay a fee to the treasurer at a rate not to exceed two dollars per parcel.

4. The titleholder may make written request to the treasurer to have the tax statement delivered to a person or entity in lieu of to the titleholder. A fee shall not be charged by the treasurer for delivering the tax statement to such person or entity in lieu of to the titleholder.

5. Failure to receive a tax statement is not a defense to the payment of the total amount due.

6. The county treasurer shall deliver to the taxpayer a receipt stating the year of tax, date of payment, a description of the parcel, and the amount of taxes, interest, fees, and costs paid when payment is made by cash tender. A receipt for other payment tender types shall only be delivered upon request. The receipt shall be in full of the first half, second half, or full year amounts unless a payment is made under section 445.36A or 435.24, subsection 6.

[R60, §760; C73, §867; C97, §1405; C24, 27, 31, 35, 39, §7188; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.5]

83 Acts, ch 156, §1, 2; 91 Acts, ch 191, §30; 97 Acts, ch 206, §22, 24; 98 Acts, ch 1186, §2, 3, 5; 99 Acts, ch 167, §2; 2003 Acts, ch 24, §8; 2005 Acts, ch 34, §12, 13, 26; 2006 Acts, ch 1010, §114; 2006 Acts, ch 1070, §20; 2011 Acts, ch 25, §98; 2011 Acts, ch 109, §2

Subsections 2 and 6 amended

#### **445.36 Payment — installments.**

1. The taxes which become delinquent during the fiscal year are for the previous fiscal year.

2. A demand of taxes is not necessary, but every person subject to taxation shall attend at the office of the county treasurer and pay the taxes either in full, or one-half of the taxes before September 1 succeeding the levy, and the remaining half before March 1 following. This subsection does not apply to special assessments, or rates or charges.

3. If an installment of taxes, or an annual payment in the case of special assessments, or payment in full in the case of rates or charges, is delinquent and not paid as of November 1 of the fiscal year in which the amounts are due, the treasurer shall notify the taxpayer of the delinquency and the due date for the second installment. Failure to receive notice is not a defense to the payment of the total amount due.

[C51, §492; R60, §756; C73, §857; C97, §1403; C24, 27, 31, 35, 39, §7210; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.36]

89 Acts, ch 214, §3; 91 Acts, ch 191, §43; 98 Acts, ch 1107, §26; 2002 Acts, ch 1043, §5; 2006 Acts, ch 1070, §21; 2011 Acts, ch 109, §3

Subsection 3 amended

## CHAPTER 446

### TAX SALES

For definitions applicable to chapter,  
see §445.1

#### **446.9 Notice of sale — service — publication — costs.**

1. A notice of the date, time, and place of the annual tax sale shall be served upon the person in whose name the parcel subject to sale is taxed. The county treasurer shall serve the

notice by sending it by regular first class mail to the person's last known address not later than May 1 of each fiscal year. However, in those instances when May 1 is a Saturday or Sunday, the notice shall be served not later than the first business day of May. The notice shall contain a description of the parcel to be sold which is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. It shall also contain the amount of delinquent taxes for which the parcel is liable each year, the amount of the interest and fees, and the amount of the service fee as provided in section 446.10, subsection 2, all to be incorporated as a single sum. The notice shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

2. Publication of the date, time, and place of the annual tax sale shall be made once by the treasurer in at least one official newspaper in the county as selected by the board of supervisors and designated by the treasurer at least one week, but not more than three weeks, before the day of sale. The publication shall contain a description of the parcel to be sold that is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. All items offered for sale pursuant to section 446.18 may be indicated by an "s" or by an asterisk. The publication shall also contain the name of the person in whose name the parcel to be sold is taxed and the amount delinquent for which the parcel is liable each year, the amount of the interest and fees, and the amount of the service fee as provided in section 446.10, subsection 2, all to be incorporated as a single sum. The publication shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

3. *a.* In addition to the notice required by subsection 1 and the publication required by subsection 2, the treasurer shall send, at least one week but not more than three weeks before the day of sale, a notice of sale in the form prescribed by subsection 1, by regular first class mail to any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor of the parcel who has a recorded lease or memorandum of a recorded lease, and to any other person who has an interest of record in the parcel, if the mortgagee, vendor, lessor, or other person having an interest of record has done both of the following:

(1) Requested on a form prescribed by the treasurer that notice of sale be sent to the person.

(2) Filed the request form with the treasurer at least one month prior to the date of sale, together with a fee of twenty-five dollars per parcel.

*b.* The request for notice is valid for a period of five years from the date of filing with the treasurer. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection.

4. Notice required by subsections 1 and 3 shall be deemed completed when the notice is enclosed in a sealed envelope with the proper postage on the envelope, is addressed to the person entitled to receive it at the person's last known mailing address, and is deposited in a mail receptacle provided by the United States postal service. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

5. If, for good cause, a parcel is not included in the publication specified in subsection 2, notice shall be given by publication or by posting a description of the parcel and the date, time, and place of the tax sale in the treasurer's office for two weeks before the regular or any adjourned tax sale and, at the time of the publication or posting, by mailing the notice required in subsection 1.

[C51, §498; R60, §764; C73, §872 – 874, 3833; C97, §1419; S13, §1419; C24, 27, 31, 35, 39, §7246; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.9]

84 Acts, ch 1221, §6; 86 Acts, ch 1139, §4; 89 Acts, ch 214, §5; 91 Acts, ch 191, §61; 92 Acts, ch 1016, §24; 97 Acts, ch 121, §18; 98 Acts, ch 1107, §28; 99 Acts, ch 4, §2, 4; 2002 Acts, ch 1043, §7, 8; 2003 Acts, ch 44, §64; 2006 Acts, ch 1070, §22; 2011 Acts, ch 25, §143

Code editor directive applied

#### **446.20 Remedies.**

1. *a.* Without limiting the county's rights under section 445.3, once a certificate is issued to a county, a county may collect the total amount due by the alternative remedy provided

in section 445.3 by converting the total amount due to a personal judgment. Entrance of the judgment shall be shown on the county system. Collection of the judgment may then be initiated as provided in section 445.4. The county attorney shall, upon request of the county treasurer, assist in prosecution of action authorized under this section and sections 445.3 and 445.4.

*b.* The remedies associated with tax sale and personal judgment may be simultaneously pursued until such time as the total amount due has been collected or otherwise discharged. If the total amount due is collected pursuant to a personal judgment, the tax sale shall be canceled by the treasurer. If a tax deed is issued, any personal judgment shall be released and a satisfaction of judgment shall be filed with the clerk of the appropriate district court.

2. *a.* If the board or council determines that any property located on a parcel purchased by the county or city pursuant to section 446.19 requires removal, dismantling, or demolition, the board or council shall, at the same time and in the same manner that the notice of expiration of right of redemption is served, cause to be served on the person in possession of the parcel and also upon the person in whose name the parcel is taxed a separate notice stating that if the parcel is not redeemed within the time period specified in the notice of expiration of right of redemption, the property described in the notice shall be removed, dismantled, or demolished. The notice shall further state that the costs of removal, dismantling, or demolition shall be assessed against the person in whose name the parcel is taxed and a lien for the costs shall be placed against any other parcel taxed in that person's name within the county.

*b.* Service of the notice shall also be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memorandum of a recorded lease, and any other person who has an interest of record, at the person's last known address, if the mortgagee, vendor, lessor, or other person has filed a request for notice, as prescribed in section 446.9, subsection 3. The notice shall also be served on any city where the parcel is situated. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

3. This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

91 Acts, ch 191, §72; 92 Acts, ch 1016, §27; 95 Acts, ch 57, §19; 98 Acts, ch 1107, §29; 2006 Acts, ch 1010, §115; 2007 Acts, ch 126, §73; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 447

### TAX REDEMPTION

For definitions applicable to chapter,  
see §445.1

#### **447.8 Redemption after delivery of deed.**

1. *a.* After the delivery of the treasurer's deed, a person entitled to redeem a parcel sold at tax sale shall do so only by an equitable action in the district court of the county where the parcel is located. The action may be maintained only by a person who was entitled to redeem the parcel during the ninety-day redemption period in section 447.12, except that such a person may assign the person's right of redemption or right to maintain the action to another person.

*b.* In order to establish the right to redeem, the person maintaining the action shall be required to prove to the court either that the person maintaining the action or a predecessor in interest was not properly served with notice in accordance with the requirements of sections 447.9 through 447.12, or that the person maintaining the action or a predecessor in interest acquired an interest in or possession of the parcel during the ninety-day redemption period in section 447.12. A person shall not be entitled to maintain such action by claiming

that a different person was not properly served with notice of expiration of right of redemption, if the person seeking to maintain the action, or the person's predecessor in interest, if applicable, was properly served with the notice. A person is not allowed to redeem a parcel sold for delinquent taxes in any other manner after the execution and delivery of the treasurer's deed.

2. The person maintaining the action shall name as defendants all persons claiming an interest in the parcel derived from the tax sale, as shown by the record.

3. If the court determines that notice was properly served, the court shall enter judgment holding that all rights of redemption are terminated and that the validity of the tax title or purported tax title is conclusively established as a matter of law.

4. If the court determines that notice was not properly served and that the person maintaining the action is entitled to redeem, the court shall so order. The order shall determine the rights, claims, and interests of all parties, including liens for taxes and claims for improvements made on or to the parcel by the person claiming under the tax title. The order shall establish the amount necessary to effect redemption. The redemption amount shall include the amount for redemption computed in accordance with section 447.1, including interest computed up to and including the date of payment of the total redemption amount to the clerk of court; the amount of all costs added to the redemption amount in accordance with section 447.13; and, in the event that the person claiming under the tax title has made improvements on or to the parcel after the treasurer's deed was issued, an amount equal to the value of all such improvements. The order shall direct that the person maintaining the action shall pay to the clerk of court, within thirty days after the date of the order, the total redemption amount established in the order.

5. a. Upon timely receipt of the payment, the court shall enter judgment declaring the treasurer's deed to be invalid and determining the resulting rights, claims, and interests of all parties to the action. In its judgment, the court shall direct the clerk of court to deliver the entire amount of the redemption payment to the person who previously claimed title under the treasurer's deed.

b. If the person maintaining the action fails to timely deliver payment of the total redemption amount to the clerk of court, the court shall enter judgment holding that all rights of redemption are terminated and that the validity of the tax title or purported tax title is conclusively established as a matter of law. No subsequent action shall be brought to challenge the treasurer's deed or to recover the parcel.

6. If an affidavit is filed pursuant to section 448.15 and if the time period for filing a claim under section 448.16 expires with no claims having been filed, all persons are thereafter barred and estopped from commencing an action under this section.

[C73, §893; C97, §1440; C24, 27, 31, 35, 39, §7278; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.8]

91 Acts, ch 191, §95; 2005 Acts, ch 34, §19, 26; 2011 Acts, ch 25, §143

2005 amendment to this section takes effect April 19, 2005, and applies to parcels sold at tax sales occurring on or after June 1, 2005; 2005 Acts, ch 34, §26

Code editor directive applied

## CHAPTER 450

### INHERITANCE TAX

#### 450.3 Property included.

The tax hereby imposed shall be collected upon the net market value and shall go into the general fund of the state to be determined as herein provided, of any property passing as follows:

1. By will or under the statutes of inheritance of this or any other state or country.
2. By deed, grant, sale, gift, or transfer made within three years of the death of the grantor or donor, which is not a bona fide sale for an adequate and full consideration in money or

money's worth and which is in excess of the annual gift tax exclusion allowable for each donee under section 2503, subsections (b) and (e), of the Internal Revenue Code. If both spouses consent, a gift made by one spouse to a person who is not the other spouse is considered, for the purposes of this subsection, as made one half by each spouse under the same terms and conditions provided for in section 2513 of the Internal Revenue Code. The net market value of a transfer described in this subsection shall be the net market value determined as of the date of the transfer.

3. By deed, grant, sale, gift or transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. A transfer of property in respect of which the transferor reserves to the transferor a life income or interest shall be deemed to have been intended to take effect in possession or enjoyment at death, provided, that if the transferor reserves to the transferor less than the entire income or interest, the transfer shall be deemed taxable thereunder only to the extent of a like proportion of the value of the property transferred.

4. To the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has within three years of death exercised or released a general power of appointment by a disposition which is of a nature that if it were a transfer of property owned by the decedent, the property would be includable in the decedent's gross estate under this section whether the general power was created before or after the taking effect of this chapter. A transfer involving creation of a general power of appointment shall be treated as a transfer of a fee or equivalent interest in the property subject thereto to the donee of the power. Any transfer involving creation of any other power of appointment shall be treated, except when an election is made under subsection 7, as the transfer of a life estate or term of years in the property subject thereto to the donee of the power and as the transfer of the remainder interests to those who would take if the power is not exercised.

5. Property which is held in joint tenancy by the decedent and any other person or persons or any deposit in banks, or other institution in their joint names and payable to either or to the survivor, except such part as may be proven to have belonged to the survivor; or any interest of a decedent in property owned by a joint stock or other corporate body whereby the survivor or survivors become beneficially entitled to the decedent's interest upon the death of a shareholder. However, if such property is so held by the decedent and the surviving spouse as the only co-owners, one half of such property is not subject to taxation under the provisions of this chapter, but if the surviving spouse proves that the surviving spouse contributed to acquisition of such property an amount, in money or other property, greater than one half of the cost of the property held in joint tenancy, the portion of such property which is not subject to taxation under the provisions of this chapter shall be the proportion which the actual contribution by the surviving spouse is of the total contribution to acquisition of such property. The tax imposed upon the passing of property under the provisions of this subsection shall apply to property held under all such contracts or agreements whether made before or after the taking effect of this chapter.

6. When the decedent shall have disposed of the decedent's estate in any manner to take effect at the decedent's death with a request secret or otherwise that the beneficiary give, pay to, or share the property or any interest therein received from the decedent, with other person or persons, or to so dispose of beneficial interests conferred by the decedent upon the beneficiaries as that the property so passing would be taxable under the provisions of this chapter if passing directly by will or deed from the decedent owner to those to receive the gift from the beneficiary, compliance with such request shall constitute a transfer taxable under the provisions of this chapter, at the highest rate possible in like cases of transfers by will or deed.

7. a. Which qualifies as a qualified terminable interest property as defined in section 2056(b)(7)(B) of the Internal Revenue Code, shall, if an election is made, be treated and considered as passing in fee, or its equivalent, to the surviving spouse in the estate of the donor-grantor. Property on which the election is made shall be included in the gross estate of the surviving spouse and shall be deemed to have passed in fee from the surviving spouse to the persons succeeding to the remainder interest, unless the property was sold, distributed,

or otherwise disposed of prior to the death of the surviving spouse. A sale, disposition, or disposal of the property prior to the death of the surviving spouse shall void the election, and shall subject the property disposed of, less amounts received or retained by the surviving spouse, to tax in the donor-grantor's estate in the same manner as if the tax had been deferred under sections 450.44 through 450.49.

b. Unless the will or trust instrument provides otherwise, the estate of the surviving spouse shall have the right to recover from the persons succeeding to the remainder interests, the additional tax imposed, if any, without interest, on the surviving spouse by reason of the election being made. The amount of tax recovered, if any, shall be a credit in the donee's estate against the tax imposed on the qualified terminable interest property.

c. An election under this subsection can only be made if an election in relation to the qualified terminable interest property is also made for federal estate tax purposes.

d. The director of revenue shall adopt and promulgate all rules necessary for the enforcement and administration of this subsection including the form and manner of making the election.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §7307; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.3]

84 Acts, ch 1240, §1; 85 Acts, ch 148, §2, 3; 85 Acts, ch 230, §12; 86 Acts, ch 1237, §27; 88 Acts, ch 1028, §36; 2003 Acts, ch 95, §3, 24; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143

Code editor directive applied

#### **450.10 Rate of tax.**

The property or any interest therein or income therefrom, subject to the provisions of this chapter, shall be taxed as herein provided:

1. When the property or any interest in property, or income from property, taxable under the provisions of this chapter, passes to the brother or sister, son-in-law, or daughter-in-law, the rate of tax imposed on the individual share so passing shall be as follows:

a. Five percent on any amount up to twelve thousand five hundred dollars.

b. Six percent on any amount in excess of twelve thousand five hundred dollars and up to twenty-five thousand dollars.

c. Seven percent on any amount in excess of twenty-five thousand dollars and up to seventy-five thousand dollars.

d. Eight percent on any amount in excess of seventy-five thousand dollars and up to one hundred thousand dollars.

e. Nine percent on any amount in excess of one hundred thousand dollars and up to one hundred fifty thousand dollars.

f. Ten percent on all sums in excess of one hundred fifty thousand dollars.

2. When the property or interest in property or income from property, taxable under this chapter, passes to a person not included in subsections 1 and 6, the rate of tax imposed on the individual share so passing shall be as follows:

a. Ten percent on any amount up to fifty thousand dollars.

b. Twelve percent on any amount in excess of fifty thousand dollars and up to one hundred thousand dollars.

c. Fifteen percent on all sums in excess of one hundred thousand dollars.

3. When the property or any interest in property or income from property, taxable under the provisions of this chapter, passes in any manner to societies, institutions or associations incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to cemetery associations, including humane societies not organized under the laws of this state, or to resident trustees for uses without this state, the rate of tax imposed shall be ten percent on the entire amount so passing.

4. When the property or any interest in property or income from property, taxable under this chapter, passes to any firm, corporation, or society organized for profit, including fraternal and social organizations which do not qualify for exemption under sections 170(c) and 2055 of the Internal Revenue Code, the rate of tax imposed shall be fifteen percent on the entire amount so passing.

5. When the property or any interest in property, or income from property, taxable under this chapter, passes to any person included under subsection 1, there shall be credited to the tax imposed on the individual share so passing an amount equal to the tax imposed in this state on the decedent on any property, real, personal or mixed, or the proportionate share thereof on property passing to the person taxed hereunder, which can be identified as having been received by the decedent as a share in the estate of any person who died within two years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received. The credit shall not be applicable to taxes on property of the decedent which was not acquired from the prior estate.

6. Property, interest in property, or income passing to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants, is not taxable under this section.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §7313; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.10; 81 Acts, ch 147, §4]

91 Acts, ch 159, §25 – 27; 94 Acts, ch 1046, §11; 97 Acts, ch 1, §3 – 8; 2001 Acts, ch 116, §24, 28; 2011 Acts, ch 34, §101

Subsections 1 – 4 amended

#### **450.22 Administration avoided — inheritance tax duties required — penalty.**

1. When the heirs or persons entitled to inherit the property of an estate subject to tax under this chapter desire to avoid the appointment of a personal representative as provided in section 450.21, and in all instances where real estate is involved and there are no regular probate proceedings, they or one of them shall file under oath the inventories required by section 633.361 and the required reports, perform all the duties required by this chapter of the personal representative, and file the inheritance tax return.

2. However, this section does not apply and a return is not required to be filed even though real estate is part of the assets subject to tax under this chapter, if all of the assets are held in joint tenancy with right of survivorship between husband and wife alone, or if the estate exclusively consists of property held in joint tenancy with the right of survivorship solely by the decedent and individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax and the estate does not have a federal estate tax obligation.

3. *a.* However, this section does not apply and a return is not required to be filed, even though real estate is involved, if the estate does not have a federal estate tax filing obligation and if all the estate's assets are described in any of the following categories:

(1) Assets held in joint tenancy with right of survivorship between husband and wife alone.

(2) Assets held in joint tenancy with right of survivorship solely between the decedent and individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax.

(3) Assets passing by beneficiary designation, pursuant to a trust intended to pass the decedent's property at death or through any other nonprobate transfer solely to individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax.

*b.* This subsection does not apply to interests in an asset or assets that pass to both an individual listed in section 450.9 and to that individual's spouse.

4. If a return is not required to be filed pursuant to subsection 3, and if real estate is involved, one of the individuals with an interest in, or succeeding to an interest in, the real estate shall file an affidavit in the county in which the real estate is located setting forth the legal description of the real estate and the fact that an inheritance tax return is not required pursuant to subsection 3. Anyone with or succeeding to an interest in real estate who willfully fails to file such an affidavit, or who willfully files a false affidavit, is guilty of a fraudulent practice.

5. When this section applies, proceedings for the collection of the tax when a personal

representative is not appointed shall conform as nearly as possible to proceedings under this chapter in other cases.

[S13, §1481-a3; C24, 27, 31, 35, 39, §7328; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.22]

83 Acts, ch 177, §9, 38; 89 Acts, ch 251, §36; 99 Acts, ch 151, §46, 89; 2004 Acts, ch 1073, §30; 2005 Acts, ch 14, §1, 6; 2011 Acts, ch 25, §143

Code editor directive applied

#### **450.94 Return — determination — appeal.**

1. “*Taxpayer*” as used in this section means a person liable for the payment of tax as stated in section 450.5.

2. Unless a return is not required to be filed pursuant to section 450.22, subsection 3, or section 450.53, subsection 1, paragraph “b”, the taxpayer shall file an inheritance tax return on forms to be prescribed by the director of revenue on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is dated, or on or before the last day of the following month if the notice is dated after the twentieth day of a month and before the first day of the following month.

3. If the amount paid is greater than the correct tax, penalty, and interest due, the department shall refund the excess with interest. Interest shall be computed at the rate in effect under section 421.7, under the rules prescribed by the director counting each fraction of a month as an entire month and the interest shall begin to accrue on the first day of the second calendar month following the date of payment or on the date the return was due to be filed or was filed, whichever is the latest. However, the director shall not allow a claim for refund or credit that has not been filed with the department within three years after the tax payment upon which a refund or credit is claimed became due, or one year after the tax payment was made, whichever time is later. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest due or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing, and upon the hearing the director shall determine the correct tax, penalty, and interest or refund due, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director’s decision under section 450.59 within sixty days after the date of the notice of the director’s decision.

4. Payments received must be credited first to the penalty and interest accrued and then to the tax due.

5. a. The amount of tax imposed under this chapter shall be assessed according to one of the following:

(1) Within three years after the return is filed with respect to property reported on the final inheritance tax return.

(2) At any time after the tax became due with respect to property not reported on the final inheritance tax return, but not later than three years after the omitted property is reported to the department on an amended return or on the final inheritance tax return if one was not previously filed.

(3) The period for examination and determination of the correct amount of tax to be reported and due under this chapter is unlimited in the case of failure to file a return or the filing of a false or fraudulent return or affidavit.

b. In addition to the applicable periods of limitations for examination and determination specified in paragraph “a”, subparagraphs (1) and (2), the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter

between the taxpayer and the internal revenue service with respect to the federal estate, gift, or generation skipping transfer tax. In order to begin the running of the six months assessment period, the notice shall be in writing in form sufficient to inform the department of the final disposition of any matter with respect to the federal estate, gift, or generation skipping transfer tax, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

[S13, §1481-a43; C24, 27, 31, 35, 39, §7396; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.94; 81 Acts, ch 131, §17]

83 Acts, ch 177, §34, 38; 84 Acts, ch 1240, §9, 10; 85 Acts, ch 148, §5; 86 Acts, ch 1007, §40; 86 Acts, ch 1241, §45; 89 Acts, ch 285, §9; 91 Acts, ch 159, §28; 94 Acts, ch 1133, §11, 16; 96 Acts, ch 1034, §42; 99 Acts, ch 151, §48, 89; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §34; 2005 Acts, ch 14, §4; 2011 Acts, ch 25, §99

Subsection 5 amended

## CHAPTER 450B

### QUALIFIED USE INHERITANCE TAX

#### **450B.2 Alternate election of value for qualified use.**

1. Notwithstanding section 450.37, the value of qualified real property for the purpose of the tax imposed under chapter 450 may, at the election of the taxpayer, be its value for the use under which it qualifies as prescribed by section 2032A of the Internal Revenue Code. A taxpayer may make an election under this section only if all of the following conditions are met:

a. An election for federal estate tax purposes was made with regard to the qualified real property under section 2032A of the Internal Revenue Code.

b. All persons who signed the agreement referred to in section 2032A(d)(2) of the Internal Revenue Code make the election under this section and sign an agreement with the department of revenue consenting to the application of section 450B.3 with respect to the qualified real property.

c. The total decrease in the value of the qualified real property as a result of the election under this section does not exceed the dollar limitation specified in section 2032A(a)(2) of the Internal Revenue Code.

2. The election under this section shall be made by the taxpayer in the manner as the director of revenue may prescribe by rule. The value for the qualified use under this section shall be the value as determined and accepted for federal estate tax purposes.

3. The definitions and special rules specified in section 2032A(e) of the Internal Revenue Code shall apply with respect to qualified real property for which an election was made under this section except that rules shall be prescribed by the director of revenue in lieu of the regulations promulgated by the secretary of the treasury.

4. The director shall prescribe regulations setting forth the application of this chapter in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business within the meaning of section 6166(b)(1) of the Internal Revenue Code. Such regulations shall conform as nearly as possible with the regulations promulgated by the United States secretary of the treasury in respect to such interests.

[81 Acts, ch 147, §13]

88 Acts, ch 1028, §40; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 452A

## MOTOR FUEL AND SPECIAL FUEL TAXES

This chapter not enacted as a part of this title; transferred from chapter 324 in Code 1993

## DIVISION I

## MOTOR FUEL AND SPECIAL FUEL TAX

**452A.15 Transportation reports — refinery and pipeline and marine terminal reports.**

1. *a.* Every railroad and common carrier or contract carrier transporting motor fuel or special fuel either in interstate or intrastate commerce within this state and every person transporting motor fuel or special fuel by whatever manner into this state shall, subject to penalties for false certificate, report to the department all deliveries of motor fuel or special fuel to points within this state other than refineries or marine or pipeline terminals. If any supplier, restrictive supplier, importer, blender, or distributor is also engaged in the transportation of motor fuel or special fuel for others, the supplier, restrictive supplier, importer, blender, or distributor shall make the same reports as required of common carriers and contract carriers.

*b.* The report shall cover monthly periods and shall show as to each delivery:

- (1) The name and address of the person to whom delivery was actually made.
- (2) The name and address of the originally named consignee, if delivered to any other than the originally named consignee.
- (3) The point of origin, the point of delivery, and the date of delivery.
- (4) The number and initials of each tank car and the number of gallons contained in the tank car, if shipped by rail.
- (5) The name of the boat, barge, or vessel, and the number of gallons contained in the boat, barge, or vessel, if shipped by water.
- (6) The registration number of each tank truck and the number of gallons contained in the tank truck, if transported by motor truck.
- (7) The manner, if delivered by other means, in which the delivery is made.
- (8) Additional information relative to shipments of motor fuel or special fuel as the department may require.

*c.* If a person required under this section to file transportation reports is a licensee under this division and if the information required in the transportation report is contained in any other report rendered by the person under this division, a separate transportation report of that information shall not be required.

2. A person operating storage facilities at a refinery or at a terminal in this state shall make a monthly accounting to the department of all motor fuel, alcohol, and undyed special fuel withdrawn from the refinery and all motor fuel, alcohol, and undyed special fuel delivered into, withdrawn from, and on hand in the refinery or terminal.

3. Persons operating storage facilities at a nonterminal location shall file a monthly report with the department accounting for all motor fuel, alcohol, and special fuel that is delivered into, stored within, withdrawn from, or sold from the storage facility.

4. The reports required in this section shall be for information purposes only and the department may in its discretion waive the filing of any of these reports not necessary for proper administration of this division. The reports required in this section shall be certified under penalty for false certificate and filed with the department within the time allowed for filing of suppliers' and restrictive suppliers' returns of motor fuel or special fuel withdrawn from a terminal within this state or imported into this state.

5. The director may impose a civil penalty against any person who fails to file the reports or keep the records required under this section. The penalty shall be one hundred dollars for the first violation and shall increase by one hundred dollars for each additional violation occurring in the calendar year in which the first violation occurred.

6. The director may require by rule that reports be filed by electronic transmission.

[C27, 31, §5093-a6, -b1; C35, §5093-f25, -f26, -f27; C39, §5093.25 – 5093.27; C46, 50, 54, §324.46 – 324.48; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.15]

C93, §452A.15

95 Acts, ch 155, §23; 99 Acts, ch 151, §58, 89; 2002 Acts, ch 1150, §17; 2002 Acts, ch 1151, §24 – 26; 2011 Acts, ch 25, §143

Code editor directive applied

#### **452A.19 Revocation of refund permit.**

1. Any refund permit issued under this chapter may be revoked by the department for any of the following violations, but only after the holder of the permit has been given reasonable notice of the intention to revoke the permit and reasonable opportunity to be heard:

a. Using in support of a refund claim a false or altered invoice.

b. Making a false statement in a claim for refund or in response to an investigation by the department of a claim for refund.

c. Refusal to submit the holder's books and records for examination by the department.

2. A person whose refund permit is revoked for cause may not obtain another refund permit for a period of one year after the revocation. A refund permit under which a refund is not claimed for a period of three years or a refund permit whose holder has moved from the county in which the holder resided at the time of application for the permit is invalid subject to reinstatement or issuance of a new permit upon application as provided in section 452A.18.

[C27, 31, §5093-a4, -a6, -a7, -a8; C35, §5093-f22, -f31; C39, §5093.22, 5093.31; C46, 50, 54, §324.43, 324.58, 324.59; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.19]

86 Acts, ch 1241, §7

C93, §452A.19

2002 Acts, ch 1150, §19; 2011 Acts, ch 25, §143

Code editor directive applied

#### **452A.21 Refund — credit.**

1. Persons not licensed under this division who blend motor fuel and alcohol to produce ethanol blended gasoline may file for a refund for the difference between taxes paid on the motor fuel purchased to produce ethanol blended gasoline and the tax due on the ethanol blended gasoline blended. If, during any month, a person licensed under this division uses tax paid motor fuel to blend ethanol blended gasoline and the refund otherwise due under this section is greater than the licensee's total tax liability for that month, the licensee is entitled to a credit. The claim for credit shall be filed as part of the return required by section 452A.8.

2. In order to obtain the refund established by this section, the person shall do all of the following:

a. Obtain a blender's permit as provided in section 452A.18.

b. File a refund claim containing the information as required by the department and certified by the claimant under penalty for false certificate.

c. Retain invoices meeting the requirements of section 452A.17, subsection 1, paragraph "b", subparagraph (3), for the motor fuel purchased.

d. Retain invoices for the purchase of alcohol.

3. A refund shall not be issued unless the claim is filed within three years following the end of the month during which the ethanol blended gasoline was actually blended. An income tax credit is not allowed under this section.

[C81, §324.21]

91 Acts, ch 87, §8, 9

C93, §452A.21

95 Acts, ch 155, §26, 44; 96 Acts, ch 1066, §12, 21; 99 Acts, ch 151, §64, 65, 89; 2002 Acts, ch 1150, §20; 2011 Acts, ch 25, §143

Code editor directive applied

DIVISION II  
MOTOR FUEL GALLONAGE —  
FLEXIBLE FUEL VEHICLES

**452A.33 Reporting requirements.**

1. *a.* Each retail dealer shall report its total motor fuel gallonage for a determination period as follows:

(1) Its total gasoline gallonage and its total ethanol gallonage, including for each classification and subclassification as provided in section 452A.31.

(2) Its total diesel fuel gallonage and its total biodiesel gallonage, including for each classification and subclassification as provided in section 452A.31.

*b.* The report shall include information required in paragraph “a” on a company-wide and site-by-site basis, as required by the department.

(1) The information submitted on a company-wide basis shall include the total motor fuel gallonage, including for each classification and subclassification, sold and dispensed by the retail dealer as provided in paragraph “a” for all retail motor fuel sites from which the retail dealer sells and dispenses motor fuel.

(2) The information submitted on a site-by-site basis shall include the total motor fuel gallonage, including for each classification and subclassification, sold and dispensed by the retail dealer as provided in paragraph “a” separately for each retail motor fuel site from which the retail dealer sells and dispenses motor fuel.

*c.* The retail dealer shall prepare and submit the report in a manner and according to procedures required by the department. The department may require that retail dealers report to the department on an annual, quarterly, or monthly basis.

*d.* The information included in a report submitted by a retail dealer is deemed to be a trade secret, protected as a confidential record pursuant to section 22.7.

2. On or before April 1 the department shall deliver a report to the governor and the legislative services agency. The report shall compile information reported by retail dealers to the department as provided in this section and shall at least include all of the following:

*a.* (1) The aggregate gasoline gallonage for the previous determination period, including for all classifications and subclassifications as provided in section 452A.31.

(2) The aggregate diesel fuel gallonage for the previous determination period, including for all classifications and subclassifications as provided in section 452A.31.

*b.* (1) The aggregate ethanol distribution percentage for the previous determination period.

(2) The aggregate biodiesel distribution percentage for the previous determination period.

*c.* The report shall not provide information regarding motor fuel or biofuel which is sold and dispensed by an individual retail dealer or at a particular retail motor fuel site. The report shall not include a trade secret protected as a confidential record pursuant to section 22.7.

3. On or before February 1 of each year, the state department of transportation shall deliver a report to the governor and the legislative services agency providing information regarding flexible fuel vehicles registered in this state during the previous determination period. The information shall state all of the following:

*a.* The aggregate number of flexible fuel vehicles.

*b.* Of the aggregate number of flexible fuel vehicles, all of the following:

(1) The number of flexible fuel vehicles according to the year of manufacture.

(2) The number of passenger vehicles and the number of passenger vehicles according to the year of manufacture.

(3) The number of light pickup trucks and the number of light pickup trucks according to the year of manufacture.

2006 Acts, ch 1142, §56; 2008 Acts, ch 1184, §63; 2011 Acts, ch 113, §10, 13, 14

2011 amendment to subsection 1, paragraph b, takes effect May 26, 2011, and applies retroactively to tax years beginning on and after January 1, 2011; 2011 Acts, ch 113, §13, 14

Subsection 1, paragraph b stricken and rewritten

DIVISION IV  
PROVISIONS COMMON TO TAXES IMPOSED  
UNDER DIVISIONS I AND III

**452A.62 Inspection of records.**

1. The department of revenue or the state department of transportation, whichever is applicable, is hereby given the authority within the time prescribed for keeping records to do the following:

a. To examine, during the usual business hours of the day, the records, books, papers, receipts, invoices, storage tanks, and any other equipment of any of the following:

(1) A distributor, supplier, restrictive supplier, importer, exporter, blender, terminal operator, nonterminal storage facility, common carrier, or contract carrier, pertaining to motor fuel or undyed special fuel withdrawn from a terminal or a nonterminal storage facility, or brought into this state.

(2) A licensed compressed natural gas or liquefied petroleum gas dealer, user, or person supplying compressed natural gas or liquefied petroleum gas to a licensed compressed natural gas or liquefied petroleum gas dealer or user.

(3) An interstate operator of motor vehicles to verify the truth and accuracy of any statement, report, or return, or to ascertain whether or not the taxes imposed by this chapter have been paid.

(4) Any person selling fuels that can be used for highway use.

b. To examine the records, books, papers, receipts, and invoices of any distributor, supplier, restrictive supplier, importer, blender, exporter, terminal operator, nonterminal storage facility, licensed compressed natural gas or liquefied petroleum gas dealer or user, or any other person who possesses fuel upon which the tax has not been paid to determine financial responsibility for the payment of the taxes imposed by this chapter.

2. If a person under this section refuses access to pertinent records, books, papers, receipts, invoices, storage tanks, or any other equipment, the appropriate state agency shall certify the names and facts to any court of competent jurisdiction, and the court shall enter an order to enforce this chapter.

[C27, 31, §5093-a6; C35, §5093-f26, -f29; C39, §5093.26, 5093.29; C46, 50, 54, §324.47, 324.52; C58, 62, 66, §324.61; C71, 73, 75, 77, 79, 81, §324.62]

C93, §452A.62

95 Acts, ch 155, §31, 44; 2002 Acts, ch 1151, §28; 2003 Acts, ch 145, §286; 2005 Acts, ch 140, §65, 66; 2011 Acts, ch 25, §143

Code editor directive applied

**452A.74 Unlawful acts — penalty.**

1. It shall be unlawful:

a. For any person to knowingly fail, neglect, or refuse to make any required return or statement or pay over fuel taxes required under this chapter.

b. For any person to knowingly make any false, incorrect, or materially incomplete record required to be kept or made under this chapter, to refuse to offer required books and records to the department of revenue or the state department of transportation for inspection on demand or to refuse to permit the department of revenue or the state department of transportation to examine the person's motor fuel or undyed special fuel storage tanks and handling or dispensing equipment.

c. For any seller to issue or any purchaser to receive and retain any incorrect or false invoice or sales ticket in connection with the sale or purchase of motor fuel or undyed special fuel.

d. For any claimant to alter any invoice or sales ticket, whether the invoice or sales ticket is to be used to support a claim for refund or income tax credit or not, provided, however, if a claimant's refund permit has been revoked for cause as provided in section 452A.19, the revocation shall serve as a bar to prosecution for violation of this paragraph.

e. For any person to act as a supplier, restrictive supplier, importer, exporter, blender, or compressed natural gas or liquefied petroleum gas dealer or user without the required license.

f. For any person to use motor fuel, undyed special fuel, or dyed special fuel in the fuel supply tank of a vehicle with respect to which the person knowingly has not paid or had charged to the person's account with a distributor or dealer, or with respect to which the person does not, within the time required in this chapter, report and pay the applicable fuel tax.

g. For any licensed compressed natural gas or liquefied petroleum gas dealer or user to dispense compressed natural gas or liquefied petroleum gas into the fuel supply tank of any motor vehicle without collecting the fuel tax.

2. Any delivery of compressed natural gas or liquefied petroleum gas to a compressed natural gas or liquefied petroleum gas dealer or user for the purpose of evading the state tax on compressed natural gas or liquefied petroleum gas, into facilities other than those licensed above knowing that the fuel will be used for highway use shall constitute a violation of this section. Any compressed natural gas or liquefied petroleum gas dealer or user for purposes of evading the state tax on compressed natural gas or liquefied petroleum gas, who allows a distributor to place compressed natural gas or liquefied petroleum gas for highway use in facilities other than those licensed above, shall also be deemed in violation of this section.

3. A person found guilty of an offense specified in this section is guilty of a fraudulent practice. Prosecution for an offense specified in this section shall be commenced within six years following the date of commission of the offense.

[C27, 31, §5093-a4, -a6, -a7, -a8; C35, §5093-f31; C39, §5093.31; C46, 50, 54, §324.58; C58, 62, 66, §324.73; C71, 73, 75, 77, 79, 81, §324.74]

83 Acts, ch 160, §1

C93, §452A.74

95 Acts, ch 155, §35, 44; 96 Acts, ch 1066, §17, 18, 21; 99 Acts, ch 152, §35, 40; 2003 Acts, ch 145, §286; 2011 Acts, ch 34, §102

See §452A.19

Fraudulent practices, see §714.8 through 714.14

Section amended

## CHAPTER 453A

### CIGARETTE AND TOBACCO TAXES

This chapter not enacted as a part of this title;  
transferred from chapter 98 in Code 1993

#### DIVISION I

#### CIGARETTES

##### **453A.2 Persons under legal age.**

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

2. A person under eighteen years of age shall not smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes.

3. Possession of cigarettes or tobacco products by an individual under eighteen years of age does not constitute a violation under this section if the individual under eighteen years of age possesses the cigarettes or tobacco products as part of the individual's employment and the individual is employed by a person who holds a valid permit under this chapter or who lawfully offers for sale or sells cigarettes or tobacco products.

4. The alcoholic beverages division of the department of commerce, a county, or a city may directly enforce this section in district court and initiate proceedings pursuant to section

453A.22 before a permit-issuing authority which issued the permit against a permit holder violating this section.

5. Payment and distribution of court costs, fees, and fines in a prosecution initiated by a city or county shall be made as provided in chapter 602 for violation of a city or county ordinance.

6. If a county or a city has not assessed a penalty pursuant to section 453A.22, subsection 2, for a violation of subsection 1, within sixty days of the adjudication of the violation, the matter shall be transferred to and be the exclusive responsibility of the alcoholic beverages division of the department of commerce. Following transfer of the matter, if the violation is contested, the alcoholic beverages division of the department of commerce shall request an administrative hearing before an administrative law judge, assigned by the division of administrative hearings of the department of inspections and appeals in accordance with the provisions of section 10A.801, to adjudicate the matter pursuant to chapter 17A.

7. A tobacco compliance employee training fund is created in the office of the treasurer of state. The fund shall consist of civil penalties assessed by the alcoholic beverages division of the department of commerce under section 453A.22 for violations of this section. Moneys in the fund are appropriated to the alcoholic beverages division of the department of commerce and shall be used to develop and administer the tobacco compliance employee training program under section 453A.5. Moneys deposited in the fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. Notwithstanding section 8.33, any unexpended balance in the fund at the end of the fiscal year shall be retained in the fund.

8. *a.* A person shall not be guilty of a violation of this section if conduct that would otherwise constitute a violation is performed to assess compliance with cigarette and tobacco products laws if any of the following applies:

(1) The compliance effort is conducted by or under the supervision of law enforcement officers.

(2) The compliance effort is conducted with the advance knowledge of law enforcement officers and reasonable measures are adopted by those conducting the effort to ensure that use of cigarettes or tobacco products by individuals under eighteen years of age does not result from participation by any individual under eighteen years of age in the compliance effort.

*b.* For the purposes of this subsection, “*law enforcement officer*” means a peace officer as defined in section 801.4 and includes persons designated under subsection 4 to enforce this section.

[C97, §5005, 5006; C24, 27, 31, 35, 39, §1553; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.2]

87 Acts, ch 83, §1; 91 Acts, ch 240, §3

C93, §453A.2

94 Acts, ch 1172, §37; 2000 Acts, ch 1105, §2; 2001 Acts, ch 116, §25; 2003 Acts, ch 26, §1, 5, 7; 2003 Acts, ch 179, §130, 159; 2003 Acts, 1st Ex, ch 2, §29, 33; 2011 Acts, ch 25, §143; 2011 Acts, ch 63, §13

For scheduled fines applicable to violations of subsections 1 and 2, see §805.8C, subsection 3, paragraphs b and c  
Code editor directive applied  
Subsections 4, 6, and 7 amended

#### **453A.8 Sale and exchange of stamps.**

1. Stamps shall be sold by and purchased from the department. The department shall sell stamps to the holder of a state distributor’s or manufacturer’s permit which has not been revoked and to no other person. Stamps shall be sold to the permit holders at a discount of two percent of the face value. Stamps shall be sold in unbroken rolls of thirty thousand stamps or unbroken lots of any other form authorized by the director.

2. Orders for cigarette tax stamps, including the payment for such stamps, shall be sent direct to the department on a form to be prescribed by the director, except as provided in subsection 6.

3. *a.* The department may make refunds on unused stamps to the person who purchased the stamps at a price equal to the amount paid for the stamps when proof satisfactory to the

department is furnished that any stamps upon which a refund is requested were properly purchased from the department and paid for by the person requesting the refund. In making the refund, the department shall prepare a voucher showing the amount of refund due and to whom payable and shall authorize the department of administrative services to issue a warrant upon order of the director to pay the refund out of any funds in the state treasury not otherwise appropriated.

b. The director may promulgate rules providing for refunds of the face value of stamps, less any discount, affixed to any cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss. Refund shall be made in the same manner as provided for unused stamps.

4. The department may in the enforcement of this division recall any stamps which have been sold by the department and which have not been used, and the department shall, upon receipt of recalled stamps, issue a refund for tax stamps surrendered for the face value of the stamps less the amount of the discount. The purchaser of stamps shall surrender any unused stamps for refund upon demand of the department.

5. The department shall keep a record of all stamps sold by the department and of all refunds made by the department.

6. The director may authorize a bank as defined by section 524.103, subsection 8, to sell stamps. A bank authorized to sell stamps shall comply with all of the requirements governing the sale of stamps by the department. Section 453A.12 shall apply to any bank authorized to sell stamps.

[C24, §1574, 1575; C27, 31, 35, §1574-al, 1575; C39, §1556.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.8; 81 Acts, ch 43, §2]

83 Acts, ch 165, §2; 92 Acts, ch 1163, §22

C93, §453A.8

99 Acts, ch 151, §76, 89; 2004 Acts, ch 1101, §60; 2011 Acts, ch 25, §143

Inventory tax, §453A.40

Code editor directive applied

#### **453A.13 Distributor's, wholesaler's, and retailer's permits.**

1. *Permits required.* Every distributor, wholesaler, cigarette vendor, and retailer, now engaged or who desires to become engaged in the sale or use of cigarettes, upon which a tax is required to be paid, shall obtain a state or retail cigarette permit as a distributor, wholesaler, cigarette vendor, or retailer, as the case may be.

##### *2. Issuance or denial.*

a. The department shall issue state permits to distributors, wholesalers, and cigarette vendors subject to the conditions provided in this division. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities.

b. The department may deny the issuance of a permit to a distributor, wholesaler, vendor or retailer who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent on any delinquent tax, penalty or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest or penalty of the applicant corporation.

c. The department, or a city or county, shall submit a duplicate of any application for a retail permit and any retail permit issued by the entity under this subsection to the alcoholic beverages division of the department of commerce within thirty days of the issuance. The alcoholic beverages division of the department of commerce shall submit the current list of all retail permits issued to the Iowa department of public health by the first day of each quarter of a state fiscal year.

##### *3. Fees — expiration.*

a. All permits provided for in this division shall expire on June 30 of each year. A permit shall not be granted or issued until the applicant has paid for the period ending June 30 next, to the department or the city or county granting the permit, the fees provided for in

this division. The annual state permit fee for a distributor, cigarette vendor, and wholesaler is one hundred dollars when the permit is granted during the months of July, August, or September. However, whenever a state permit holder operates more than one place of business, a duplicate state permit shall be issued for each additional place of business on payment of five dollars for each duplicate state permit, but refunds as provided in this division do not apply to any duplicate permit issued.

b. The fee for retail permits is as follows when the permit is granted during the months of July, August, or September:

- (1) In places outside any city, fifty dollars.
- (2) In cities of less than fifteen thousand population, seventy-five dollars.
- (3) In cities of fifteen thousand or more population, one hundred dollars.

c. If any permit is granted during the months of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the months of January, February, or March, one-half of the maximum schedule, and if granted during the months of April, May, or June, one-fourth of the maximum schedule.

4. *Refunds.*

a. An unrevoked permit for which the holder has paid the full annual fee may be surrendered during the first nine months of said year to the officer issuing it, and the department, or the city or county granting the permit shall make refunds to the said holder as follows:

(1) Three-fourths of the annual fee if the surrender is made during July, August, or September.

(2) One-half of the annual fee if the surrender is made during October, November, or December.

(3) One-fourth of the annual fee if the surrender is made during January, February, or March.

b. An unrevoked permit for which the holder has paid three-fourths of a full annual fee may be so surrendered during the first six months of the period covered by said payment and the said department, city or county shall make refunds to the holder as follows:

(1) A sum equal to one-half of an annual fee if the surrender is made during October, November or December.

(2) A sum equal to one-fourth of an annual fee if the surrender is made during January, February or March.

c. An unrevoked permit for which the holder has paid one-half of a full annual fee may be surrendered during the first three months of the period covered by that payment, and the department, city or county, shall refund to the holder a sum equal to one-fourth of an annual fee.

5. *Application — bond.* Permits shall be issued only upon applications accompanied by the fee indicated above, and by an adequate bond as provided in section 453A.14, and upon forms furnished by the department upon written request. The failure to furnish such forms shall be no excuse for the failure to file the forms unless absolute refusal is shown. The forms shall set forth all of the following:

a. The manner under which the distributor, wholesaler, or retailer, transacts or intends to transact such business as a distributor, wholesaler, or retailer.

b. The principal office, residence, and place of business where the permit is to apply.

c. If the applicant is not an individual, the principal officers or members and their addresses.

d. Any other information as the director shall by rules prescribe.

6. *No sales without permit.* No distributor, wholesaler, cigarette vendor, or retailer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is unrevoked and unexpired.

7. *Number of permits — trucks.* An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesaler, or retailer, excepting that no permit need be obtained for a delivery or sales truck of a distributor or wholesaler holding a permit, provided that the director may by regulation require that said truck bear the distributor's or wholesaler's name, and that the permit number of the place of business

for and from which it operates be conspicuously displayed on the outside of the body of the truck, immediately under the name.

8. *Group business.* Any person who operates both as a distributor and wholesaler in the same place of business shall only be required to obtain a state permit for the particular place of business where such operation of said business is conducted. A separate retail permit, however, shall be required if any distributor or wholesaler sells cigarettes at both retail and wholesale.

9. *Permit — form and contents.* Each permit issued shall describe clearly the place of business for which it is issued, shall be nonassignable, consecutively numbered, designating the kind of permit, and shall authorize the sale of cigarettes in this state subject to the limitations and restrictions herein contained. The retail permits shall be upon forms furnished by the department or on forms made available or approved by the department.

10. *Permit displayed.* The permit shall, at all times, be publicly displayed by the distributor, wholesaler, or retailer at the place of business so as to be easily seen by the public and the persons authorized to inspect the place of business. The proprietor or keeper of any building or place where cigarettes and other tobacco products are kept for sale, or with intent to sell, shall upon request of any agent of the department or any peace officer exhibit the permit. A refusal or failure to exhibit the permit is prima facie evidence that the cigarettes or other tobacco products are kept for sale or with intent to sell in violation of this division.

[S13, §5007-a; C24, 27, §1557, 1558, 1560, 1563, 1564, 1584; C31, 35, §1557, 1558, 1560, 1563, 1563-d1, 1564, 1584; C39, §1556.08; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.13]

86 Acts, ch 1007, §5; 86 Acts, ch 1241, §1

C93, §453A.13

94 Acts, ch 1165, §38; 2000 Acts, ch 1105, §5; 2007 Acts, ch 186, §34, 35; 2011 Acts, ch 25, §48; 2011 Acts, ch 63, §14

Subsection 2, paragraph c amended

Subsections 3 and 4 amended

#### **453A.14 Bonds.**

1. No state or manufacturer's permit shall be issued until the applicant files a bond, with good and sufficient surety, to be approved by the director, which bond shall be in favor of the state and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the provisions of this division. The bonds shall be on forms prescribed by the director and in the following amounts:

a. State permit, not less than five hundred dollars.

b. Manufacturer's permit, not less than five thousand dollars.

2. A person shall not engage in interstate business unless the person files a bond, with good and sufficient surety in an amount of not less than one thousand dollars. The amount of the bond required of the person shall be fixed by the director, subject to the minimum limitation provided in this section. The bond is subject to approval by the director and shall be payable to the state in Des Moines, Polk county, and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the person for violation of any of the requirements of this division affecting the person, on a form prescribed by the director.

3. An additional bond or a new bond may be required by the director at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond, or new bond, shall be supplied within ten days after demand. On failure to supply a new bond or additional bond within ten days after demand, the director may cancel any existing bond made and secured by and for the person. If the bond is canceled the person shall within forty-eight hours after receiving cigarettes or forty-eight hours after the cancellation, excluding Sundays and legal holidays, cause any cigarettes in the person's possession to have the requisite amount of stamps affixed to represent the tax.

[C24, 27, 31, 35, §1561, 1562; C39, §1556.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.14]

C93, §453A.14

2011 Acts, ch 25, §100

Subsection 1, unnumbered paragraph 1 amended  
Subsection 1, unnumbered paragraph 2 stricken

**453A.22 Revocation — suspension — civil penalty.**

1. If a person holding a permit issued by the department under this division, including a retailer permit for railway car, has willfully violated section 453A.2, the department shall revoke the permit upon notice and hearing. If the person violates any other provision of this division, or a rule adopted under this division, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the department may be held at a site in the state as the department may direct. The notice shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

2. If a retailer or employee of a retailer has violated section 453A.2 or section 453A.36, subsection 6, the department or local authority, or the alcoholic beverages division of the department of commerce following transfer of the matter to the alcoholic beverages division of the department of commerce pursuant to section 453A.2, subsection 6, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

a. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen days.

b. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars or the retailer's permit shall be suspended for a period of thirty days. The retailer may select its preference in the penalty to be applied under this paragraph.

c. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of thirty days.

d. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of sixty days.

e. For a fifth violation within a period of four years, the retailer's permit shall be revoked.

3. If an employee of a retailer violates section 453A.2, subsection 1, the retailer shall not be assessed a penalty under subsection 2, and the violation shall be deemed not to be a violation of section 453A.2, subsection 1, for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 2, if the employee holds a valid certificate of completion of the tobacco compliance employee training program pursuant to section 453A.5 at the time of the violation. A retailer may assert only once in a four-year period the bar under this subsection against assessment of a penalty pursuant to subsection 2, for a violation of section 453A.2, that takes place at the same place of business location.

4. Reserved.

5. If a permit is revoked a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority.

6. Notwithstanding subsection 5, if a retail permit is suspended or revoked under this section, the suspension or revocation shall only apply to the place of business at which the

violation occurred and shall not apply to any other place of business to which the retail permit applies but at which the violation did not occur.

7. The department or local authority shall report the suspension or revocation of a retail permit under this section to the alcoholic beverages division of the department of commerce within thirty days of the suspension or revocation of the retail permit.

8. For the purposes of this section, “retailer” means retailer as defined in sections 453A.1 and 453A.42 and “retail permit” includes permits issued to retailers under division I or division II of this chapter.

[C24, 27, 31, 35, §1559; C39, §1556.17; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.22] 86 Acts, ch 1007, §6; 86 Acts, ch 1241, §2; 89 Acts, ch 251, §1; 91 Acts, ch 240, §5 C93, §453A.22

2000 Acts, ch 1105, §6, 7; 2000 Acts, ch 1232, §71, 95; 2003 Acts, ch 26, §3 – 7; 2005 Acts, ch 93, §3; 2006 Acts, ch 1030, §41; 2011 Acts, ch 63, §15, 16

Subsection 2, unnumbered paragraph 1 amended

Subsection 7 amended

#### **453A.35 Tax and fees paid to general fund — standing appropriation to health care trust fund.**

1. a. With the exception of revenues credited to the health care trust fund pursuant to paragraph “b”, the proceeds derived from the sale of stamps and the payment of taxes, fees, and penalties provided for under this chapter, and the permit fees received from all permits issued by the department, shall be credited to the general fund of the state.

b. Of the revenues generated from the tax on cigarettes pursuant to section 453A.6, subsection 1, and from the tax on tobacco products as specified in section 453A.43, subsections 1, 2, 3, and 4, the first one hundred six million sixteen thousand four hundred dollars shall be credited to the health care trust fund created in section 453A.35A.

2. All permit fees provided for in this chapter and collected by cities in the issuance of permits granted by the cities shall be paid to the treasurer of the city where the permit is effective, or to another city officer as designated by the council, and credited to the general fund of the city. Permit fees so collected by counties shall be paid to the county treasurer.

[C24, 27, 31, 35, §1569; C39, §1556.30; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.35] 83 Acts, ch 123, §51, 209

C93, §453A.35

2007 Acts, ch 17, §5, 12; 2009 Acts, ch 182, §62; 2010 Acts, ch 1192, §82; 2011 Acts, ch 131, §96, 158

Subsection 1 amended

#### **453A.35A Health care trust fund.**

1. A health care trust fund is created in the office of the treasurer of state. The fund consists of the revenues generated from the tax on cigarettes pursuant to section 453A.6, subsection 1, and from the tax on tobacco products as specified in section 453A.43, subsections 1, 2, 3, and 4, that are credited to the health care trust fund, annually, pursuant to section 453A.35. Moneys in the fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53 relating to generally accepted accounting principles. Moneys in the fund shall be used only as specified in this section and shall be appropriated only for the uses specified. Moneys in the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. Moneys in the fund shall be used only for purposes related to health care, substance abuse treatment and prevention, and tobacco use prevention, cessation, and control.

2007 Acts, ch 17, §6, 12; 2011 Acts, ch 131, §97, 158

Subsection 1 amended

DIVISION II  
CIGARS AND OTHER TOBACCOS

**453A.44 Licenses — distributors, subjobbers.**

1. No person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received a license from the director to engage in that business at that place of business.

2. Every application for such a license shall be made on a form prescribed by the director and shall state the name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the director may require for the purpose of the administration of this division.

3. A person without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for a license as a distributor, be granted a license by the director, and thereafter be subject to all the provisions of this division and entitled to act as a licensed distributor.

4. *a.* Each application for a distributor's license shall be accompanied by a fee of one hundred dollars, except that an applicant holding a permit pursuant to division I of this chapter shall not be required to pay an additional fee. The application shall be accompanied by a corporate surety bond issued by a surety licensed to do business in this state, in the sum of one thousand dollars, conditioned upon the true and faithful compliance by the distributor with all the provisions of this division and the payment when due of all taxes, penalties and accrued interest arising in the ordinary course of business or by reason of any delinquent money which may be due the state of Iowa. This bond shall be in a form to be fixed by the director and approved by the attorney general. Whenever it is the opinion of the director that the bond given by a licensee is inadequate in amount to fully protect the state, the director shall require either an increase in the amount of said bond or additional bond, in such amount as the director deems sufficient. Any bond required by this division, or a reissue thereof, or a substitute therefor, shall be kept in full force and effect during the entire period covered by the license.

*b.* A separate application for license shall be made for each place of business where a distributor proposes to engage in business as such under this division.

5. Each application for a subjobber's license shall be accompanied by a fee of ten dollars, except that no applicant holding a permit pursuant to division I of this chapter shall be required to pay an additional fee.

6. A distributor or subjobber applying for a license between January 1 and June 30 of any year shall be required to pay only one-half of the license fee provided for herein.

7. The director, upon receipt of the application (and bond, in the case of the distributor) in proper form, and payment of the license fee required by subsection 4 or subsection 5, shall unless otherwise provided by this division, issue the applicant a license in form as prescribed by the director, which license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business shown in the application. The director shall assign a permit number to each person licensed as a distributor at the time of issuance of the person's first license, which shall be inscribed upon all licenses issued to that distributor.

8. Each license shall expire on June 30 following its date of issue unless sooner revoked by the director or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the director.

9. No license shall be transferable to any other person.

10. The director may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of any of the provisions of this division, or any other act applicable to the sale of tobacco products, or any rule or regulations promulgated by the director in

furtherance of this division. No license shall be revoked, canceled, or suspended except after notice and a hearing by the director as provided in section 453A.48.

11. No license shall be issued under this division to any person within one year of the date of final determination of a revocation of any previous license held by the person.

12. When the surety upon any bond issued pursuant to the provisions of this division shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of the person bonded under this division, such surety shall be subrogated to all the rights of the state in connection with the transaction wherein such loss occurred.

[C71, 73, 75, 77, 79, 81, §98.44]

89 Acts, ch 251, §3; 90 Acts, ch 1232, §1

C93, §453A.44

94 Acts, ch 1165, §39; 2011 Acts, ch 25, §143

Code editor directive applied

#### **453A.45 Licensees, duties.**

1. *a.* Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

*b.* When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, an invoice of those sales is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least three years after the date of the documents or the date of the entries appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine if all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making the examination, the license of the distributor at that premises is subject to revocation by the director.

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The person shall preserve legible copies of all these invoices for three years from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each invoice for three years from the date of purchase. Invoices shall be available for inspection by the director or the director's authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for three years from the date of delivery of the tobacco products.

5. *a.* The transportation of tobacco products into this state by means other than common carrier must be reported to the director within thirty days with the following exceptions:

(1) The transportation of not more than fifty cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

(2) Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 453A.44, or tobacco products sold by such person to a retailer in this state.

b. The report shall be made on forms provided by the director or the director may require by rule that the report be filed by electronic transmission.

c. Common carriers transporting tobacco products into this state shall file with the director reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 554. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month; the date, point of origin, point of delivery, name of consignee, description and quantity of tobacco products delivered, and such information as the director may otherwise require.

d. Any person who fails or refuses to transmit to the director the required reports or whoever refuses to permit the examination of the records by the director shall be guilty of a serious misdemeanor.

[C71, 73, 75, 77, 79, 81, §98.45]

87 Acts, ch 199, §1

C93, §453A.45

99 Acts, ch 151, §82, 89; 2004 Acts, ch 1073, §46, 47; 2007 Acts, ch 186, §47; 2011 Acts, ch 25, §143

Code editor directive applied

#### **453A.46 Distributors, monthly returns — interest, penalties.**

1. a. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; made, manufactured, or fabricated in this state for sale in this state; and any other information the director may require. Every licensed distributor outside this state shall in like manner file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers and any other information the director may require. Returns shall be made upon forms furnished or made available in electronic form and prescribed by the director and shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within three years after the return is filed or within three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

b. The three-year limitation period may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the extension period and the tax period to which the extension applies. The agreement must also stipulate that a claim for refund may be filed by the taxpayer at any time during the extension period.

2. a. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

b. The director may reduce or abate interest when in the director's opinion the facts warrant the reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

3. In addition to the tax or additional tax, the taxpayer shall also pay a penalty as provided in section 421.27 and be subject to the civil penalties set forth in sections 421.27; 453A.31, subsection 1, paragraph "b"; and 453A.50, subsection 3, as applicable.

4. The department shall notify any person assessed pursuant to this section by sending a

written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

5. The director may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under this division.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 453A.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. Within three years after the return is filed or within three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

7. The director may require by rule that returns be filed by electronic transmission.

[C71, 73, 75, 77, 79, 81, §98.46]

84 Acts, ch 1173, §2; 86 Acts, ch 1007, §9; 87 Acts, ch 199, §2, 3; 90 Acts, ch 1172, §2  
C93, §453A.46

94 Acts, ch 1133, §14, 16; 99 Acts, ch 151, §83, 89; 2004 Acts, ch 1073, §48; 2007 Acts, ch 186, §48, 49; 2008 Acts, ch 1184, §65; 2011 Acts, ch 25, §143

Code editor directive applied

#### **453A.47A Retailers — permits — fees — penalties.**

1. *Permits required.* A person shall not engage in the business of a retailer of tobacco products at any place of business without first having received a permit as a tobacco products retailer.

2. *No sales without permit.* A retailer shall not sell any tobacco products until an application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is not suspended, unrevoked, or unexpired.

3. *Number of permits.* An application shall be filed and a permit obtained for each place of business owned or operated by a retailer.

4. *Retailer — cigarettes and tobacco products.* A retailer, as defined in section 453A.1, who holds a permit under division I of this chapter is not required to also obtain a retail permit under this division. However, if a retailer, as defined in section 453A.1, only holds a permit under division I of this chapter and that permit is suspended, revoked, or expired, the retailer shall not sell any cigarettes or tobacco products during the time which the permit is suspended, revoked, or expired.

5. *Separate permit.* A separate retail permit shall be required of a distributor or subjobber if the distributor or subjobber sells tobacco products at retail.

6. *Issuance.* Cities shall issue retail permits to retailers within their respective limits. County boards of supervisors shall issue retail permits to retailers in their respective counties, outside of the corporate limits of cities. The city or county shall submit a duplicate of any application for a retail permit and any retail permit issued by the entity under this section to the alcoholic beverages division of the department of commerce within thirty days

of issuance. The alcoholic beverages division of the department of commerce shall submit the current list of all retail permits issued to the Iowa department of public health by the first day of each quarter of a state fiscal year.

7. *Fees — expiration.*

a. All permits provided for in this division shall expire on June 30 of each year. A permit shall not be granted or issued until the applicant has paid the fees provided for in this section for the period ending June 30 next, to the city or county granting the permit. The fee for retail permits is as follows when the permit is granted during the month of July, August, or September:

- (1) In places outside any city, fifty dollars.
- (2) In cities of less than fifteen thousand population, seventy-five dollars.
- (3) In cities of fifteen thousand or more population, one hundred dollars.

b. If any permit is granted during the month of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the month of January, February, or March, one-half of the maximum schedule, and if granted during the month of April, May, or June, one-fourth of the maximum schedule.

8. *Refunds.*

a. An unrevoked permit for which the retailer paid the full annual fee may be surrendered during the first nine months of the year to the officer issuing it, and the city or county granting the permit shall make refunds to the retailer as follows:

- (1) Three-fourths of the annual fee if the surrender is made during July, August, or September.
- (2) One-half of the annual fee if the surrender is made during October, November, or December.
- (3) One-fourth of the annual fee if the surrender is made during January, February, or March.

b. An unrevoked permit for which the retailer has paid three-fourths of a full annual fee may be surrendered during the first six months of the period covered by the payment, and the city or county shall make refunds to the retailer as follows:

- (1) A sum equal to one-half of an annual fee if the surrender is made during October, November, or December.
- (2) A sum equal to one-fourth of an annual fee if the surrender is made during January, February, or March.

c. An unrevoked permit for which the retailer has paid one-half of a full annual fee may be surrendered during the first three months of the period covered by the payment, and the city or county shall refund to the retailer a sum equal to one-fourth of an annual fee.

9. *Application.* Retail permits shall be issued only upon applications, accompanied by the fee indicated above, made upon forms furnished by the department upon written request. The failure to furnish such forms shall be no excuse for the failure to file the form unless absolute refusal is shown. The forms shall specify:

- a. The manner under which the retailer transacts or intends to transact business as a retailer.
- b. The principal office, residence, and place of business, for which the permit is to apply.
- c. If the applicant is not an individual, the principal officers or members of the applicant, not to exceed three, and their addresses.
- d. Such other information as the director shall by rules prescribe.

10. *Records and reports of retailers.*

a. The director shall prescribe the forms necessary for the efficient administration of this section and may require uniform books and records to be used and kept by each retailer or other person as deemed necessary.

b. Every retailer shall, when requested by the department, make additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the retailer involving the purchase or sale or use of tobacco products.

11. *Penalties.* The permit suspension and revocation provisions and the civil penalties

established in section 453A.22 shall apply to retailers under this division, in addition to any other penalties imposed under this division.

2005 Acts, ch 93, §4; 2005 Acts, ch 179, §131; 2011 Acts, ch 63, §17  
Subsection 6 amended

## CHAPTER 453B

### EXCISE TAX ON UNLAWFUL DEALING IN CERTAIN SUBSTANCES

#### 453B.1 Definitions.

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

1. “*Controlled substance*” means controlled substance as defined in section 124.101.
2. “*Counterfeit substance*” means a counterfeit substance as defined in section 124.101.
3. a. “*Dealer*” means any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces in this state any of the following:
  - (1) Seven or more grams of a taxable substance other than marijuana, but including a taxable substance that is a mixture of marijuana and other taxable substances.
  - (2) Forty-two and one-half grams or more of processed marijuana or of a substance consisting of or containing marijuana.
  - (3) One or more unprocessed marijuana plants.
  - (4) Ten or more dosage units of a taxable substance which is not sold by weight.
- b. However, a person who lawfully ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces a taxable substance in this state is not considered a dealer.
4. “*Department*” means the department of revenue.
5. “*Director*” means the director of revenue.
6. “*Dosage unit*” means the unit of measurement in which a substance is dispensed to the ultimate user. Dosage unit includes, but is not limited to, one pill, one capsule, or one microdot.
7. “*Marijuana*” means marijuana as defined in section 124.101.
8. “*Processed marijuana*” means all marijuana except unprocessed marijuana plants.
9. “*Simulated controlled substance*” means a simulated controlled substance as defined in section 124.101.
10. “*Taxable substance*” means a controlled substance, a counterfeit substance, a simulated controlled substance, or marijuana, or a mixture of materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marijuana.
11. “*Unprocessed marijuana plant*” means any cannabis plant at any level of growth, whether wet, dry, harvested, or growing.

90 Acts, ch 1251, §37

C91, §421A.1

C93, §453B.1

95 Acts, ch 83, §29 – 31; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 453C

### TOBACCO PRODUCT MANUFACTURERS — FINANCIAL OBLIGATIONS

#### 453C.1 Definitions.

1. “*Adjusted for inflation*” means increased in accordance with the formula for inflation adjustment set forth in exhibit “C” to the master settlement agreement.

2. “*Affiliate*” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns”, “is owned”, and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term “person” means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

3. “*Allocable share*” means allocable share as defined in the master settlement agreement.

4. a. “*Cigarette*” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

(2) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

(3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1).

b. The term “*cigarette*” includes “roll-your-own” tobacco, meaning tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of “*cigarette*”, 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette”.

5. “*Master settlement agreement*” means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

6. “*Qualified escrow fund*” means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds’ principal except as consistent with section 453C.2, subsection 2, paragraph “b”.

7. “*Released claims*” means released claims as that term is defined in the master settlement agreement.

8. “*Releasing parties*” means releasing parties as that term is defined in the master settlement agreement.

9. a. “*Tobacco product manufacturer*” means an entity that on or after May 20, 1999, directly and not exclusively through any affiliate does any of the following:

(1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States).

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

(3) Becomes a successor of an entity described in subparagraph (1) or (2).

b. The term “*tobacco product manufacturer*” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraph “a”, subparagraphs (1) through (3).

10. “*Units sold*” means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by

excise taxes collected by the state on packs bearing the excise stamp of the state or on roll-your-own tobacco containers. The department of revenue shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

99 Acts, ch 157, §1, 3; 2000 Acts, ch 1058, §42; 2001 Acts, ch 18, §1, 2, 4; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §131, 159; 2007 Acts, ch 186, §53; 2011 Acts, ch 25, §101

Subsections 4 and 9 amended

## CHAPTER 453D

### TOBACCO PRODUCT MANUFACTURERS — ENFORCEMENT OF FINANCIAL OBLIGATIONS

#### **453D.3 Certifications, directory, tax stamps.**

1. *Certification.* A tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a stamping agent, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form and in the manner prescribed by the attorney general, a certification to the director and the attorney general, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer or is in full compliance with chapter 453C, including all quarterly installment payments required by rule.

a. A participating manufacturer shall include in the participating manufacturer's certification a list of the participating manufacturer's brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of the participating manufacturer's brand families by executing and delivering a supplemental certification to the attorney general and the director.

b. (1) A nonparticipating manufacturer shall include in its certification all of the following:

(a) A list of all of the nonparticipating manufacturer's brand families and the number of units sold for each brand family that was sold in the state during the preceding calendar year.

(b) A list of all of the nonparticipating manufacturer's brand families that have been sold in the state at any time during the current calendar year.

(c) An indication, by an asterisk, of any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification.

(d) Identification by name and address of any other manufacturer of such brand families in the preceding or current calendar year.

(2) The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of the nonparticipating manufacturer's brand families by executing and delivering a supplemental certification to the attorney general and the director.

c. A nonparticipating manufacturer shall also certify all of the following:

(1) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required in section 453D.4.

(2) That the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund and has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.

(3) That the nonparticipating manufacturer is in full compliance with chapter 453C and this chapter and any rules adopted pursuant to chapter 453C or this chapter.

(4) All of the following:

(a) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to chapter 453C and all rules adopted pursuant to chapter 453C.

(b) The account number of the qualified escrow fund and any subaccount number for Iowa.

(c) The amount the nonparticipating manufacturer deposited in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification deemed necessary by the attorney general to confirm this information.

(d) The amount and date of any withdrawal or transfer made at any time by the nonparticipating manufacturer from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer made escrow payments at any time pursuant to chapter 453C and any rules adopted pursuant to chapter 453C.

d. (1) A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer's certification unless one of the following applies, as applicable:

(a) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement.

(b) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be the nonparticipating manufacturer's cigarettes for the purposes of chapter 453C.

(2) This section shall not be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of chapter 453C.

e. Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for certification for a period of five years, unless otherwise required by law to maintain invoices and documentation for a greater period of time.

2. *Directory of cigarettes approved for stamping and sale.* The director shall develop and publish on the department's website a directory listing all tobacco product manufacturers that have provided current and accurate certification conforming to the requirements of subsection 1 and all brand families that are listed in the certification, with the following exceptions:

a. The director shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection 1, paragraphs "b" and "c", unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

b. A tobacco product manufacturer and a brand family shall not be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that either of the following applies:

(1) Any escrow payment required pursuant to chapter 453C for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general.

(2) Any outstanding final judgment, including interest on the judgment, for a violation of chapter 453C has not been fully satisfied for the brand family or the nonparticipating manufacturer.

c. The director shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

d. Stamping agents and distributors shall provide and update as necessary an electronic mail address to the director for the purpose of receiving any notifications as may be required by this chapter.

3. *Prohibition against stamping, sale, or import of cigarettes not included in the directory.* It shall be unlawful for any person to do any of the following:

a. Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory.

b. Sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

2003 Acts, ch 97, §3, 13; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 455A

### DEPARTMENT OF NATURAL RESOURCES

Former chapter 455A, Code 1981, repealed by 82 Acts, ch 1199, §97;  
effect of repeal, 83 Acts, ch 137, §30

#### 455A.18 Iowa resources enhancement and protection fund — audits.

1. An Iowa resources enhancement and protection fund is created in the office of the treasurer of state. The fund consists of all revenues and all other moneys lawfully credited or transferred to the fund. The director shall certify monthly the portions of the fund that are allocated to the various accounts as provided under section 455A.19. The director shall certify before the twentieth of each month the portions of the fund resulting from the previous month's receipts to be allocated to the various accounts.

2. The auditor of state or a certified public accountant firm appointed by the auditor of state shall conduct annual audits of all accounts and transactions of the fund.

3. a. For each fiscal year of the fiscal period beginning July 1, 1997, and ending June 30, 2021, there is appropriated from the general fund, to the Iowa resources enhancement and protection fund, the amount of twenty million dollars, to be used as provided in this chapter. However, in any fiscal year of the fiscal period, if moneys from the lottery are appropriated by the state to the fund, the amount appropriated under this subsection shall be reduced by the amount appropriated from the lottery.

b. Section 8.33 does not apply to moneys appropriated under this subsection.

4. Notwithstanding section 12C.7, interest or earnings on investments or time deposits of the moneys in the Iowa resources enhancement and protection fund or any of its accounts shall be credited to the Iowa resources enhancement and protection fund.

89 Acts, ch 236, §5; 89 Acts, ch 311, §9; 90 Acts, ch 1255, §22; 91 Acts, ch 260, §1232, 1233; 94 Acts, ch 1198, §46; 96 Acts, ch 1214, §31; 2011 Acts, ch 25, §143

Special fees from natural resources vehicle registration plates; see §321.34

See Iowa Acts for special provisions relating to appropriation of funds in a given fiscal year

Code editor directive applied

#### 455A.19 Allocation of fund proceeds.

1. Upon receipt of any revenue, the director shall deposit the moneys in the Iowa resources enhancement and protection fund created pursuant to section 455A.18. The first three hundred fifty thousand dollars of the funds received for deposit in the fund annually shall be allocated to the conservation education program board for the purposes specified in section 455A.21. One percent of the revenue receipts shall be deducted and transferred to the administration fund provided for in section 456A.17. All of the remaining receipts shall be allocated to the following accounts:

a. (1) Twenty-eight percent shall be allocated to the open spaces account. At least ten percent of the allocations to the account shall be made available to match private funds for open space projects on the cost-share basis of not less than twenty-five percent private funds pursuant to the rules adopted by the natural resource commission. Five percent of the funds allocated to the open spaces account shall be used to fund the protected waters program. This account shall be used by the department to implement the statewide open space acquisition, protection, and development programs.

(2) The department shall give priority to acquisition and control of open spaces of

statewide significance. The department shall also use these funds for developments on state property. The total cost of an open spaces project funded under this paragraph "a" shall not exceed two million dollars unless a public hearing is held on the project in the area of the state affected by the project. However, on and after July 1, 1994, the following shall apply:

(a) If the total amount appropriated by the general assembly to the resources enhancement and protection fund, in any fiscal year as defined in section 8.36, is seven million dollars or more, not more than seventy-five percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single project.

(b) If the total amount appropriated by the general assembly to the resources enhancement and protection fund, in any fiscal year as defined in section 8.36, is less than seven million dollars, not more than fifty percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single project.

(3) Political subdivisions of the state shall be reimbursed for property tax dollars lost to open space acquisitions based on the reimbursement formula provided for in section 465A.4. There is appropriated from the open spaces account to the department the amount in that account, or so much thereof as is necessary, to carry out the open spaces program as specified in this paragraph "a". An appropriation made under this paragraph "a" shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the final fiscal year, whichever date is earlier, shall revert to the open spaces account.

b. Twenty percent shall be allocated to the county conservation account.

(1) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county equally.

(2) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county on a per capita basis.

(3) Forty percent of the allocation to the county conservation account annually shall be held in an account in the state treasury for the natural resource commission to award to counties on a competitive grant basis by a project selection committee established in this subparagraph. Local matching funds are not required for grants awarded under this subparagraph. The project planning and review committee shall be composed of two staff members of the department and two county conservation board directors appointed by the director and a fifth member selected by a majority vote of the director's appointees. The natural resource commission, by rule, shall establish procedures for application, review, and selection of county projects submitted for funding. Upon recommendation of the project planning and review committee, the director shall award the grants.

(4) Funds allocated to the counties under subparagraphs (1), (2), and (3) may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment. However, expenditures are not allowed for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities. Funds may be used for county projects located within the boundaries of a city.

(5) Funds allocated pursuant to subparagraphs (2) and (3) shall only be allocated to counties dedicating property tax revenue at least equal to twenty-two cents per thousand dollars of the assessed value of taxable property in the county to county conservation purposes. State funds received under this paragraph shall not reduce or replace county tax revenues appropriated for county conservation purposes. The county auditor shall submit documentation annually of the dedication of property tax revenue for county conservation purposes. The annual audit of the financial transactions and condition of a county shall certify compliance with requirements of this subparagraph. Funds not allocated to counties not qualifying for the allocations under subparagraph (2) as a result of this subparagraph shall be held in reserve for each county for two years. Counties qualifying within two years may receive the funds held in reserve. Funds not spent by a county within two years shall revert to the general pool of county funds for reallocation to other counties where needed.

(6) Each board of supervisors shall create a special resource enhancement account in the office of county treasurer and the county treasurer shall credit all resource enhancement

funds received from the state in that account. Notwithstanding section 12C.7, all interest earned on funds in the county resource enhancement account shall be credited to that account and used for the purposes authorized for that account.

(7) There is appropriated from the county conservation account to the department the amount in that account, or so much thereof as is necessary, to fund the provisions of this paragraph. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which a project funded pursuant to subparagraph (3) is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the county conservation account.

(8) Any funds received by a county under this paragraph may be used to match other state or federal funds, and multicounty or multiagency projects may be funded under this paragraph.

c. Twenty percent shall be allocated to the soil and water enhancement account. The moneys shall be used to carry out soil and water enhancement programs including, but not limited to, reforestation, woodland protection and enhancement, wildlife habitat preservation and enhancement, protection of highly erodible soils, and clean water programs. The division of soil conservation, by rule, shall establish procedures for eligibility, application, review, and selection of projects and practices to implement the requirements of this paragraph. There is appropriated from the soil and water enhancement account to the soil conservation division the amount in that account, or so much thereof as is necessary, to carry out the programs as specified in this paragraph. Remaining funds of the soil and water enhancement account shall be allocated to the accounts of the water protection fund authorized in section 161C.4. Annually, fifty percent of the soil and water enhancement account funds shall be allocated to the water quality protection projects account. The balance of the funds shall be allocated to the water protection practices account. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the soil and water enhancement account.

d. Fifteen percent shall be allocated to a cities' parks and open space account. The moneys allocated in this paragraph may be used to fund competitive grants to cities to acquire, establish, and maintain natural parks, preserves, and open spaces. The grants may include expenditures for multipurpose trails, restroom facilities, shelter houses, and picnic facilities, but expenditures for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities requiring specialized equipment are excluded. The grants may be used for city projects located outside of a city's boundaries. The natural resource commission, by rule, shall establish procedures for application, review, and selection of city projects on a competitive basis. The rules shall provide for three categories of cities based on population within which the cities shall compete for grants. There is appropriated from the cities' parks and open space account to the department the amount in that account, or so much thereof as is necessary, to carry out the competitive grant program as provided in this paragraph.

e. Nine percent shall be allocated to the state land management account. The department shall use the moneys allocated to this account for maintenance and expansion of state lands and related facilities under its jurisdiction. The authority to expand state lands and facilities under this paragraph is limited to expansion of the state lands and facilities already owned by the state. There is appropriated from the state land management account to the department the moneys in that account, or so much thereof as is necessary, to implement a maintenance and expansion program for state lands and related facilities under the jurisdiction of the department.

f. Five percent shall be allocated to the historical resource grant and loan fund established pursuant to section 303.16. The department of cultural affairs shall use the moneys allocated

to this fund to implement historical resource development programs as provided under section 303.16.

g. Three percent shall be allocated to the living roadway account for distribution to the living roadway trust fund created under section 314.21 for the development and implementation of integrated roadside vegetation plans.

2. a. The moneys appropriated under this section shall remain in the appropriate account of the Iowa resources enhancement and protection fund until such time as the agency, board, commission, or overseer of the fund to which moneys are appropriated has made a request to the treasurer for use of moneys appropriated to it and the amount needed for that use. Notwithstanding section 8.33, moneys remaining of the appropriations made for a fiscal year from any of the accounts within the Iowa resources enhancement and protection fund on June 30 of that fiscal year, shall not revert to any fund but shall remain in that account to be used for the purposes for which they were appropriated and the moneys remaining in that account shall not be considered in making the allotments for the next fiscal year.

b. However, any moneys in excess of five hundred thousand dollars, remaining in the living roadway account under subsection 1, paragraph “g”, on June 30 shall revert to the resources enhancement and protection fund under this section for distribution pursuant to the formula under this section except for subsection 1, paragraph “g”. That proportion of moneys that would have been reallocated to subsection 1, paragraph “g”, shall be distributed to the open spaces account under subsection 1, paragraph “a”.

89 Acts, ch 236, §6; 91 Acts, ch 146, §4 – 6; 91 Acts, ch 191, §120; 93 Acts, ch 176, §43; 95 Acts, ch 220, §29, 30; 2000 Acts, ch 1128, §1; 2001 Acts, ch 24, §53; 2002 Acts, ch 1140, §38; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 455B

### JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

#### DIVISION I

#### ADMINISTRATION

##### **455B.104 Departmental duties.**

1. The department shall either approve or deny a permit to a person applying for a permit under this chapter within six months from the date that the department receives a completed application for the permit. An application which is not approved or denied within the six-month period shall be approved by default. The department shall issue a permit to the applicant within ten days following the date of default approval. However, this subsection shall not apply to applications for permits which are issued under division II or division IV, parts 2 through 5.

2. The department shall assist persons applying for assistance to establish and operate renewable fuel production facilities pursuant to the value-added agriculture component of the economic development financial assistance program established in section 15G.112.

3. The department may periodically forward recommendations to the commission designed to encourage the reduction of statewide greenhouse gas emissions.

4. By December 31 of each year, the department shall submit a report to the governor and the general assembly regarding the greenhouse gas emissions in the state during the previous calendar year and forecasting trends in such emissions. The first submission by the

department shall be filed by December 31, 2011, for the calendar year beginning January 1, 2010.

93 Acts, ch 176, §44; 94 Acts, ch 1119, §30; 98 Acts, ch 1209, §10, 53; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262; 2009 Acts, ch 123, §31; 2010 Acts, ch 1031, §258; 2010 Acts, ch 1193, §54; 2011 Acts, ch 9, §2; 2011 Acts, ch 118, §86, 89

Code editor directive applied  
Subsection 1 amended

#### **455B.109 Schedule of fines — violations.**

1. The commission shall establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than ten thousand dollars for violations of this chapter\* or rules, permits or orders adopted or issued under this chapter.\* In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and director shall consider among other relevant factors the following:

- a. The costs saved or likely to be saved by noncompliance by the violator.
- b. The gravity of the violation.
- c. The degree of culpability of the violator.
- d. The maximum penalty authorized for that violation under this chapter.\*

2. Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation. Violations not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under subsection 1.

3. When the commission establishes a schedule for violations, the commission shall provide, by rule, a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action.

4. A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final. When a person against whom a civil penalty is assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final for the purposes of this section until all judicial review processes are completed. Additional judicial review may not be sought after the order becomes final. A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. The attorney general shall institute, at the request of the department, summary proceedings to recover the penalty and any accrued interest.

5. a. Except as provided in paragraph "b", civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state.

b. The following provisions shall apply to animal feeding operations:

(1) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving animal feeding operations under chapter 459, subchapter II, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

(2) Civil penalties assessed by the department and interest on the penalties, arising out of violations committed by animal feeding operations under chapter 459, subchapter III, which may be assessed pursuant to section 455B.191 or 459.604, shall also be deposited in the animal agriculture compliance fund.

(3) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving open feedlot operations under chapter 459A, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

(4) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving dry bedded confinement feeding operations under chapter 459B, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

6. This section does not require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

84 Acts, ch 1159, §1; 86 Acts, ch 1245, §1899; 92 Acts, ch 1111, §1; 95 Acts, ch 195, §12; 2002 Acts, ch 1137, §2, 71; 2005 Acts, ch 136, §25; 2008 Acts, ch 1032, §57; 2009 Acts, ch 155, §24, 34

\*Sections formerly contained in this chapter were transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137; see also §459.601 – 459.604

For future amendment to subsection 5, effective July 1, 2012, see 2011 Acts, ch 128, §34, 45  
Section not amended; footnote added

#### **455B.113 Certification of laboratories.**

1. The director shall certify laboratories which perform laboratory analyses of samples required to be submitted by the department by this chapter; chapter 459, subchapters I, II, III, IV, and VI;\* or chapter 459A, or by rules adopted in accordance with this chapter; chapter 459, subchapters I, II, III, IV, and VI;\* or chapter 459A, or by permits or orders issued under this chapter; chapter 459, subchapters I, II, III, IV, and VI;\* or chapter 459A.

2. a. The commission shall adopt rules regarding content of laboratory certification application forms, which shall be furnished by the department.

b. The commission shall adopt rules regarding reciprocity agreements with other states that have equivalent laboratory certification requirements.

3. The director may charge a fee for processing of an application. The application fee is nonrefundable. In establishing the fee, the director shall take into account the administrative costs incurred and the cost of enforcement of this section. Fees collected shall be retained by the department.

4. A laboratory shall submit an application, every other year, accompanied by the fee determined by the director.

88 Acts, ch 1120, §1; 2005 Acts, ch 136, §29; 2011 Acts, ch 25, §143

\*Chapter 459, subchapters I, II, III, IV, and VI, transferred from ch 455B and subchapter V transferred from former ch 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137  
Code editor directive applied

**455B.116 Pollution hotline program.** Repealed by 2011 Acts, ch 9, § 10.

## DIVISION II AIR QUALITY

### PART 1 GENERAL

#### **455B.134 Director — duties — limitations.**

The director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II and chapter 459, subchapter II.

3. Grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A and other major stationary sources, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source.

b. The condition of expected performance shall be reasonably detailed in the construction or conditional permit.

c. All applications for permits other than conditional permits for electric generating facilities shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit other than a conditional permit for an electric generating facility, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission.

d. (1) All applications for conditional permits for electric power generating facilities shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agreement pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or by the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.

(2) In applications for conditional permits for electric power generating facilities, the applicant shall quantify the potential to emit greenhouse gases due to the proposed project.

e. A regulated air contaminant source for which a construction permit or conditional permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements including emission allowances for sulfur dioxide emissions for sources subject to Tit. IV of the federal Clean Air Act Amendments of 1990. If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.

f. (1) Notwithstanding any other provision of division II of this chapter or chapter 459, subchapter II, the following siting requirements shall apply to anaerobic lagoons and earthen waste slurry storage basins:

(a) Anaerobic lagoons, constructed or expanded on or after June 20, 1979, but prior to May 31, 1995, or earthen waste slurry storage basins, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995, which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation.

(b) Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a

residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon or an earthen waste slurry storage basin closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

g. All applications for construction permits or prevention of significant deterioration permits shall quantify the potential to emit greenhouse gases due to the proposed project.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution, or to secure compliance with permit conditions. In making the orders, the director shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public, the practicability of reducing or limiting the emissions from the air pollution source, and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary cooperation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and chapter 459, subchapter II, and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter and chapter 459, subchapter II. The director may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

14. Convene meetings not later than June 1 during the second calendar year following the adoption of new or revised federal ambient air quality standards by the United States environmental protection agency to review emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source as provided in section 455B.133, subsection 4. By November 1 of the same calendar year, the department shall submit a report to the governor and the general assembly regarding recommendations for law changes necessary for the attainment of the new or revised federal standards.

[C71, §136B.4, 136B.5; C73, 75, 77, 79, §455B.12, 455B.13; C81, §455B.13; 82 Acts, ch 1124, §2, 3]

C83, §455B.134

86 Acts, ch 1245, §1899; 90 Acts, ch 1153, §2, 3; 91 Acts, ch 255, §11 – 13; 93 Acts, ch 137, §4; 95 Acts, ch 195, §14; 2007 Acts, ch 120, §2, 3; 2010 Acts, ch 1115, §1; 2011 Acts, ch 25, §49, 50

For regulations establishing separation distances between anaerobic lagoons or earthen manure storage structures constructed or expanded on or after May 31, 1995, and various locations and objects, see chapter 459

For regulations governing the construction of earthen storage structures within agricultural drainage well areas, see chapter 460  
Subsection 3, paragraph d, subparagraph (2) amended  
Subsection 3, paragraph g amended

## DIVISION III WATER QUALITY

### PART 1 GENERAL

#### **455B.171 Definitions.**

When used in this part 1 of division III, unless the context otherwise requires:

1. “*Abandoned well*” means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.

2. “*Construction*” of a water well means the physical act or process of making the water well including but not limited to siting, excavation, construction, and the installation of equipment and materials necessary to maintain and operate the well.

3. “*Contractor*” means a person engaged in the business of well construction or reconstruction or other well services.

4. “*Credible data*” means scientifically valid chemical, physical, or biological monitoring data collected under a scientifically accepted sampling and analysis plan, including quality control and quality assurance procedures. Data dated more than five years before the department’s date of listing or other determination under section 455B.194, subsection 1, shall be presumed not to be credible data unless the department identifies compelling reasons as to why the data is credible.

5. “*Disposal system*” means a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge. “*Disposal system*” includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.

6. “*Effluent standard*” means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard, or other limitation.

7. “*Federal Water Pollution Control Act*” means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as published in 33 U.S.C. § 1251 – 1376, as amended through December 31, 1985.

8. “*Food commodity*” means any commodity that is derived from an agricultural animal or crop, both as defined in section 717A.1, which is intended for human consumption in its raw or processed state.

a. A food commodity in its raw state for processing includes but is not limited to milk, eggs, vegetables, fruits, nuts, syrup, and honey.

b. A food commodity in its processed state includes but is not limited to dairy products, pastries, pies, and meat or poultry products.

9. “*Historical data*” means data collected more than five years before the department’s date of listing or other determination under section 455B.194, subsection 1.

10. “*Industrial waste*” means any liquid, gaseous, radioactive, or solid waste substance

resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource.

11. “*Manure*” means the same as defined in section 459.102.

12. “*Manure sludge*” means the solid or semisolid residue produced during the treatment of manure in an anaerobic lagoon.

13. “*Maximum contaminant level*” means the maximum permissible level of any physical, chemical, biological, or radiological substance in water which is delivered to any user of a public water supply system.

14. “*Naturally occurring condition*” means any condition affecting water quality which is not caused by human influence on the environment including but not limited to soils, geology, hydrology, climate, wildlife influence on the environment, and water flow with specific consideration given to seasonal and other natural variations.

15. “*New source*” means any building, structure, facility, or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

16. “*On-farm processing operation*” means any place located on a farm where the form or condition of a food commodity originating from that farm or another farm is changed or packaged for human consumption, including but not limited to a dairy, creamery, winery, distillery, cannery, bakery, or meat or poultry processor.

17. “*Other waste*” means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste.

18. a. “*Person*” means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

b. For the purpose of imposing liability for violation of a section of this part, or a rule or regulation adopted by the department of natural resources under this part, “*person*” does not include a person who holds indicia of ownership in contaminated property from which prohibited discharges, deposits, or releases of pollutants into any water of the state have been or are evidenced, if the person has satisfied the requirements of section 455B.381, subsection 7, paragraph “b”, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

19. “*Point source*” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

20. “*Pollutant*” means sewage, industrial waste, or other waste.

21. “*Private sewage disposal system*” means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis.

22. “*Private water supply*” means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

23. “*Production capacity*” means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

24. “*Public water supply system*” means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. The term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

25. “*Reconstruction*” of a water well means replacement or removal of all or a portion of the casing of the water well.

26. “*Schedule of compliance*” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

27. “*Section 303(d) list*” means any list required under 33 U.S.C. § 1313(d).

28. “*Section 305(b) report*” means any report required under 33 U.S.C. § 1315(b).

29. “*Semipublic sewage disposal system*” means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary district, or a designated and approved management agency under § 1288 of the federal Water Pollution Control Act, codified at 33 U.S.C. § 1288.

30. “*Septage*” means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or from a holding tank, when the system is cleaned or maintained.

31. “*Sewage*” means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present.

32. “*Sewage sludge*” means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. “*Sewage sludge*” includes but is not limited to solids removed during primary, secondary, or advanced waste water treatment, scum septage, portable toilet pumpings, type III marine device pumpings as defined in 33 C.F.R. part 159, and sewage sludge products. “*Sewage sludge*” does not include grit, screenings, or ash generated during the incineration of sewage sludge.

33. “*Sewer extension*” means pipelines or conduits constituting main sewers, lateral sewers, or trunk sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

34. “*Sewer system*” means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices, and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act, ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this part of this division.

35. “*Toilet unit*” means a portable or fixed tank or vessel holding untreated human waste without secondary wastewater treatment that is emptied for disposal. “*Toilet unit*” does not include a portable or fixed tank or vessel holding untreated human waste that is part of a recreational vehicle or marine vessel.

36. “*Total maximum daily load*” means the same as in the federal Water Pollution Control Act.

37. “*Treatment works*” means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes.

38. “*Viable*” means a disposal system or a public water supply system which is self-sufficient and has the financial, managerial, and technical capability to reliably meet standards of performance on a long-term basis, as required by state and federal law, including the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

39. “*Water of the state*” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

40. “*Water pollution*” means the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.

41. “*Water supply distribution system extension*” means any extension to the pipelines or

conduits which carry water directly from the treatment facility, source or storage facility to the consumer's service connection.

42. "Water well" means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. "Water well" does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

[C66, 71, §455B.2; C73, 75, 77, 79, 81, §455B.30; 82 Acts, ch 1050, §1, 2, ch 1199, §6, 7, 8, 96]

C83, §455B.171

83 Acts, ch 137, §2; 84 Acts, ch 1121, §1, 2; 85 Acts, ch 176, §1; 86 Acts, ch 1144, §1; 86 Acts, ch 1237, §29; 91 Acts, ch 224, §3; 92 Acts, ch 1041, §1; 93 Acts, ch 42, §1; 95 Acts, ch 195, §20; 96 Acts, ch 1079, §13; 97 Acts, ch 137, §1, 2; 98 Acts, ch 1209, §22; 2000 Acts, ch 1068, §9; 2000 Acts, ch 1232, §72; 2002 Acts, ch 1137, §25, 68, 71; 2002 Acts, ch 1138, §3, 5; 2002 Acts, 2nd Ex, ch 1003, §249, 260, 262; 2003 Acts, ch 44, §66; 2005 Acts, ch 153, §1; 2007 Acts, ch 126, §74; 2009 Acts, ch 41, §132; 2011 Acts, ch 31, §1

NEW subsection 8 and former subsections 8 - 14 renumbered as 9 - 15

NEW subsection 16 and former subsections 15 - 40 renumbered as 17 - 42

#### **455B.172 Jurisdiction of department and local boards.**

1. The department is the agency of the state to prevent, abate, or control water pollution and to conduct the public water supply program.

2. The department shall carry out the responsibilities of the state related to private water supplies and private sewage disposal systems for the protection of the environment and the public health and safety of the citizens of the state.

3. Each county board of health shall adopt standards for private water supplies and private sewage disposal facilities. These standards shall be at least as stringent but consistent with the standards adopted by the commission. If a county board of health has not adopted standards for private water supplies and private sewage disposal facilities, the standards adopted by the commission shall be applied and enforced within the county by the county board of health.

4. Each county board of health shall regulate the private water supply and private sewage disposal facilities located within the county board's jurisdiction, including the enforcement of standards adopted pursuant to this section.

5. *a.* The department shall maintain jurisdiction over and regulate the direct discharge to a water of the state. The department shall retain concurrent authority to enforce state standards for private water supply and private sewage disposal facilities within a county, and exercise departmental authority if the county board of health fails to fulfill board responsibilities pursuant to this section.

*b.* The department shall by rule adopt standards for the commercial cleaning of private sewage disposal facilities, including but not limited to septic tanks, and for the disposal of waste from the facilities. The standards shall not be in conflict with the state building code adopted pursuant to section 103A.7. A person shall not commercially clean such facilities or dispose of waste from such facilities unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. The department may contract for the delegation of the authority for inspection of land application sites, record reviews, and equipment inspections to a county board of health. In the event of entering into such a contract, the department shall retain concurrent authority over such activities. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. A license application shall include registration applications for each vehicle used by the applicant for purposes of collecting septage from private sewage disposal facilities and each vehicle used by the applicant for purposes of applying septage to land.

Septic disposal management plans shall be submitted to the department and approved annually as a condition of licensing and shall also be filed annually with the county board of health in the county where a proposed septage application site is located. The septic disposal management plan shall include, but not be limited to, the sites of septage application, the anticipated volume of septage applied to each site, the area of each septage application site, the type of application to be used at each site, the volume of septage expected to be collected from private sewage disposal facilities, and a list of registered vehicles collecting septage from private sewage disposal facilities and applying septage to land. The annual license or license renewal fee for a person commercially cleaning private sewage disposal facilities shall be established by the department based on the volume of septage that is applied to land. A septic management fund is created in the state treasury under the control of the department. Annual license and license renewal fees collected pursuant to this section shall be deposited in the septic management fund and are appropriated to the department for purposes of contracting with county boards of health to conduct land application site inspections, record reviews, and septic cleaning equipment inspections. A person violating this section or the rules adopted pursuant to this section as determined by the department is subject to a civil penalty of not more than two hundred fifty dollars. The department shall adopt rules related to, but not limited to, recordkeeping requirements, application procedures and limitations, contamination issues, loss of septage, failure to file a septic disposal management plan, application by vehicles that are not properly registered, wrongful application, and violations of a septic disposal management plan. Each day that a violation continues constitutes a separate offense. The penalty shall be assessed for the duration of time commencing with the time the violation begins and ending with the time the violation is corrected. The septic disposal management plan may be examined to determine the duration of the violation. Moneys collected by the department from the imposition of civil penalties shall be deposited in the general fund of the state. Moneys collected by a county board of health from the imposition of civil penalties shall be deposited in the general fund of the county.

6. a. The department shall by rule adopt standards for the commercial cleaning of toilet units and for the disposal of waste from toilet units. Waste from toilet units shall be disposed of at a wastewater treatment facility and shall not be applied to land. The department may contract for the delegation of the authority for inspection of record reviews and equipment inspections for such units to a county board of health. In the event of entering into such a contract, the department shall retain concurrent authority over such activities.

b. A person shall not commercially clean toilet units or dispose of waste from such units unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. A license application shall include registration applications for each vehicle used by the applicant for purposes of collecting waste from toilet units and each vehicle used by the applicant for purposes of transporting waste from toilet units to a wastewater treatment facility. The annual license or license renewal fee for a person commercially cleaning toilet units shall be established by the department based on the number of trucks or vehicles used by the licensee for purposes of commercial cleaning of toilet units and for the disposal of waste from the toilet units. For purposes of this subsection, "vehicle" includes a trailer.

c. A toilet unit fund is created in the state treasury under the control of the department. Annual license and license renewal fees collected pursuant to this subsection shall be deposited in the toilet unit fund and are appropriated to the department for purposes of contracting with county boards of health to conduct record reviews and toilet unit cleaning equipment inspections.

d. A person violating this section or the rules adopted pursuant to this section as determined by the department is subject to a civil penalty of not more than five hundred dollars. Each day that a violation continues constitutes a separate offense. The penalty shall

be assessed for the duration of time commencing with the time the violation begins and ending with the time the violation is corrected. Moneys collected by the department from the imposition of civil penalties shall be deposited in the general fund of the state. Moneys collected by a county board of health from the imposition of civil penalties shall be deposited in the general fund of the county.

7. *a.* The department is the state agency to regulate the construction, reconstruction and abandonment of all of the following water wells:

(1) Those used as part of a public water supply system as defined in section 455B.171.

(2) Those used for the withdrawal of water for which a permit is required pursuant to section 455B.268, subsection 1.

(3) Those used for the purpose of monitoring groundwater quantity and quality required or installed pursuant to directions or regulations of the department.

*b.* A local board of health is the agency to regulate the construction, reconstruction and abandonment of water wells not otherwise regulated by the department. The local board of health shall not adopt standards relative to the construction, reconstruction and abandonment of wells less stringent than those adopted by the department.

8. The department is the state agency to regulate the registration or certification of water well contractors pursuant to section 455B.187 or section 455B.190A.

9. Pursuant to chapter 28E, the department may delegate its authority for regulation of the construction, reconstruction and abandonment of water wells specified in subsection 7 or the registration of water well contractors specified in subsection 8 to boards of health or other agencies which have adequate authority and ability to administer and enforce the requirements established by law or rule.

10. Any county ordinance related to sewage sludge which is in effect on March 1, 1997, shall not be preempted by any provision of section 455B.171, 455B.174, 455B.183, or 455B.304.

11. *a.* If a building where a person resides, congregates, or is employed is served by a private sewage disposal system, the sewage disposal system serving the building shall be inspected prior to any transfer of ownership of the building. The requirements of this subsection shall be applied to all types of ownership transfer including at the time a seller-financed real estate contract is signed. The county recorder shall not record a deed or any other property transfer or conveyance document until either a certified inspector's report is provided which documents the condition of the private sewage disposal system and whether any modifications are required to conform to standards adopted by the department or, in the event that weather or other temporary physical conditions prevent the certified inspection from being conducted, the buyer has executed and submitted a binding acknowledgment with the county board of health to conduct a certified inspection of the private sewage disposal system at the earliest practicable time and to be responsible for any required modifications to the private sewage disposal system as identified by the certified inspection. Any type of on-site treatment unit or private sewage disposal system must be inspected according to rules developed by the department. For the purposes of this subsection, "*transfer*" means the transfer or conveyance by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, if the property includes at least one but not more than four dwelling units. However, "*transfer*" does not include any of the following:

(1) A transfer made pursuant to a court order, including but not limited to a transfer under chapter 633 or 633A, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to chapter 654, the forfeiture of a real estate contract under chapter 656, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.

(2) A transfer to a mortgagee by a mortgagor or successor in interest who is in default, a transfer by a mortgagee who has acquired real property as a result of a deed in lieu of foreclosure or has acquired real property under chapter 654 or 655A, or a transfer back to a mortgagor exercising a right of first refusal pursuant to section 654.16A.

(3) A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

- (4) A transfer between joint tenants or tenants in common.
- (5) A transfer made to a spouse, or to a person in the lineal line of consanguinity of a person making the transfer.
- (6) A transfer between spouses resulting from a decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to chapter 598.
- (7) A transfer in which the transferee intends to demolish or raze the building. The department shall adopt rules pertaining to such transfers.
- (8) A transfer of property with a system that was installed not more than two years prior to the date of the transfer.
- (9) A deed arising from a partition proceeding.
- (10) A tax sale deed issued by the county treasurer.
- (11) A transfer for which consideration is five hundred dollars or less.
- (12) A deed between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in section 428A.2, subsection 15, and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or corporate dissolution or in the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deed is given for no actual consideration other than for shares or for debt securities of the family corporation, partnership, limited partnership, limited liability partnership, or limited liability company.
  - b. At the time of inspection, any septic tank existing as part of the sewage disposal system shall be opened and have the contents pumped out and disposed of as provided for by rule. In the alternative, the owner may provide evidence of the septic tank being properly pumped out within three years prior to the inspection by a commercial septic tank cleaner licensed by the department which shall include documentation of the size and condition of the tank and its components at the time of such occurrence.
  - c. If a private sewage disposal system is failing to ensure effective wastewater treatment or is otherwise improperly functioning, the private sewage disposal system shall be renovated to meet current construction standards, as adopted by the department, either by the seller or, by agreement, and within a reasonable time period as determined by the county board of health or the department, by the buyer. If the private sewage disposal system is properly treating the wastewater and not creating an unsanitary condition in the environment at the time of inspection, the system is not required to meet current construction standards.
  - d. Inspections shall be conducted by an inspector certified by the department.
  - e. Pursuant to chapter 17A, the department shall adopt certification requirements for inspectors including training, testing, and fees, and shall establish uniform statewide inspection criteria and an inspection form. The inspector certification training shall include use of the criteria and form. The department shall maintain a list of certified inspectors.
  - f. County personnel are eligible to become certified inspectors. A county may set an inspection fee for inspections conducted by certified county personnel. A county shall allow any department certified inspector to provide inspection services under this subsection within the county's jurisdiction.
  - g. Following an inspection, the inspection form and any attachments shall be provided to the county board of health and the department for enforcement of any follow-up mandatory system improvement and to the department for record.
  - h. An inspection is valid for a period of two years for any ownership transfers during that period.
  - i. This subsection preempts any city or county ordinance related to the inspection of private sewage disposal systems in association with the transfer of ownership of a building.

[C66, 71, §455B.3; C73, §455B.31; C75, 77, 79, 81, §135.20, 455B.31; 82 Acts, ch 1199, §9] C83, §455B.172

83 Acts, ch 137, §3; 84 Acts, ch 1121, §3; 85 Acts, ch 176, §2; 87 Acts, ch 225, §112, 113; 90 Acts, ch 1243, §1; 91 Acts, ch 224, §4; 97 Acts, ch 137, §3; 2004 Acts, ch 1086, §74; 2004 Acts, ch 1167, §11; 2005 Acts, ch 153, §2, 3; 2006 Acts, ch 1010, §172, 177; 2008 Acts, ch 1033, §1,

2; 2009 Acts, ch 175, §22, 25; 2010 Acts, ch 1061, §85; 2010 Acts, ch 1120, §1 – 5; 2011 Acts, ch 25, §51

Subsection 5, unnumbered paragraphs 1 and 2 editorially designated as paragraphs a and b  
Subsection 11, paragraph a, unnumbered paragraph 1 amended

**455B.172A On-farm processing operations.**

1. The department shall adopt by rule standards for the disposal of wastewater from an on-farm processing operation. These standards shall provide for but are not limited to disposal by all of the following:

a. By land application if all of the following apply:

(1) The volume of wastewater produced by the on-farm processing operation is less than one thousand five hundred gallons per day.

(2) The wastewater is land-applied by a person licensed by the department under section 455B.172.

(3) The application rate does not exceed thirty thousand gallons per acre per year.

(4) The application rate does not exceed one thousand five hundred gallons per acre per day.

(5) The standards for land application are consistent with the rules for land application of septage that implement section 455B.172.

b. At a publicly owned treatment works or other wastewater treatment system with the permission of the owner of the treatment works.

c. Through a subsurface absorption system in conformance with applicable regulations of the United States environmental protection agency.

d. Through a disposal system that meets all of the following:

(1) The disposal system is located on the same site as the on-farm processing operation.

(2) The disposal system is constructed in conformance with a permit issued by the department.

(3) For a disposal system that discharges wastewater to a water of the United States, the system must be operated in conformance with a national pollutant discharge elimination system permit issued by the department under section 455B.197.

2. The department shall adopt by rule standards for the disposal of septage from an on-farm processing operation. The rules shall provide that the septage may be discharged to a permitted septage lagoon or septage drying bed with the permission of the owner of the septage system.

2011 Acts, ch 31, §2

NEW section

**455B.173 Duties.**

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards, and effluent standards in accordance with the provisions of this chapter.

a. The effluent standards may provide for maintaining the existing quality of the water of the state that is a navigable water of the United States under the federal Water Pollution Control Act where the quality thereof exceeds the requirements of the water quality standards.

b. If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306, or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306, or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent

standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division or chapter 459, subchapter III, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 or 169 or both sections of the Internal Revenue Code, whichever period ends first.

3. Establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions, including the viability of a system pursuant to section 455B.174, under which the director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system, or for the discharge of any pollutant.

a. The rules specifying the conditions under which the director shall issue permits for the construction of an electric power generating facility subject to chapter 476A shall provide for issuing a conditional permit upon the submission of engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems that will provide compliance with effluent standards or limitations.

b. No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

c. A publicly owned treatment works whose discharge meets the final effluent limitations which were contained in its discharge permit on the date that construction of the publicly owned treatment works was approved by the department shall not be required to meet more stringent effluent limitations for a period of ten years from the date the construction was completed and accepted but not longer than twelve years from the date that construction was approved by the department.

4. Cooperate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.

5. Establish, modify, or repeal rules relating to drinking water standards for public water supply systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.

6. Adopt rules relating to inspection, monitoring, recordkeeping, and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

7. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall cooperate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into any agreement, subject to approval of the commission, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be coordinated with disaster emergency plans.

8. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards)

as adopted by the Great Lakes – Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature, and applicable safety standards. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the “Iowa Standards for Sewer Systems” and the “Iowa Standards for Water Supply Distribution Systems” and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public.

9. Adopt, modify, or repeal rules relating to the construction and reconstruction of water wells, the proper abandonment of wells, and the registration or certification of water well contractors. The rules shall include those necessary to protect the public health and welfare, and to protect the waters of the state. The rules may include, but are not limited to, establishing fees for registration or certification of water well contractors, requiring the submission of well driller’s logs, formation samples or well cuttings, water samples, information on test pumping and requiring inspections. Fees shall be based upon the reasonable cost of conducting the water well contractor registration or certification program.

10. Adopt, modify, or repeal rules relating to the business plan which disposal systems and public water supply systems must file with the department pursuant to section 455B.174, and adopt, modify, or repeal rules establishing a methodology and timetable by which nonviable systems shall take action to become viable or make alternative arrangements in providing treatment or water supply services.

11. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit.

12. Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations, as provided in sections relating to animal feeding operations provided in chapter 459, subchapter III.

[C97, §2565; C24, 27, 31, 35, 39, §2220; C46, 50, 54, 58, 62, §136.3(2,c); C66, 71, §136.3(2,c), 455B.9; C73, 75, §455B.32, 455B.65; C77, 79, 81, §455B.32; 82 Acts, ch 1199, §10, 96]

C83, §455B.173

83 Acts, ch 136, §2; 85 Acts, ch 176, §3; 86 Acts, ch 1245, §1899A; 87 Acts, ch 225, §114; 89 Acts, ch 125, §1; 90 Acts, ch 1255, §23; 91 Acts, ch 224, §5; 92 Acts, ch 1041, §2, 3; 95 Acts, ch 61, §1; 95 Acts, ch 195, §21, 22; 98 Acts, ch 1209, §23, 53; 99 Acts, ch 45, §1; 2000 Acts, ch 1058, §43; 2004 Acts, ch 1086, §106; 2004 Acts, ch 1167, §12; 2006 Acts, ch 1014, §2; 2006 Acts, ch 1145, §1; 2011 Acts, ch 25, §102

Subsections 2 and 3 amended

#### **455B.174 Director’s duties.**

The director shall:

1. Conduct investigations of alleged water pollution or of alleged violations of this part of this division, chapter 459, subchapter III, chapter 459A, chapter 459B, or any rule adopted or any permit issued pursuant thereto upon written request of any state agency, political subdivision, local board of health, twenty-five residents of the state, as directed by the department, or as may be necessary to accomplish the purposes of this part of this division, chapter 459, subchapter III, chapter 459A, or chapter 459B.

2. Conduct periodic surveys and inspection of the construction, operation, self-monitoring, recordkeeping, and reporting of all public water supply systems and all disposal systems except as provided in section 455B.183.

3. Take any action or actions allowed by law which, in the director’s judgment, are necessary to enforce or secure compliance with the provisions of this part of this division or chapter 459, subchapter III, or of any rule or standard established or permit issued pursuant thereto.

4. a. (1) Approve or disapprove the plans and specifications for the construction of disposal systems or public water supply systems except for those sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.183. The director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system except for sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.183. The director shall also issue, revoke, suspend, modify, or deny permits for the discharge of any pollutant, or for the use or disposal of sewage sludge. The permits shall contain conditions and schedules of compliance as necessary to meet the requirements of this part of this division or chapter 459, subchapter III, the federal Water Pollution Control Act and the federal Safe Drinking Water Act. A permit issued under this chapter for the use or disposal of sewage sludge is in addition to and must contain references to any other permits required under this chapter. The director shall not issue or renew a permit to a disposal system or a public water supply system which is not viable. If the director has reasonable grounds to believe that a disposal system or public water supply system is not viable, the department may require the system to submit a business plan as a means of determining viability. This plan shall include the following components:

(a) A facilities plan which describes proposed new facilities and the condition of existing facilities, rehabilitation and replacement needs, and future needs to meet the requirements of the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

(b) A management plan which consists of an administrative plan describing methods to assure performance of functions necessary to administer the system, including credentials of management personnel; and an operation and maintenance plan describing how all operating and maintenance duties necessary to the system's proper function will be accomplished.

(c) A financial plan which describes provisions for assuring that adequate revenues will be available to meet cash flow requirements, based on the full cost of providing the service, adequate initial capitalization, and access to additional capital for contingencies.

(2) If, upon submission and review of the business plan, the department determines that the disposal system or public water supply system is not viable, the director may require the system to take actions to become viable within a time period established pursuant to section 455B.173, or to make alternative arrangements in providing treatment or water supply services as determined by rule.

b. In addition to the requirements of paragraph "a", a permit shall not be issued to operate or discharge from any disposal system unless the conditions of the permit assure that any discharge from the disposal system meets or will meet all applicable state and federal water quality standards and effluent standards and the issuance of the permit is not otherwise prohibited by the federal Water Pollution Control Act. All applications for discharge permits are subject to public notice and opportunity for public participation including public hearing as the department may by rule require. The director shall promptly notify the applicant in writing of the director's action and, if the permit is denied, state the reasons for denial. A person who is an applicant or permittee may contest the denial of a permit or any condition of a permit issued by the director if the person notifies the director within thirty days of the director's notice of denial or issuance of the permit. Notwithstanding section 17A.11, subsection 1, if the applicant or permittee timely contests the director's action, the presiding officer in the resulting contested case proceeding shall be an administrative law judge assigned by the division of administrative hearings pursuant to sections 10A.801 and 17A.11.

c. Copies of all forms or other paper instruments required to be filed during on-site inspections or investigations shall be given to the owner or operator of the disposal system or public water supply system being investigated or inspected before the inspector or investigator leaves the site. Any other report, statement, or instrument shall not be filed with the department unless a copy is sent by ordinary mail to the owner or operator of the disposal system or public water supply system within ten working days of the filing. If an inspection or investigation is done in cooperation with another state department, the department involved and the areas inspected shall be stated.

d. The director shall also issue or deny conditional permits for the construction of disposal systems for electric power generating facilities subject to chapter 476A. All applications for conditional permits shall be subject to such notice and opportunity for public participation as may be required by the department and as may be consistent with chapter 476A and any agreement pursuant thereto under chapter 28E. The applicant or an intervenor may appeal to the department from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or the department upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the department. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawing and an application for a construction permit for a disposal system that will meet the effluent limitations in the conditional permit.

e. If a public water supply has a groundwater source that contains petroleum, a fraction of crude oil, or their degradation products, or is located in an area deemed by the department as likely to be contaminated by such materials, and after consultation with the public water supply system and consideration of all applicable rules relating to remediation, the department may require the public water supply system to replace that groundwater source in order to receive a permit to operate. The requirement to replace the source shall only be made by the department if the public water supply system is fully compensated for any additional design, construction, operation, and monitoring costs from the Iowa comprehensive petroleum underground storage tank fund created by chapter 455G or from any other funds that do not impose a financial obligation on the part of the public water supply system. Funds available to or provided by the public water supply system may be used for system improvements made in conjunction with replacement of the source. The department cannot require a public water supply system to replace its water source with a less reliable water source or with a source that does not meet federal primary, secondary, or other health-based standards unless treatment is provided to ensure that the drinking water meets these standards. Nothing in this paragraph shall affect the public water supply system's right to pursue recovery from a responsible party.

f. The department may enter into an agreement with a county to delegate to the county the duties of the department under this subsection as they relate to the construction of semipublic sewage disposal systems.

5. a. Conduct random inspections of work done by city and county public works departments to ensure such public works departments are complying with this part of this division. If a city or county public works department is not complying with section 455B.183 in reviewing plans and specifications or in granting permits or both, the department shall perform these functions in that jurisdiction until the city or county public works department is able to perform them. Performance of these functions in a jurisdiction by a local public works department shall not be suspended or revoked until after notice and opportunity for hearing as provided in chapter 17A.

b. The department shall give technical assistance to city and county public works departments upon request of such local public works departments.

[C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, §135.11(7); C66, 71, §135.11(7), 455B.9 – 455B.11, 455B.15, 455B.17; C73, 75, §455B.33, 455B.37, 455B.66; C77, 79, 81, §455B.33; 82 Acts, ch 1050, §3]

C83, §455B.174

83 Acts, ch 137, §4; 86 Acts, ch 1245, §1899, 1899B; 92 Acts, ch 1041, §4; 96 Acts, ch 1079, §14; 97 Acts, ch 137, §4; 2004 Acts, ch 1175, §260; 2005 Acts, ch 19, §57; 2009 Acts, ch 155, §28, 34; 2010 Acts, ch 1029, §1; 2011 Acts, ch 97, §2

Subsection 4, NEW paragraph f

#### **455B.175 Violations.**

1. If there is substantial evidence that any person has violated or is violating any provision of this part of this division, chapter 459, subchapter III, chapter 459A, or chapter 459B, or of any rule or standard established or permit issued pursuant thereto; then:

a. The director may issue an order directing the person to desist in the practice which

constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act, chapter 17A, by filing with the director within thirty days a notice of appeal to the commission. On appeal the commission may affirm, modify or vacate the order of the director; or

b. If it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a hearing before the commission or by a court; or

c. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.191 or 459.604.

2. Notwithstanding the limitations on civil and criminal penalty amounts in sections 331.302 and 331.307, a county that has entered into an agreement with the department pursuant to sections 455B.174 and 455B.183 regarding the construction of semipublic sewage disposal systems may assess civil penalties in amounts consistent with and not exceeding the amounts established for such penalties under this division.

[C66, 71, §455B.12, 455B.15, 455B.17; C73, 75, §455B.34, 455B.37; C77, 79, 81, §455B.34] C83, §455B.175

83 Acts, ch 137, §5; 86 Acts, ch 1245, §1899; 2003 Acts, ch 44, §114; 2007 Acts, ch 82, §1; 2009 Acts, ch 155, §29, 34; 2011 Acts, ch 97, §3

Section amended

#### **455B.183 Written permits required.**

1. It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department:

a. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto except those sewer extensions and water supply distribution system extensions that are subject to review and approval by a city or county public works department pursuant to this section, the use or disposal of sewage sludge, and private sewage disposal systems. Unless federal law or regulation requires the review and approval of plans and specifications, a permit shall be issued for the construction, installation, or modification of a public water supply system or part of a system if a qualified, licensed engineer certifies to the department that the plans for the system or part of the system meet the requirements of state and federal law or regulations. The permit shall state that approval is based only upon the engineer's certification that the system's design meets the requirements of all applicable state and federal laws and regulations and the review of the department shall be advisory.

b. The construction or use of any new point source for the discharge of any pollutant into any water of the state.

c. The operation of any waste disposal system or public water supply system or any part of or extension or addition to the system. This provision does not apply to a pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal; a semipublic sewage disposal system, the construction of which has been approved by the department and which does not discharge into water of the state; or a private sewage disposal system which does not discharge into a water of the state. Sludge from a semipublic or private sewage disposal system shall be disposed of in accordance with the rules adopted by the department pursuant to chapter 17A. The exemption of this paragraph shall not apply to any industrial waste discharges.

2. Upon adoption of standards by the commission pursuant to section 455B.173, subsections 5 to 8, plans and specifications for sewer extensions and water supply distribution system extensions covered by this section shall be submitted to the city or county public works department for approval if the local public works department employs a qualified, licensed engineer who reviews the plans and specifications using the specific state standards known as the Iowa Standards for Sewer Systems and the Iowa Standards

for Water Supply Distribution Systems that have been formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. The local agency shall issue a written permit to construct if all of the following apply:

a. The submitted plans and specifications are in substantial compliance with departmental rules and the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems.

b. The extensions primarily serve residential consumers and will not result in an increase greater than five percent of the capacity of the treatment works or serve more than two hundred fifty dwelling units or, in the case of an extension to a water supply distribution system, the extension will have a capacity of less than five percent of the system or will serve fewer than two hundred fifty dwelling units.

c. The proposed sewer extension will not exceed the capacity of any treatment works which received a state or federal monetary grant after 1972.

d. The proposed water supply distribution system extension will not exceed the production capacity of any public water supply system constructed after 1972.

3. After issuing a permit, the city or county public works department shall notify the director of such issuance by forwarding a copy of the permit to the director. In addition, the local agency shall submit quarterly reports to the director including such information as capacity of local treatment plants and production capacity of public water supply systems as well as other necessary information requested by the director for the purpose of implementing this chapter.

4. Plans and specifications for all other waste disposal systems and public water supply systems, including sewer extensions and water supply distribution system extensions not reviewed by a city or county public works department under this section, shall be submitted to the department before a written permit may be issued. Plans and specifications for public water supply systems and water supply distribution system extensions must be certified by a licensed engineer as provided in subsection 1, paragraph "a". The construction of any such waste disposal system or public water supply system shall be in accordance with standards formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. If it is necessary or desirable to make material changes in the plans or specifications, revised plans or specifications together with reasons for the proposed changes must be submitted to the department for a supplemental written permit. The revised plans and specifications for a public water supply system must be certified by a licensed engineer as provided in subsection 1, paragraph "a".

5. Prior to the adoption of statewide standards, the department may delegate the authority to review plans and specifications to those governmental subdivisions if in addition to compliance with subsection 1, paragraph "c", the governmental subdivisions agree to comply with all state and federal regulations and submit plans for the review of plans and specifications including a complete set of local standard specifications for such improvements.

6. The director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in chapter 17A if the director determines that a city or county public works department has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of public water supply systems or which otherwise violate state or federal requirements.

7. The department shall exempt any public water supply system from any requirement respecting a maximum contaminant level or any treatment technique requirement of an applicable national drinking water regulation if these regulations apply to contaminants which the department determines are harmless or beneficial to the health of consumers and if the owner of a public water supply system determines that funds are not reasonably available to provide for controlling amounts of those contaminants which are harmless or beneficial to the health of consumers.

8. The department may enter into an agreement with a county to delegate to the county the duties of the department under this section as they relate to the construction of semipublic sewage disposal systems.

[C66, 71, §455B.25; C73, 75, 77, 79, 81, §455B.45; 82 Acts, ch 1199, §11, 96]

C83, §455B.183

83 Acts, ch 137, §6; 84 Acts, ch 1099, §1; 84 Acts, ch 1121, §4; 86 Acts, ch 1245, §1899, 1899B; 97 Acts, ch 4, §6; 97 Acts, ch 137, §5, 6; 2003 Acts, ch 44, §67; 2007 Acts, ch 126, §75 – 77; 2011 Acts, ch 97, §4

NEW subsection 8

**455B.191 Penalties — burden of proof.**

1. As used in this section, “*hazardous substance*” means hazardous substance as defined in section 455B.381 or section 455B.411.

2. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation.

3. *a.* Any person who negligently or knowingly does any of the following shall, upon conviction, be punished as provided in paragraph “*b*” or “*c*”:

(1) Violates section 455B.183 or section 455B.186 or any condition or limitation included in any permit issued under section 455B.183.

(2) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage.

(3) Causes a treatment works to violate any water quality standard, effluent standard, pretreatment standard or condition of a permit issued to the treatment works pursuant to section 455B.183, unless the person is in compliance with all applicable federal and state requirements or permits.

*b.* (1) A person who commits a negligent violation under this subsection is guilty of a serious misdemeanor punishable by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or both.

(2) If the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both.

*c.* (1) A person who commits a knowing violation under this subsection is guilty of an aggravated misdemeanor punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both.

(2) If the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than one hundred thousand dollars for each day of violation or by imprisonment for not more than five years, or both.

4. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

5. The attorney general shall, at the request of the director with approval of the commission, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the director or the commission after notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

6. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 455B.182.

7. If the attorney general has instituted legal proceedings in accordance with this section,

all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.178 shall be raised in the legal proceedings instituted in accordance with this section.

8. Any civil penalty collected by the state or a county relating to the construction of semipublic sewage disposal systems shall be deposited in the unsewered community revolving loan fund created pursuant to section 16.141.

[C66, 71, §455B.23, 455B.25; C73, §455B.43, 455B.45, 455B.49; C75, §455B.43, 455B.49; C77, 79, 81, §455B.49]

C83, §455B.187

C85, §455B.191

86 Acts, ch 1245, §1899A; 88 Acts, ch 1080, §1, 2; 95 Acts, ch 195, §23; 98 Acts, ch 1209, §24; 2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262; 2009 Acts, ch 133, §154; 2010 Acts, ch 1069, §56; 2011 Acts, ch 97, §5

Former sections in ch 455B, division III, applicable to animal feeding operations transferred to chapter 459, subchapter III, pursuant to legislative directive in 2002 Acts, ch 1137; see also §459.603

NEW subsection 8

#### **455B.193 Qualifications for collection of credible data.**

1. For purposes of this part, all of the following shall apply:

a. Data is not credible data unless the data originates from studies and samples collected by the department, a professional designee of the department, or a qualified volunteer. For purposes of this paragraph, “*professional designee*” includes governmental agencies other than the department, and a person hired by, or under contract for compensation with, the department to collect or study data.

b. All information submitted by a qualified volunteer shall be reviewed and approved or disapproved by the department. The qualified volunteer shall submit a site specific plan with data which includes information used to obtain the data, the sampling and analysis plan, and quality control and quality assurance procedures used in the monitoring process. The qualified volunteer must provide proof to the department that the water monitoring plan was followed. The department shall review all data collected by a qualified volunteer, verify the accuracy of the data collected by a qualified volunteer, and determine that all components of the water monitoring plan were followed.

c. The department shall retain all information submitted by a qualified volunteer submitting the information for a period of not less than ten years from the date of receipt by the department. All information submitted shall be a public record.

d. The department shall adopt rules establishing requirements for a person to become a qualified volunteer.

2. The department of natural resources shall develop a methodology for water quality assessments as used in the section 303(d) lists and assess the validity of the data.

2000 Acts, ch 1068, §10; 2000 Acts, ch 1232, §73; 2011 Acts, ch 25, §143

Code editor directive applied

#### **455B.197 National pollutant discharge elimination system permits.**

The department may issue a permit related to the administration of the national pollutant discharge elimination system (NPDES) permit program pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pt. 124 including but not limited to storm water discharge permits issued pursuant to section 455B.103A. The department may provide for the receipt of applications and the issuance of permits as provided by rules adopted by the department which are consistent with this section. The department shall assess and collect fees for the processing of applications and the issuance of permits as provided in this section. The department shall deposit the fees into the national pollutant discharge elimination system permit fund created in section 455B.196. The fees shall be established as follows:

1. For a permit for the discharge from mining and processing facilities, NPDES general permit no. 5, the following fee schedule shall apply:

a. An annual permit, one hundred twenty-five dollars each year.

b. For a multiyear permit, all of the following shall apply:

- (1) A three-year permit, three hundred dollars.
- (2) A four-year permit, four hundred dollars.
- (3) A five-year permit, five hundred dollars.
2. For coverage under NPDES individual permits for storm water, for a construction permit, an application fee of one hundred dollars.
3. For coverage under NPDES individual permits for non-storm water, the following annual fees apply:
  - a. For a major municipal facility, one thousand two hundred seventy-five dollars.
  - b. For a minor municipal facility, two hundred ten dollars. For a city with a population of two hundred fifty or less, the maximum fee shall be two hundred ten dollars regardless of how many NPDES individual permits for non-storm water the city holds.
  - c. For a semipublic facility, three hundred forty dollars.
  - d. For a facility that holds an operation permit, with no wastewater discharge into surface waters, one hundred seventy dollars.
  - e. For a municipal water treatment facility, a fee shall not be charged.
  - f. For a major industrial facility, three thousand four hundred dollars.
  - g. For a minor industrial facility, three hundred dollars.
  - h. For an open feedlot operation as provided in chapter 459A, an annual fee of three hundred forty dollars.
  - i. For a new facility that has not been issued a current non-storm water NPDES permit, a prorated amount which shall be calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by twelve.
  - j. For a facility covered under an existing non-storm water NPDES permit, a prorated amount which shall be calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by twelve.
  - k. For a non-storm water permit as provided in this subsection, a single application fee of eighty-five dollars.
4. A single family home shall not be charged a fee under this section.
5. The owner of an on-farm processing operation that produces less than one thousand five hundred gallons per day of wastewater shall not be assessed a fee by the department under this section.

2006 Acts, ch 1178, §25; 2007 Acts, ch 22, §79; 2007 Acts, ch 53, §1, 2; 2011 Acts, ch 31, §3  
NEW subsection 5

#### **455B.199B Disadvantaged communities variance.**

1. The department may provide for a variance of regulations pursuant to this part when it determines that regulations adopted pursuant to this part affect a disadvantaged community. Such a variance shall be consistent with federal rules and regulations. In considering an application for a variance, the department shall consider the substantial and widespread economic and social impact to the ratepayers and the affected community that may occur as a result of compliance with a federal regulation, a rule adopted by the department, or an order of the department pursuant to this part. In considering an application for a variance, the department shall take into account the rules adopted pursuant to this part with which a regulated entity and the commensurate affected community are required to comply.
2. The department shall find that a regulated entity and the affected community are a disadvantaged community by evaluating all of the following:
  - a. The ability of the regulated entity and the affected community to pay for a project based on the ratio of the total annual project costs per household to median household income.
  - b. Median household income in the community and the unemployment rate of the county in which the community is located.
  - c. The outstanding debt of the system and the bond rating of the community.
3. The department shall find that an unsewered community is a disadvantaged community by evaluating all of the following:
  - a. The ability of the community to pay for a project based on the ratio of the total annual project costs per household to median household income.
  - b. The unemployment rate in the county where the community is located.

- c. The median household income of the community.
4. The department shall not consider a regulated entity, affected community, or unsewered community a disadvantaged community if the ratio of compliance costs to median household income is below one percent.
5. The department may grant a regulated entity a variance from complying with a rule adopted pursuant to this part or as otherwise allowed by federal law or regulations, if the department determines that the regulated entity or the affected community will suffer substantial and widespread economic and social impact. The department shall ensure the conditions of any variance improve water quality and represent reasonable progress toward complying with rules adopted pursuant to this part, but do not result in substantial and widespread economic and social impact.
6. The department shall not require installation of a wastewater treatment system by an unsewered community if the department determines that such installation would create substantial and widespread economic and social impact.
7. The Iowa finance authority, in cooperation with the department, shall utilize the disadvantaged community criteria in this section to determine the appropriate interest rates for loans awarded from the revolving loan funds created in sections 455B.291 through 455B.299, as allowed by federal law or regulations.
8. The economic development authority shall utilize the disadvantaged community criteria in this section to determine eligibility for water or sewer community development block grants as provided in section 15.108, subsection 1, paragraph "a".

2009 Acts, ch 72, §10; 2011 Acts, ch 97, §6, 7; 2011 Acts, ch 118, §85, 89

Code editor directive applied

Subsection 2 amended

NEW subsections 3 and 4 and former subsection 3 renumbered as 5

NEW subsection 6 and former subsections 4 and 5 renumbered as 7 and 8

## PART 2

### WATER TREATMENT

#### **455B.213 Certification of operators.**

1. *By director.* The director shall certify persons as to their qualifications to supervise the operation of treatment plants and water distribution systems after considering the recommendations of the commission.
2. *Applications.* Applications for certification shall be on forms prescribed and furnished by the department and shall not contain a recent photograph of the applicant. An applicant is not ineligible for certification because of age, citizenship, sex, race, religion, marital status, or national origin although the application may require citizenship information. The director may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of operation of waterworks or wastewater works. Character references may be required, but shall not be obtained from certificate holders.
3. *Disclosure of confidential information.* An employee of the department shall not disclose information relating to the following:
  - a. Criminal history or prior misconduct of the applicant.
  - b. Information relating to the contents of the examination to persons other than members of a board of certification of another state or their employees or an employee of the department.
  - c. Information relating to the examination results other than final scores except for information about the results of an examination which is given to the person who took the examination.
4. *Violation.*
  - a. An employee of the department who willfully communicates or seeks to communicate such information, and a person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.
  - b. A member of the commission who willfully communicates or seeks to communicate

such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days.

[C66, 71, §136A.3; C73, 75, 77, 79, 81, §455B.52]

C83, §455B.213

86 Acts, ch 1245, §1892, 1899; 88 Acts, ch 1134, §85; 2011 Acts, ch 25, §103

Subsection 4 amended

### PART 3

#### SEWAGE WORKS CONSTRUCTION

**455B.241 through 455B.246** Repealed by 2011 Acts, ch 9, §10.

With respect to proposed amendment to former §455B.243 by 2011 Acts, ch 25, §143, see Code editor's note on simple harmonization

### PART 4

#### WATER ALLOCATION AND USE; FLOODPLAIN CONTROL

##### **455B.263 Duties.**

1. The commission shall deliver to the general assembly by January 15, 1987, a plan embodying a general groundwater protection strategy for this state which considers the effects of potential sources of groundwater contaminations on groundwater quality. The plan shall evaluate the ability of existing laws and programs to protect groundwater quality and recommend any necessary additional or alternative laws and programs. The department shall develop the plan with the assistance of and in consultation with representatives of agriculture, industry, and public and other interests. The commission shall report to the general assembly on the status and implementation of the plan on a biennial basis. This section does not preclude the implementation of existing or new laws or programs which may protect groundwater quality.

2. The commission shall designate the official representative of this state on all comprehensive water resources planning groups for which state participation is provided. The commission shall coordinate state planning with local and national planning and, in safeguarding the interests of the state and its people, shall undertake the resolution of any conflicts that may arise between the water resources policies, plans, and projects of the federal government and the water resources policies, plans, and projects of the state, its agencies, and its people. This section does not limit or supplant the functions, duties, and responsibilities of other state or local agencies or institutions with regard to planning of water-associated projects within the particular area of responsibility of those state or local agencies or institutions.

3. The commission shall enter into negotiations and agreements with the federal government relative to the operation of, or the release of water from, any project that has been authorized or constructed by the federal government when the commission deems the negotiations and agreements to be necessary for the achievement of the policies of this state relative to its water resources.

4. The commission, on behalf of the state, shall enter into negotiations with the federal government relative to the inclusion of conservation storage features for water supply in any project that has been authorized by the federal government when the commission deems the negotiations to be necessary for the achievement of the policies of this state, however, an agreement reached pursuant to these negotiations does not bind the state until enacted into law by the general assembly.

5. A water user who benefits from the development by the federal government of conservation storage for water supply shall be encouraged to assume the responsibility for repaying to the federal government any reimbursable costs incurred in the development, and

a user who accepts benefits from the developments financed in whole or part by the state shall assume by contract the responsibility of repaying to the state the user's reasonable share of the state's obligations in accordance with a basis which will assure payment within the life of the development. An appropriation, diversion, or use shall not be made by a person of any waters of the state that have been stored or released from storage either under the authority of the state or pursuant to an agreement between the state and the federal government until the person has assumed by contract the person's repayment responsibility. However, this subsection does not infringe upon any vested property interests.

6. a. In its contracts with water users for the payment of state obligations incurred in the development of conservation storage for water supply, the commission shall include the terms deemed reasonable and necessary:

(1) To protect the health, safety, and general welfare of the people of the state.

(2) To achieve the purposes of this chapter.

(3) To provide that the state is not responsible to any person if the waters involved are insufficient for performance.

b. The commission may designate and describe any such contract, and describe the relationships to which it relates, as a sale of storage capacity, a sale of water release services, a contract for the storage or sale of water, or any similar terms suggestive of the creation of a property interest. The term of the contracts shall be commensurate with the investment and use concerned, but the commission shall not enter into any such contract for a term in excess of the maximum period provided for water use permits.

7. The commission shall procure flood control works and water resources projects from or by cooperation with any agency of the United States, by cooperation with the cities and other subdivisions of the state under the laws of the state relating to flood control and use of water resources, and by cooperation with the action of landowners in areas affected by the works or projects when the commission deems the projects to be necessary for the achievement of the policies of this state.

8. The commission shall promote the policies set forth in this part and shall represent this state in all matters within the scope of this part. The commission shall adopt rules pursuant to chapter 17A as necessary to transact its business and for the administration and exercise of its powers and duties.

9. In carrying out its duties, the commission may accept gifts, contributions, donations and grants, and use them for any purpose within the scope of this part.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.3, 455A.8, 455A.15, 455A.17; 82 Acts, ch 1199, §17, 96]

C83, §455B.263

83 Acts, ch 137, §10; 85 Acts, ch 7, §3; 2011 Acts, ch 25, §143

Code editor directive applied

#### **455B.275 Prohibited acts — powers of commission and executive director.**

1. A person shall not permit, erect, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on a floodway or floodplains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, or adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, and the same are declared to be public nuisances.

2. The department may commence, maintain, and prosecute any appropriate action to enjoin or abate a nuisance, including any of the nuisances specified in subsection 1 and any other nuisance which adversely affects flood control.

3. a. A person shall file a written application with the department if the person desires to do any of the following:

(1) Erect, construct, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on any floodway or floodplains.

(2) Erect, construct, maintain, or operate a dam on a navigable or meandered stream.

(3) Erect, construct, maintain, or operate a dam on a stream for manufacturing or industrial purposes.

b. The application shall set forth information as required by rule of the commission. The

department, after an investigation, shall approve or deny the application imposing conditions and terms as prescribed by the department.

4. The department may maintain an action in equity to enjoin a person from erecting or making or permitting to be made a structure, dam, obstruction, deposit, or excavation for which a permit has not been granted. The department may also seek judicial abatement of any structure, dam, obstruction, deposit, or excavation erected or made without a permit required under this part. The abatement proceeding may be commenced to enforce an administrative determination of the department in a contested case proceeding that a public nuisance exists and should be abated. The costs of abatement shall be borne by the violator. Notwithstanding section 352.11, a structure, dam, obstruction, deposit, or excavation on a floodway or floodplain in an agricultural area established under chapter 352 is not exempt from the sections of this part which relate to regulation of floodplains and floodways. As used in this subsection, “*violator*” includes a person contracted to erect or make a structure, dam, obstruction, deposit, or excavation in a floodway including stream straightening unless the project is authorized by a permit required under this part.

5. The department may remove or eliminate a structure, dam, obstruction, deposit, or excavation in a floodway which adversely affects the efficiency of or unduly restricts the capacity of the floodway, by an action in condemnation, and in assessing the damages in the proceeding, the appraisers and the court shall take into consideration whether the structure, dam, obstruction, deposit, or excavation is lawfully in or on the floodway in compliance with this part.

6. The department may require, as a condition of an approval order or permit granted pursuant to this part, the furnishing of a performance bond with good and sufficient surety, conditioned upon full compliance with the order or permit and the rules of the commission. In determining the need for and amount of bond, the department shall give consideration to the hazard posed by the construction and maintenance of the approved works and the protection of the health, safety, and welfare of the people of the state. This subsection does not apply to orders or permits granted to a governmental entity.

7. When approving a request to straighten a stream, the department may establish as a condition of approval a permanent prohibition against tillage of land owned by the person receiving the approval and lying within a minimum distance from the stream sufficient in the judgment of the director or commission to hold soil erosion to reasonable limits. The department shall record the prohibition in the office of the county recorder of the appropriate county and the prohibition shall attach to the land.

8. The commission shall establish, by rule, thresholds for dimensions and effects, and any structure, dam, obstruction, deposit, or excavation having smaller dimensions and effects than those established by the commission is not subject to regulation under this section. The thresholds shall be established so that only those structures, dams, obstructions, deposits, or excavations posing a significant threat to the well-being of the public and the environment are subject to regulation.

9. The commission or the department shall not initiate any administrative or judicial action to remove or eliminate any structure, dam, obstruction, deposit, or excavation in a floodway, or to remove or eliminate any stream straightening, or to place other restrictions on the use of land or water affected by the structure, dam, obstruction, deposit, excavation, or stream straightening if not initiated within five years after the department becomes aware of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening. After ten years from the completion of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening, the prohibition of this subsection applies to, but is not limited to, any administrative or judicial abatement or action in condemnation that the commission or department may initiate under this section unless action is required to protect the public safety, in which case this section is not intended to limit the department from taking actions otherwise authorized by law.

[C50, 54, §455A.19; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.33; 82 Acts, ch 1199, §29, 96]

## C83, §455B.275

83 Acts, ch 137, §18; 86 Acts, ch 1144, §2; 88 Acts, ch 1196, §1, 2; 90 Acts, ch 1108, §4; 2011 Acts, ch 25, §143

Nuisances in general, chapter 657

In addition to prospective application, 1988 amendments to subsection 4 and new subsection 9 apply to all knowledge possessed by department for at least five years before July 1, 1988, and to all projects completed earlier than ten years before July 1, 1988; 88 Acts, ch 1196, §3

Validity of permits or licenses issued before July 1, 1990, under chapter 469, Code 1989; rights and obligations governed by §455B.275; 90 Acts, ch 1108, §6

Code editor directive applied

DIVISION IV  
SOLID WASTE DISPOSAL

PART 1  
SOLID WASTE

**455B.301 Definitions.**

As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. “*Actual cost*” means the operational, remedial and emergency action, closure, postclosure, and monitoring costs of a sanitary disposal project for the lifetime of the project.

2. “*Beneficial use*” means a specific utilization of a solid by-product as a resource that constitutes reuse rather than disposal, does not adversely affect human health or the environment, and is approved by the department.

3. “*Beverage*” means wine as defined in section 123.3, subsection 47, alcoholic liquor as defined in section 123.3, subsection 5, beer as defined in section 123.3, subsection 7, wine cooler or drink, tea, potable water, soda water and similar carbonated soft drinks, mineral water, fruit juice, vegetable juice, or fruit or vegetable drinks, which are intended for human consumption.

4. “*Beverage container*” means a sealed glass, plastic, or metal bottle, can, jar, or carton containing a beverage.

5. “*Biodegradable*” means degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gasses and organic compounds.

6. “*Closure*” means actions that will prevent, mitigate, or minimize the threat to public health and the environment posed by a closed sanitary landfill, including but not limited to application of final cover, grading and seeding of final cover, installation of an adequate monitoring system, and construction of ground and surface water diversion structures, if necessary.

7. “*Closure plan*” means the plan which specifies the methods and schedule by which an operator will complete or cease disposal operations of a sanitary disposal project, prepare the area for long-term care, and make the area suitable for other uses.

8. “*Degradable*” means capable of decomposing by biodegradation, photodegradation, or chemical process into harmless component parts after exposure to natural elements for not more than three hundred sixty-five days.

9. “*Financial assurance instrument*” means an instrument submitted by an applicant to ensure the operator’s financial capability to provide reasonable and necessary remedial responses.

a. The instrument shall be sufficient to ensure adequate response pursuant to section 455B.304, subsection 6.

b. The instrument shall be sufficient to ensure the proper closure and postclosure care of the project, and corrective action, if necessary, in the event the operator fails to correctly perform those requirements.

c. The instrument may provide for one or more of the following:

(1) The establishment of a secured trust fund.

- (2) The use of a cash or surety bond.
- (3) The obtaining of insurance.
- (4) The satisfaction of a corporate financial test.
- (5) The satisfaction of a local government financial test.
- (6) The obtaining of a corporate guarantee.
- (7) The obtaining of a local government guarantee.
- (8) The use of a local government dedicated fund.
- (9) The obtaining of an irrevocable letter of credit.
10. “*Incinerator*” means any enclosed device using controlled flame combustion that does not meet the criteria for classification as a boiler and is not listed as an industrial furnace. “*Incinerator*” does not include thermal oxidizers used for the treatment of gas emissions.
11. “*Leachate*” means fluid that has percolated through solid waste and which contains contaminants consisting of dissolved or suspended materials, chemicals, or microbial waste products from the solid waste.
12. “*Lifetime of the project*” means the projected period of years that a landfill will receive waste, from the time of opening until closure, based on the volume of waste to be received projected at the time of submittal of the initial project plan and the calculated refuse capacity of the landfill based upon the design of the project.
13. “*Manufacturer*” means a person who by labor, art, or skill transforms raw material into a finished product or article of trade.
14. “*Photodegradable*” means degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.
15. “*Postclosure*” and “*postclosure care*” mean the time and actions taken for the care, maintenance, and monitoring of a sanitary disposal project after closure that will prevent, mitigate, or minimize the threat to public health, safety, and welfare and the threat to the environment posed by the closed facility.
16. “*Postclosure plan*” means the plan which specifies the methods and schedule by which the operator will perform the necessary monitoring and care for the area after closure of a sanitary disposal project.
17. “*Private agency*” means a private agency as defined in section 28E.2.
18. “*Public agency*” means a public agency as defined in section 28E.2.
19. “*Resource recovery system*” means the recovery and separation of ferrous metals and nonferrous metals and glass and aluminum and the preparation and burning of solid waste as fuel for the production of electricity.
20. “*Rubble*” means dirt, stone, brick, or similar inorganic materials used for beneficial fill, landscaping, excavation, or grading at places other than a sanitary disposal project. “*Rubble*” includes asphalt waste only as long as it is not used in contact with water in a floodplain. For purposes of this chapter, “*rubble*” does not mean gypsum or gypsum wallboard, coal combustion residue, foundry sand, or other industrial process wastes unless those wastes are approved by the department.
21. “*Sanitary disposal project*” means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.
22. “*Sanitary landfill*” means a sanitary disposal project where solid waste is buried between layers of earth.
23. “*Solid waste*” means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by section 321.1, subsection 90. This definition does not prohibit the use of rubble at places other than a sanitary disposal project. “*Solid waste*” does not include any of the following:
  - a. Hazardous waste regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6921-6934.

b. Hazardous waste as defined in section 455B.411, except to the extent that rules allowing for the disposal of specific wastes have been adopted by the commission.

c. Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

d. Petroleum contaminated soil that has been remediated to acceptable state or federal standards.

[C71, §406.2; C73, 75, 77, 79, 81, §455B.75]

C83, §455B.301

85 Acts, ch 241, §1, 2; 86 Acts, ch 1175, §1; 87 Acts, ch 225, §404; 88 Acts, ch 1182, §1; 90 Acts, ch 1168, §50; 91 Acts, ch 252, §4; 92 Acts, ch 1182, §1; 2008 Acts, ch 1118, §1

Section not amended; internal reference change applied

#### **455B.305 Issuance or renewal of permits by director.**

1. The director shall issue, revoke, suspend, modify, or deny permits for the construction and operation of sanitary disposal projects.

a. A permit shall be issued by the director or, at the director's direction, by a local board of health for each sanitary disposal project operated in this state. The permit shall be issued in the name of the city or county or, where applicable, in the name of the public or private agency operating the project. Permits issued pursuant to this section are in addition to any other licenses, permits, or variances authorized or required by law, including but not limited to chapter 335.

b. Each sanitary disposal project shall be inspected periodically by the department or a local board of health.

c. A permit may be suspended or revoked by the director if a sanitary disposal project is found not to meet the requirements of this part 1 or the rules adopted pursuant to this part 1. The suspension or revocation of a permit may be appealed to the department.

2. The director shall not issue or renew a permit for a municipal solid waste landfill unless the permit applicant, in conjunction with all local governments using the landfill, has documented its implementation of solid waste disposal methods other than final disposal in a sanitary landfill.

3. The director shall not issue or renew a permit for a sanitary landfill unless the landfill is equipped with a leachate control system.

4. The director shall not issue or renew a permit for a transfer station operating as part of an agreement between two planning areas pursuant to section 455B.306, subsection 2, unless the applicant, in conjunction with all local governments using the transfer station, has documented its implementation of solid waste disposal methods other than final disposal in a sanitary landfill.

[C71, §406.6; C73, 75, 77, 79, 81, §455B.79]

C83, §455B.305

83 Acts, ch 136, §4; 86 Acts, ch 1175, §2; 86 Acts, ch 1245, §1899, 1899B; 87 Acts, ch 225, §409, 410; 89 Acts, ch 272, §30; 92 Acts, ch 1215, §6; 94 Acts, ch 1177, §3; 2005 Acts, ch 31, §1; 2008 Acts, ch 1118, §4; 2011 Acts, ch 25, §52

Subsection 1, paragraph c amended

#### **455B.305A Local approval of sanitary landfill and infectious waste incinerator projects.**

1. a. Prior to the siting of a proposed, new sanitary landfill, incinerator, or infectious medical waste incinerator, a city, county, or private agency, shall submit a request for local siting approval to the city council or county board of supervisors which governs the city or county in which the proposed site is to be located. The requirements of this section do not apply to the expansion of an existing sanitary landfill owned by a private agency which disposes of waste which the agency generates on property owned by the agency. The city council or county board of supervisors shall approve or disapprove the site for each sanitary landfill, or incinerator, or infectious medical waste incinerator.

b. Prior to the siting of a proposed new sanitary landfill or incinerator by a private agency disposing of waste which the agency generates on property owned by the agency which is located outside of the city limits and for which no county zoning ordinance exists, the private

agency shall cause written notice of the proposal, including the nature of the proposed facility, and the right of the owner to submit a petition for formal siting of the proposed site, to be served either in person or by mail on the owners and residents of all property within two miles in each direction of the proposed local site area. The owners shall be identified based upon the authentic tax records of the county in which the proposed site is to be located. The private agency shall notify the county board of supervisors which governs the county in which the site is to be located of the proposed siting, and certify that notices have been mailed to owners and residents of the impacted area. Written notice shall be published in the official newspaper, as selected by the county board of supervisors pursuant to section 349.1, of the county in which the site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, and a description of the right of persons to comment on the request. If two hundred fifty or a minimum of twenty percent, whichever is less, of the owners and residents of property notified submit a petition for formal review to the county board of supervisors or if the county board of supervisors, on the board's own motion, requires formal review of the proposed siting, the private agency proposal is subject to the formal siting procedures established pursuant to this section.

2. An applicant for siting approval shall submit information to the city council or county board of supervisors to demonstrate compliance with the requirements prescribed by this chapter regarding a sanitary landfill or infectious waste incinerator. Siting approval shall be granted only if the proposed project meets all of the following criteria:

a. The project is necessary to accommodate the solid waste management needs of the area which the project is intended to serve.

b. The project is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.

c. The project is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The city council or county board of supervisors shall consider the advice of the appropriate planning and zoning commission regarding the application.

d. The plan of operations for the project is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

e. The traffic patterns to or from the project are designed in order to minimize the impact on existing traffic flows.

f. Information regarding the previous operating experience of a private agency applicant and its subsidiaries or parent corporation in the area of solid waste management or related activities are made available to the city council or county board of supervisors.

g. The department of natural resources has been consulted by the city council or board of supervisors prior to the approval.

3. a. No later than fourteen days prior to a request for siting approval, the applicant shall cause written notice of the request to be served either in person or by restricted certified mail on the owners of all property within the proposed local site area not solely owned by the applicant, and on the owners of all property within one thousand feet in each direction of the lot line of the proposed local site property if the proposed local site is within the city limits, or within two miles in each direction of the lot line of the proposed local site property if the proposed local site is outside of the city limits. The owners shall be identified based upon the authentic tax records of the county in which the project is to be located.

b. Written notice shall be published in the official newspaper of the county in which the site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on the request.

4. a. An applicant shall file a copy of its request with the department and with the city council or the county board of supervisors in which the proposed site is located. The request shall include the substance of the applicant's proposal and all documents, if any, submitted as of that date to the department pertaining to the proposed project. All documents or other materials pertaining to the proposed project on file with the city council or county

board of supervisors shall be made available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction.

b. Any person may file written comment with the city council or county board of supervisors concerning the appropriateness of the proposed site for its intended purpose. The city council or county board of supervisors shall consider any comment received or postmarked not later than thirty days after the date of the last public hearing.

5. At least one public hearing shall be held by the city council or county board of supervisors no sooner than ninety days but no later than one hundred twenty days from receipt of the request for siting approval. A hearing shall be preceded by published notice in an official newspaper of the county of the proposed site, including in any official newspaper located in the city of the proposed site.

6. a. Decisions of the city council or the county board of supervisors shall be in writing, specifying the reasons for the decision. The written decision of the city council or the county board of supervisors shall be available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction. Final action shall be taken by the city council or the county board of supervisors within one hundred eighty days after the filing of the request for site approval.

b. At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for questioning by the city council or the county board of supervisors and members of the public, the applicant may file not more than one amended application upon payment of additional fees pursuant to subsection 9. The time limitation for final action on an amended application shall be extended for an additional ninety days.

7. Construction of a project which is granted local siting approval under this section shall commence within one calendar year from the date upon which it was granted or the permit shall be nullified.

8. The local siting approval, criteria, and other procedures provided for in this section are the exclusive local siting procedures. Local zoning, ordinances, or other local land use requirements may be considered in such siting decisions.

9. A city council or a county board of supervisors shall charge an applicant for siting approval, under this section, a fee to cover the reasonable and necessary costs incurred by the city or county in the siting approval process.

10. An applicant shall not file a request for local siting approval which is substantially the same as a request which was denied within the preceding two years pursuant to a finding against the applicant under the established criteria.

90 Acts, ch 1191, §1; 92 Acts, ch 1182, §2, 3; 94 Acts, ch 1023, §55; 2011 Acts, ch 25, §143  
Code editor directive applied

**455B.312 Waste abatement program.** Repealed by 2011 Acts, ch 9, § 10.

With respect to proposed amendment to subsection 2, unnumbered paragraph 2, of this section by 2011 Acts, ch 25, §104, see Code editor's note on simple harmonization

**455B.316 Penalty.** Repealed by 2011 Acts, ch 9, § 10.

PART 5

HAZARDOUS WASTE AND SUBSTANCE  
MANAGEMENT

"Toxic Cleanup Days"; see §455E.11(2c) and 455F.8

**455B.411 Definitions.**

As used in this part 5, unless the context otherwise requires:

1. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste or hazardous substance into or on land or water so that the hazardous waste or hazardous substance or a constituent of the hazardous waste or

hazardous substance may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

2. “*Hazardous substance*” means a hazardous substance as defined in 42 U.S.C. § 9601 of the federal Comprehensive Environmental Response, Compensation, and Liability Act and any element, compound, mixture, solution, or substance designated pursuant to 40 C.F.R. § 302.4.

3. *a.* “*Hazardous waste*” means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either of the following effects:

(1) Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. “*Hazardous waste*” may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.

*b.* “*Hazardous waste*” does not include:

(1) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.

(2) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

4. “*Hazardous waste or hazardous substance disposal site*” means real property which has been used for the disposal of hazardous waste or hazardous substances either illegally or prior to regulation as a hazardous waste or a hazardous substance under this part and any adjoining real property and groundwater affected by the disposal activities.

[C81, §455B.130; 81 Acts, ch 151, §1]

C83, §455B.411

84 Acts, ch 1108, §8; 84 Acts, ch 1157, §1; 84 Acts, ch 1158, §2; 86 Acts, ch 1025, §2, 3; 91 Acts, ch 155, §2; 2011 Acts, ch 9, §3

Subsections 5 – 11 stricken

**455B.412 through 455B.421** Repealed by 2011 Acts, ch 9, §10.

With respect to proposed amendment to §455B.416 by 2011 Acts, ch 25, §143, see Code editor’s note on simple harmonization

**455B.423 Hazardous substance remedial fund.**

1. A hazardous substance remedial fund is created within the state treasury. Moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the remedial fund at the end of each fiscal year shall be retained in the fund.

2. *a.* The director may use the fund for any of the following purposes:

(1) Administrative services for the identification, assessment and cleanup of hazardous waste or hazardous substance disposal sites.

(2) Payments to other state agencies for services consistent with the management of hazardous waste or hazardous substance disposal sites.

(3) Emergency response activities as provided in part 4 of this division.

(4) Financing the nonfederal share of the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(5) Financing the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs of hazardous waste or hazardous substance disposal sites that do not qualify for federal cost sharing pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(6) Through agreements or contracts with other state agencies, work with private industry to develop alternatives to land disposal of hazardous waste or hazardous substances including but not limited to resource recovery, recycling, neutralization, and reduction.

(7) For the administration of the waste tire collection or processing site permit program.

b. However, at least seventy-five percent of the fund shall be used for the purposes stated in paragraph "a", subparagraphs (4) and (5).

3. Neither the state nor its officers, employees, or agents are liable for an injury caused by a dangerous condition at a hazardous waste or hazardous substance disposal site unless the condition is the result of gross negligence on the part of the state, its officers, employees, or agents.

4. The director may contract with any person to perform the acts authorized in this section.

5. Moneys shall not be used from the fund for hazardous waste or hazardous substance disposal site cleanup unless the director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of hazardous waste or hazardous substance disposal sites or other responsible persons.

6. The director shall make all reasonable efforts to recover the full amount of moneys expended from the fund through litigation or cooperative agreements with responsible persons. Moneys recovered pursuant to this subsection shall be deposited with the treasurer of state and credited to the remedial fund.

84 Acts, ch 1108, §9; 86 Acts, ch 1025, §5; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §3 – 5; 92 Acts, ch 1218, §2; 2004 Acts, ch 1101, §63; 2011 Acts, ch 25, §105

Subsection 2 amended

#### **455B.426 Registry of hazardous waste or hazardous substance disposal sites.**

1. The director shall maintain and make available for public inspection a registry of confirmed hazardous waste or hazardous substance disposal sites in the state. The director shall take all necessary action to ensure that the registry provides a complete listing of all sites. The registry shall contain the exact location of each site and identify the types of waste found at each site.

2. The director shall investigate all known or suspected hazardous waste or hazardous substance disposal sites and determine whether each site should be included in the registry. In the evaluation of known or suspected hazardous waste or hazardous substance disposal sites, the director may enter private property and perform tests and analyses.

3. Beginning July 1, 2011, a new site shall not be placed on the registry of confirmed hazardous waste or hazardous substance disposal sites.

4. A site placed on the registry of confirmed hazardous waste or hazardous substance disposal sites prior to July 1, 2011, shall be removed upon the execution of a uniform environmental covenant pursuant to the provisions of chapter 455I relating to the contaminated portions of the property listed on the registry. A site may also be removed from the registry pursuant to section 455B.427, subsection 4.

5. If no sites remain listed on the registry of confirmed hazardous waste or hazardous substance disposal sites, the department shall recommend to the general assembly the repeal of this section and sections 455B.427 through 455B.432.

84 Acts, ch 1108, §12; 86 Acts, ch 1025, §7; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §7; 2011 Acts, ch 9, §4, 5

Subsection 2 amended

NEW subsections 3, 4, and 5

#### **455B.433 Physical infrastructure assistance — funding — liability.**

1. The department of natural resources shall work in conjunction with the economic development authority to identify environmentally contaminated sites which qualify for the infrastructure component of the economic development financial assistance program established in section 15G.112. The department shall provide an assessment of the site and shall provide any emergency response activities which the department deems necessary. The department may take any further action, including remediation of the site, that the department deems to be appropriate and which promotes the purposes of the infrastructure component.

2. The department shall be reimbursed from the economic development fund created in section 15G.111 for any costs incurred pursuant to this section.

3. A person shall not have standing pursuant to section 455B.111 to commence a citizen

suit which is based upon property that is part of the infrastructure component of the economic development financial assistance program established in section 15G.112.

96 Acts, ch 1218, §53; 2009 Acts, ch 123, §32; 2011 Acts, ch 118, §85, 86, 89

Code editor directives applied

## PART 6

### HAZARDOUS WASTE SITES AND FACILITIES

**455B.441 through 455B.455** Repealed by 2011 Acts, ch 9, §10.

With respect to proposed amendment to former §455B.443 and 455B.444 by 2011 Acts, ch 25, §143, see Code editor's note on simple harmonization

## PART 7

### DISPOSAL OF HAZARDOUS WASTE ON LAND

**455B.461 through 455B.463** Repealed by 2011 Acts, ch 9, §10.

**455B.465 through 455B.468** Repealed by 2011 Acts, ch 9, §10.

## PART 8

### UNDERGROUND STORAGE TANKS

#### **455B.471 Definitions.**

As used in this part unless the context otherwise requires:

1. “*Board*” means the Iowa comprehensive petroleum underground storage tank fund board.

2. “*Corrective action*” means an action taken to reduce, minimize, eliminate, clean up, control, or monitor a release to protect the public health and safety or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for purposes of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, and site management practices. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

3. “*Fund*” means the Iowa comprehensive petroleum underground storage tank fund.

4. “*Nonoperational storage tank*” means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.

5. “*Operator*” means a person in control of, or having responsibility for, the daily operation of the underground storage tank.

6. a. “*Owner*” means:

(1) In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.

(2) In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

b. To the extent consistent with the federal Resource Conservation and Recovery Act, as amended to January 1, 1994, 42 U.S.C. § 6901 et seq., “*owner*” does not include a person who holds indicia of ownership in the underground storage tank or the tank site property if all of the following apply:

(1) The person holds indicia of ownership primarily to protect that person's security

interest in the underground storage tank or tank site property, where such indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term “*primarily to protect that person’s security interest*” includes but is not limited to ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the underground storage tank or tank site property, where such exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by such interest. The person holding indicia of ownership in the underground storage tank or tank site property and who acquires title or a right to title to such underground storage tank or tank site property upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold such indicia of ownership primarily to protect that person’s security interest so long as subsequent actions taken by that person with respect to the underground storage tank or tank site property are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) The person does not exhibit managerial control of, or managerial responsibility for, the daily operation of the underground storage tank or tank site property through the actual, direct, and continual or recurrent exercise of managerial control over the underground storage tank or tank site property in which that person holds a security interest, which managerial control materially divests the borrower, debtor, owner or operator of the underground storage tank or tank site property of such control.

(3) The person has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

7. “*Petroleum*” means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

8. “*Regulated substance*” means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes substances designated in 40 C.F.R., pts. 61 and 116, and 40 C.F.R. § 401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute). However, regulated substance does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be added or deleted as regulated substances by rule of the commission pursuant to section 455B.474.

9. “*Release*” means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance, including petroleum, from an underground storage tank into groundwater, surface water, or subsurface soils.

10. “*Tank site*” means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

11. a. “*Underground storage tank*” means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. “*Underground storage tank*” does not include:

(1) Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) Tanks used for storing heating oil for consumptive use on the premises where stored.

(3) Residential septic tanks.

(4) Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985, codified at 49 U.S.C. § 1671 et seq., the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985, codified at 49 U.S.C. § 2001 et seq., or an intrastate pipeline facility regulated under chapter 479.

(5) A surface impoundment, pit, pond, or lagoon.

(6) A storm water or wastewater collection system.

(7) A flow-through process tank.

(8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) A storage tank situated in an underground area including but not limited to a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

b. “*Underground storage tank*” does not include pipes connected to a tank described in paragraph “a”, subparagraphs (1) through (9).

85 Acts, ch 162, §1; 89 Acts, ch 131, §33 – 35; 93 Acts, ch 42, §5; 94 Acts, ch 1067, §1; 95 Acts, ch 215, §4; 2011 Acts, ch 25, §106

Subsection 11 amended

#### **455B.473 Report of existing and new tanks — fee.**

1. Except as provided in subsection 2, the owner or operator of an underground storage tank existing on or before July 1, 1985, shall notify the department in writing by May 1, 1986, of the existence of each tank and specify the age, size, type, location and uses of the tank.

2. The owner of an underground storage tank taken out of operation between January 1, 1974 and July 1, 1985, shall notify the department in writing by July 1, 1986, of the existence of the tank unless the owner knows the tank has been removed from the ground. The notice shall specify to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator which brings into use an underground storage tank after July 1, 1985, shall notify the department in writing within thirty days of the existence of the tank and specify the age, size, type, location and uses of the tank.

4. An owner or operator of a storage tank described in section 455B.471, subsection 11, paragraph “a”, subparagraph (1), which brings the tank into use after July 1, 1987, shall notify the department of the existence of the tank within thirty days. The registration of the tank shall be accompanied by a fee of ten dollars to be deposited in the storage tank management account. A tank which is existing before July 1, 1987, shall be reported to the department by July 1, 1989. Tanks under this section installed on or following July 1, 1987, shall comply with underground storage tank regulations adopted by rule by the department.

5. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of ten dollars for each tank included in the notice. All moneys collected shall be deposited in the storage tank management account of the groundwater protection fund created in section 455E.11. All moneys collected pursuant to this section prior to July 1, 1987, which have not been expended, shall be deposited in the storage tank management account.

6. Subsections 1 to 3 do not apply to an underground storage tank for which notice was given pursuant to section 103, subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980.

7. A person who sells, installs, modifies, or repairs a tank used or intended to be used as an underground storage tank shall notify the purchaser and the owner or operator of the tank in writing of the owner’s notification requirements pursuant to this section including the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department. A person who installs an underground storage tank and the owner or operator of the underground storage tank shall, prior to installing an underground storage tank, notify the department in writing regarding the intent to install a tank.

8. a. It shall be unlawful to deposit or accept a regulated substance in an underground storage tank which has not been registered and issued permanent and annual tank management fee renewal tags pursuant to subsections 1 through 6. A person shall not deposit a regulated substance in an underground storage tank after receiving notice from the department that the underground storage tank is not covered by an approved form of financial responsibility in accordance with section 455B.474, subsection 2.

b. The department shall furnish the owner or operator of an underground storage tank with a registration tag for each underground storage tank registered with the department. The owner or operator shall affix the tag to the fill pipe of each registered underground storage tank. If an owner or operator fails to register or obtain annual renewal tags for the underground storage tank, the owner or operator shall pay an additional fee of two hundred fifty dollars upon registration of the tank. A fee imposed pursuant to this subsection shall not preclude the department from assessing an administrative penalty pursuant to section 455B.476.

9. The department may deny issuance of a registration or annual tank management fee renewal tag for failure of the owner or operator to provide proof the underground storage tank is covered by an approved form of financial responsibility as provided in section 455B.474, subsection 2.

85 Acts, ch 162, §3; 87 Acts, ch 225, §604, 605; 2001 Acts, ch 51, §1, 2; 2002 Acts, ch 1119, §60; 2011 Acts, ch 25, §136, 143

Code editor directive applied  
Subsection 4 amended

**455B.473A Petroleum underground storage tank registration amnesty program.** Repealed by 2011 Acts, ch 34, § 164.

**455B.474 Duties of commission — rules.**

The commission shall adopt rules pursuant to chapter 17A relating to:

1. a. Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include but are not limited to requirements for:

(1) Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

(2) Maintaining records of any monitoring or leak detection system, inventory control system, tank testing or comparable system, and periodic underground storage tank facility compliance inspections conducted by inspectors certified by the department.

(3) Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

(4) Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(a) The classification system shall consider the actual or potential threat to public health and safety and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(i) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(ii) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(iii) Surface water shall be evaluated based upon its location, its distance in relation to the

contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(iv) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(b) A site shall be classified as either high risk, low risk, or no action required, as determined by a certified groundwater professional.

(i) A site shall be considered high risk when a certified groundwater professional determines that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

(A) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(B) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(C) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(ii) A site shall be considered low risk when a certified groundwater professional determines that low risk conditions exist as follows:

(A) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(B) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(iii) A site shall be considered no action required and a no further action certificate shall be issued by the department when a certified groundwater professional determines that contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(iv) For purposes of classifying a site as either low risk or no action required, the department shall rely upon the example tier one risk-based screening level look-up table of ASTM (American society for testing and materials) international's emergency standard, ES38-94, or other look-up table as determined by the department by rule.

(v) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site and the site shall be classified as indicated by the groundwater professional unless, within ninety days of receipt by the department, the department identifies material information in the report that is inaccurate or incomplete, and based upon inaccurate or incomplete information in the report the risk classification of the site cannot be reasonably determined by the department based upon industry standards. If the department determines that the site cleanup report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within ninety days of receipt of the report and shall work with the groundwater professional to obtain correct information or additional information necessary to appropriately classify the site. However, from July 1, 2010, through June 30, 2011, the department shall have one hundred twenty days to notify the certified groundwater professional when a report is not accepted based on material information that is found to be inaccurate or incomplete. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under this section.

(5) The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

(6) Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include but not be limited to all of the following:

(a) A requirement that the site cleanup report do all of the following:

- (i) Identify the nature and level of contamination resulting from the release.
- (ii) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "a", subparagraph (4).
- (iii) Provide supporting data and a recommendation of the need for corrective action.
- (iv) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(b) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(c) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(d) High risk sites shall be addressed pursuant to a corrective action design report, as submitted by a groundwater professional and as accepted by the department. The corrective action design report shall determine the most appropriate response to the high risk conditions presented. The appropriate corrective action response shall be based upon industry standards and shall take into account the following:

- (i) The extent of remediation required to reclassify the site as a low risk site.
- (ii) The most appropriate exposure scenarios based upon residential, commercial, or industrial use or other predefined industry accepted scenarios.
- (iii) Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.
- (iv) Affected human or environmental receptors and exposure scenarios based on current and projected use scenarios.

(v) Risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with ASTM (American society for testing and materials) international's emergency standard, ES38-94.

(vi) Other relevant site specific factors such as the feasibility of available technologies, existing background contaminant levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of engineering and institutional controls, including an environmental covenant as established by chapter 455I.

(vii) Remediation shall not be required on a site that does not present an increased cancer risk at the point of exposure of one in one million for residential areas or one in ten thousand for nonresidential areas.

(e) A corrective action design report submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if within ninety days of receipt of a corrective action design report, the department identifies material information in the corrective action design report that is inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based upon industry standards, the department shall notify the groundwater professional that the corrective action design report is not accepted, and the department shall work with the groundwater professional to correct the

material information or to obtain the additional information necessary to appropriately determine the corrective action response requirements as soon as practicable. However, from July 1, 2010, through June 30, 2011, the department shall have one hundred twenty days to notify the certified groundwater professional when a corrective action design report is not accepted based on material information that is found to be inaccurate or incomplete. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in an improper or incorrect corrective action response shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under this section.

(f) Low risk sites shall be monitored as deemed necessary by the department consistent with industry standards. Monitoring shall not be required on a site which has received a no further action certificate. A site that has maintained less than the applicable target level for four consecutive sampling events shall be reclassified as a no action required site regardless of exit monitoring criteria and guidance.

(g) An owner or operator may elect to proceed with additional corrective action on the site. However, any action taken in addition to that required pursuant to this paragraph "a", subparagraph (6), shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of section 455G.9, unless otherwise previously agreed to by the board and the owner or operator pursuant to section 455G.9, subsection 7. Corrective action taken by an owner or operator due to the department's failure to meet the time requirements provided in subparagraph division (e) shall be considered corrective action for purposes of section 455G.9.

(h) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph division, "bioremediation" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(i) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board approved tank system or methodology.

(j) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this subparagraph (6) are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(k) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this subparagraph (6). Any order taken by the director pursuant to this subparagraph division shall be reviewed at the next meeting of the environmental protection commission.

(7) Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

(8) Issuing a no further action certificate or a monitoring certificate to the owner or operator of an underground storage tank site.

(a) A no further action certificate shall be issued by the department for a site which has been classified as a no further action site or which has been reclassified pursuant to completion of a corrective action plan or monitoring plan to be a no further action site by a groundwater professional, unless within ninety days of receipt of the report submitted by

the groundwater professional classifying the site, the department notifies the groundwater professional that the report and site classification are not accepted and the department identifies material information in the report that is inaccurate or incomplete which causes the department to be unable to accept the classification of the site. An owner or operator shall not be responsible for additional assessment, monitoring, or corrective action activities at a site that is issued a no further action certificate unless it is determined that the certificate was issued based upon false material statements that were knowingly or intentionally made by a groundwater professional and the false material statements resulted in the incorrect classification of the site.

(b) A monitoring certificate shall be issued by the department for a site which does not require remediation, but does require monitoring of the site.

(c) A certificate shall be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this paragraph "a", subparagraph (8), or a subsequent purchaser of the site shall not be required to perform further corrective action because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.

(9) Establishing a certified compliance inspector program administered by the department for underground storage tank facility compliance inspections.

(a) The certified compliance inspector program shall provide for, but not be limited to, all of the following:

(i) Mandatory periodic underground storage tank facility compliance inspections by owners and operators using inspectors certified by the department.

(ii) Compliance inspector qualifications, certification procedures, certification and renewal fees sufficient to cover administrative costs, continuing education requirements, inspector discipline standards including certification suspension and revocation for good cause, compliance inspection standards, professional liability bonding or insurance requirements, and any other requirements as the commission may deem appropriate. Certification and renewal fees received by the department are appropriated to the department for purposes of the administration of the certified compliance inspector program.

(b) The department shall continue to conduct independent inspections as provided in section 455B.475 as deemed appropriate to assure effective compliance and enforcement and for the purpose of auditing the accuracy and completeness of inspections conducted by certified compliance inspectors.

(c) Acts or omissions by a certified compliance inspector, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions, rules, or regulations arising out of the certification, inspections, or duties imposed by this section shall not be cause for a claim against the state or the department within the meaning of chapter 669 or any other provision of the Iowa Code.

b. In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including but not limited to location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

c. The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

2. The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for compensating third parties

for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. (1) Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

(2) A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

3. Standards of performance for new underground storage tanks which shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive

material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with ASTM (American society for testing and materials) international's standard G57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after January 14, 1987. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 8. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the federal Water Pollution Control Act, 33 U.S.C. § 1321(b)(2)(A), pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9602, pursuant to section 307, subsection a of the federal Water Pollution Control Act, 33 U.S.C. § 1317(a), pursuant to section 112 of the Clean Air Act, 42 U.S.C. § 7412, or pursuant to section 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

8. Requirements as may be necessary to maintain state program approval and which are consistent with applicable provisions of the federal Energy Policy Act of 2005, Pub. L. No. 109-58, Tit. XV, Subtit. B, Underground Storage Tank Compliance, as codified in 42 U.S.C. § 6991 et seq.

a. The commission shall adopt rules establishing a training program applicable to owners and operators of underground storage tanks. The rules may include provisions for department certification of operators, self-certification by owners and operators, education and training requirements, owner requirements to assure operator qualifications, and assessment of education, training, and certification fees. The rules shall be consistent with and sufficient to comply with the operator training requirements as provided in 42 U.S.C. § 6991i, guidance adopted pursuant to that provision by the administrator of the United States environmental protection agency, and state program approval requirements under 42 U.S.C. § 6991i(b).

b. The commission shall adopt rules related to the prohibition on the delivery of regulated substances consistent with and sufficient to comply with the provisions of 42 U.S.C. § 6991k, guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision, and state program approval requirements under 42 U.S.C. § 6991k(a)(3).

c. The commission shall adopt rules applicable to secondary containment requirements consistent with and sufficient to comply with the provisions of Pub. L. No. 109-58, Tit. XV, § 1530(a), as codified at 42 U.S.C. § 6991b(i)(1), and guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision. Each new underground storage tank or piping connected to any such new tank installed after July

1, 2007, or any existing underground storage tank or existing piping connected to such existing underground storage tank that is replaced after August 1, 2007, shall be secondarily contained if the installation is within one thousand feet of any existing community water system or any existing potable drinking water well as provided in Pub. L. No. 109-58, Tit. XV, § 1530(a), as codified at 42 U.S.C. § 6991b(i)(1), and in guidance adopted by the United States environmental protection agency pursuant to that provision. Rules adopted under this paragraph shall not amend or modify the secondary containment requirements in subsection 1, paragraph “a”, subparagraph (6), subparagraph division (i).

9. a. Groundwater professionals shall be certified. The commission shall adopt rules pursuant to chapter 17A for such certifications, and the rules shall include provisions for certification suspension or revocation for good cause.

b. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

(1) A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.

(2) A professional engineer licensed in Iowa.

(3) A professional geologist certified by a national organization.

(4) Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences.

(5) Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(a) Possession of a bachelor’s degree from an accredited college.

(b) Five years of related professional experience.

c. The department of natural resources may provide for a civil penalty of no more than fifty dollars for failure to obtain certification. An interested person may obtain a list of certified groundwater professionals from the department of natural resources. The department may impose and retain a fee for the certification of persons under this subsection sufficient to cover the costs of administration.

d. The certification of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of a groundwater professional certified pursuant to this subsection.

e. A person who requests certification under this subsection shall be required to attend a course of instruction and pass a certification examination. An applicant who successfully passes the examination shall be certified as a groundwater professional.

f. All groundwater professionals shall be required to complete continuing education requirements as adopted by rule by the commission.

g. The commission may provide for exemption from the certification requirements of this subsection and rules adopted hereunder for a professional engineer licensed pursuant to chapter 542B, if the person is qualified in the field of geotechnical, hydrological, environmental groundwater, or hydrogeological engineering.

h. Notwithstanding the certification requirements of this subsection, a site cleanup report or corrective action design report submitted by a certified groundwater professional shall be accepted by the department in accordance with subsection 1, paragraph “a”, subparagraph (4), subparagraph division (b), subparagraph subdivision (v), and paragraph “a”, subparagraph (6), subparagraph division (e).

10. Requirements that persons and companies performing or providing services for underground storage tank installations, installation inspections, testing, permanent closure of underground storage tanks by removal or filling in place, and other closure activities as defined by rules adopted by the commission be certified by the department. This provision does not apply to persons performing services in their official capacity and as authorized by the state fire marshal’s office or fire departments of political subdivisions of the state. The rules adopted by the commission shall include all of the following:

a. Establishing separate certification criteria applicable to underground storage tank installers and installation inspectors, underground storage tank testers, and persons conducting underground storage tank closure activities as required by commission rules.

b. Establishing minimum qualifications for certification including but not limited to considerations based on education, character, professional ethics, experience, manufacturer or other private agency certification, training and apprenticeship, and field demonstration of competence. The rules may provide for exemption from education, experience, and training requirements for a licensed engineer for whom underground storage tank installation is within the scope of their license and practice but shall require compliance with other certification requirements.

c. Requiring a written examination developed and administered by the department or by some other qualified public or private entity identified by the department. The department may contract with a public or private entity to administer the department's examination or a department-approved third party examination. The examination shall, at a minimum, be sufficient to establish knowledge of all applicable underground storage tank rules adopted under this section, private industry standards, federal standards, and other applicable standards adopted by the state fire marshal's office pursuant to chapter 101.

d. Providing for a minimum two-year renewable certification period. A person may apply for a combined certificate applicable to underground storage tank installer and installer inspector certification, tester certification, and closure certification.

e. Providing that certificate holders obtain and provide proof of financial responsibility for environmental liability with minimum liability limits of one million dollars per occurrence and in the aggregate. The rules may provide exemptions where the certificate holder is employed by the owner or operator of the underground storage tank system and the underground storage tank system is covered by a financial responsibility mechanism under subsection 2.

f. Providing criteria for the department to take disciplinary action including issuance of warnings, reprimands, suspension and probation, and revocation. Any certificate holder subject to suspension or revocation shall be entitled to notice and an opportunity for an evidentiary hearing as provided in section 17A.18.

g. Providing for certification reciprocity between states upon demonstration that the out-of-state certification criteria is substantially equivalent to rules adopted by the commission.

h. Providing for assessment of fees sufficient to cover the costs of administration of the certification program. A separate fee may be established for persons applying for a combination of installer and installer inspector, testing, or closure certifications. Fees received by the department pursuant to this subsection are appropriated to the department for purposes of the administration of activities under this subsection.

i. Notwithstanding subsection 7, the commission may adopt rules requiring that all underground storage tank installations, installation inspections, testing, and closure activities be conducted by persons certified in accordance with this subsection.

j. Acts or omissions of a person certified under this subsection, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions including department onsite supervision of certified activities, rules, or regulations arising out of the certification, shall not be cause for a claim against the state or the department within the meaning of chapter 669 or any other provision of the Code.

85 Acts, ch 162, §4; 86 Acts, ch 1245, §1899A; 87 Acts, ch 225, §606; 88 Acts, ch 1244, §4 – 7, 9; 89 Acts, ch 131, §36, 37; 91 Acts, ch 252, §5, 6; 92 Acts, ch 1163, §95; 95 Acts, ch 215, §5 – 10; 2000 Acts, ch 1058, §44, 45; 2004 Acts, ch 1086, §106; 2005 Acts, ch 102, §2; 2007 Acts, ch 171, §1 – 6; 2009 Acts, ch 41, §263; 2010 Acts, ch 1069, §57; 2010 Acts, ch 1193, §169 – 174; 2011 Acts, ch 25, §107, 137, 138, 143

Any registration or certification issued to underground storage tank installation inspectors pursuant to former §455G.17 continues in full force and effect until expiration or renewal; 2007 Acts, ch 171, §10

Code editor directive applied

Subsection 1 amended

Subsection 8, paragraph c amended

Subsection 9, paragraph h amended

**455B.474A Rules consistent with federal regulations.**

The rules adopted by the commission under section 455B.474 shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in section 455B.474, subsection 1, paragraph “a”, subparagraph (6), and subsection 3, paragraph “d”. It is the intent of the general assembly that state rules adopted pursuant to section 455B.474, subsection 1, paragraph “a”, subparagraph (6), and subsection 3, paragraph “d”, be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

2010 Acts, ch 1069, §58; 2011 Acts, ch 25, §139

Section amended

DIVISION VI  
INFECTIOUS WASTE

**455B.504 Collection and transportation of infectious medical waste — permits required — rules.** Repealed by 2011 Acts, ch 9, § 10.

DIVISION VIII  
CONTAMINATED SITES

**455B.601 and 455B.602** Repealed by 2011 Acts, ch 9, §10.

With respect to proposed amendment to former §455B.601, subsection 2, by 2011 Acts, ch 46, §4, see Code editor’s note on simple harmonization

DIVISION XII  
IOWA CLIMATE CHANGE  
ADVISORY COUNCIL

Greenhouse gas inventory and  
registry, see §455B.152

**455B.851 Iowa climate change advisory council.** Repealed by its own terms; 2010 Acts, ch 1031, § 259.

Section repealed effective July 1, 2011; for proposed repeal of section effective July 18, 2011, by 2011 Acts, ch 118, §48, 53; see Code editor’s note on simple harmonization

CHAPTER 455C  
BEVERAGE CONTAINERS CONTROL

**455C.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Beverage*” means wine as defined in section 123.3, subsection 47, alcoholic liquor as defined in section 123.3, subsection 5, beer as defined in section 123.3, subsection 7, mineral water, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.
2. “*Beverage container*” means any sealed glass, plastic, or metal bottle, can, jar or carton containing a beverage.
3. “*Commission*” means the environmental protection commission of the department.
4. “*Consumer*” means any person who purchases a beverage in a beverage container for use or consumption.

5. “*Dealer*” means any person who engages in the sale of beverages in beverage containers to a consumer.

6. “*Dealer agent*” means a person who solicits or picks up empty beverage containers from a dealer for the purpose of returning the empty beverage containers to a distributor or manufacturer.

7. “*Department*” means the department of natural resources created under section 455A.2.

8. “*Director*” means the director of the department.

9. “*Distributor*” means any person who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer who engages in such sales.

10. “*Geographic territory*” means the geographical area within a perimeter formed by the outermost boundaries served by a distributor.

11. “*Manufacturer*” means any person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers.

12. “*Nonrefillable beverage container*” means a beverage container not intended to be refilled for sale by a manufacturer.

13. “*Redemption center*” means a facility at which consumers may return empty beverage containers and receive payment for the refund value of the empty beverage containers.

[C79, 81, §455C.1; 82 Acts, ch 1199, §71, 96]

85 Acts, ch 32, §111; 86 Acts, ch 1245, §1899C, 1899D; 87 Acts, ch 22, §12; 88 Acts, ch 1200, §1; 89 Acts, ch 272, §34, 42; 90 Acts, ch 1261, §43, 44; 91 Acts, ch 268, §433, 442, 443; 92 Acts, ch 1242, §40, 47

Section not amended; internal reference change applied

## CHAPTER 455D

### WASTE VOLUME REDUCTION AND RECYCLING

#### **455D.3 Goals for waste stream reduction — procedures — reductions and increases in fees.**

##### *1. Year 1994 and 2000 goals.*

*a.* The goal of the state is to reduce the amount of materials in the waste stream, existing as of July 1, 1988, twenty-five percent by July 1, 1994, and fifty percent by July 1, 2000, through the practice of waste volume reduction at the source and through recycling. For the purposes of this section, “*waste stream*” means the disposal of solid waste as “*solid waste*” is defined in section 455B.301.

*b.* Notwithstanding section 455D.1, subsection 6, facilities which employ combustion of solid waste with energy recovery and refuse-derived fuel, which are included in an approved comprehensive plan, may include these processes in the definition of recycling for the purpose of meeting the state goal if at least thirty-five percent of the waste reduction goal, required to be met by July 1, 2000, pursuant to this section, is met through volume reduction at the source and recycling and reuse, as established pursuant to section 455B.301A, subsection 1, paragraphs “*a*” and “*b*”.

*2. Projected waste stream — year 2000.* A planning area may request the department to allow the planning area to project the planning area’s waste stream for the year 2000 for purposes of meeting the year 2000 fifty percent waste volume reduction and recycling goals required by this section. The department shall make a determination of the eligibility to use this option based upon the annual tonnage of solid waste processed by the planning area and the population density of the area the planning area serves. If the department agrees to allow the planning area to make year 2000 waste stream projections, the planning area shall calculate the year 2000 projections and submit the projections to the department for approval. The planning area shall use data which is current as of July 1, 1994, and shall take into account population, employment, and industrial changes and documented diversions due to existing programs. The planning area shall use the departmental methodology to calculate

the tonnage necessary to be diverted from landfills in order to meet the year 2000 fifty percent waste volume reduction and recycling goals required by this section. Once the department approves the year 2000 projections, the projections shall not be changed prior to the year 2001.

3. *Departmental monitoring.*

a. By October 31, 1994, a planning area shall submit to the department a solid waste abatement table which is updated through June 30, 1994. By April 1, 1995, the department shall report to the general assembly on the progress that has been made by each planning area on attainment of the July 1, 1994, twenty-five percent goal.

(1) If at any time the department determines that a planning area has met or exceeded the twenty-five percent goal, but has not met or exceeded the fifty percent goal, a planning area shall subtract sixty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310. If at any time the department determines that a planning area has met or exceeded the fifty percent goal, a planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310. The reduction in tonnage fees pursuant to this subparagraph shall be taken from that portion of the tonnage fees which would have been allocated for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1).

(2) If the department determines that a planning area has failed to meet the July 1, 1994, twenty-five percent goal, the planning area shall, at a minimum, implement the solid waste management techniques as listed in subsection 4. Evidence of implementation of the solid waste management techniques shall be documented in subsequent comprehensive plans submitted to the department.

b. (1) By October 31, 2000, a planning area shall submit to the department, a solid waste abatement table which is updated through June 30, 2000. By April 1, 2001, the department shall report to the general assembly on the progress that has been made by each planning area on attainment of the July 1, 2000, fifty percent goal.

(2) If at any time the department determines that a planning area has met or exceeded the fifty percent goal, the planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310. This amount shall be in addition to any amount subtracted pursuant to paragraph "a". The reduction in tonnage fees pursuant to this subparagraph shall be taken from that portion of the tonnage fees which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1). Except for fees required under subsection 4, paragraph "a", a planning area failing to meet the fifty percent goal is not required to remit any additional tonnage fees to the department.

4. *Solid waste management techniques.* A planning area that fails to meet the twenty-five percent goal shall implement the following solid waste management techniques:

a. Remit fifty cents per ton to the department, as of July 1, 1995. The funds shall be deposited in the solid waste account under section 455E.11, subsection 2, paragraph "a", to be used for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1). Moneys under this paragraph shall be remitted until such time as evidence of attainment of the twenty-five percent goal is documented in subsequent comprehensive plans submitted to the department.

b. Notify the public of the planning area's failure to meet the waste volume reduction goals of this section, utilizing standard language developed by the department for that purpose.

c. Develop draft ordinances which shall be used by local governments for establishing collection fees that are based on volume or on the number of containers used for disposal by residents.

d. Conduct an educational and promotional program to inform citizens of the manner and benefits of reducing, reusing, and recycling materials and the procurement of products made with recycled content. The program shall include the following:

(1) Targeted waste reduction and recycling education for residents, including multifamily dwelling complexes having five or more units.

(2) An intensive one-day seminar for the commercial sector regarding the benefits of and opportunities for waste reduction and recycling.

(3) Promotion of recycling through targeted community and media events.

(4) Recycling notification and education packets to all new residential, commercial, and institutional collection service customers that include, at a minimum, the manner of preparation of materials for collection, and the reasons for separation of materials for recycling.

5. *Environmental management systems.* A planning area designated as an environmental management system pursuant to section 455J.7 is exempt from the waste stream reduction goals of this section.

89 Acts, ch 272, §3; 92 Acts, ch 1213, §2; 94 Acts, ch 1177, §4; 95 Acts, ch 80, §2; 95 Acts, ch 209, §25; 98 Acts, ch 1193, §3; 2001 Acts, ch 124, §2, 6; 2006 Acts, ch 1063, §2; 2008 Acts, ch 1109, §2; 2011 Acts, ch 25, §108

Subsections 1 and 3 amended

**455D.8 Deposits, rebates, and waste abatement fees.** Repealed by 2011 Acts, ch 9, § 11.

**455D.10A Household batteries — heavy metal content and recycling requirements.**

1. *Definitions.* As used in this section and in section 455D.10B unless the context otherwise requires:

a. *“Button cell battery”* means a household battery which resembles a button or coin in size and shape.

b. *“Consumer”* means a person who purchases household batteries for personal or business use.

c. *“Easily removed”* means a battery or battery pack which can be removed from a battery-powered product by the consumer, using common household tools.

d. *“Household battery”* means any type of dry cell battery used by consumers, including but not limited to mercuric oxide, carbon-zinc, zinc air, silver oxide, nickel-cadmium, nickel-hydride, alkaline, lithium, or sealed lead acid batteries.

e. *“Institutional generator”* means a governmental, commercial, industrial, communications, or medical facility which generates waste mercuric oxide, nickel-cadmium, or sealed lead acid rechargeable batteries.

f. *“Rechargeable consumer product”* means a product that is primarily powered by a rechargeable battery and is primarily used or purchased to be used for household purposes.

g. *“Rechargeable household battery”* means a small sealed nickel-cadmium or sealed lead acid battery used for nonvehicular purposes and weighing less than twenty-five pounds, which can be recharged by the consumer and reused.

2. *Mercury content limited.*

a. A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese battery that contains more than twenty-five one-thousandths of a percent mercury by weight. A person shall not sell, distribute, or offer for sale at retail in this state an alkaline manganese household battery manufactured on or after January 1, 1996, to which mercury has been added. This paragraph does not apply to alkaline manganese button cell batteries.

b. A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese button cell battery which contains more than twenty-five milligrams of mercury.

3. *Recycling/disposal requirements for household batteries.*

a. Beginning July 1, 1996, a system or systems shall be in place to protect the health and safety of Iowans, and the state’s environment, from the toxic components of used household batteries. The system or systems shall include at least one of the following elements:

(1) Elimination or reduction to the extent established by rule of the department, of heavy metals and other toxic components in nickel-cadmium, mercuric oxide, or sealed lead acid household batteries, to ensure protection of public health, safety, and the environment when placed in or disposed of as part of mixed municipal solid waste.

(2) Establishment of a comprehensive recycling program for each type of battery listed in subparagraph (1) that is sold, distributed, or offered for sale in this state. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable

batteries. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph “a”, subparagraph (3) or (4), shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for the recycling of used batteries in an environmentally sound manner.

(3) Provision for collection, transporting, and proper disposal of used household batteries of the types listed in subparagraph (1) which are distributed, sold, or offered for retail sale in the state. For the purposes of this paragraph, “*proper disposal*” means disposal which complies with all applicable state and federal laws. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph “a”, subparagraph (3) or (4), shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for proper disposal of the used batteries.

b. To meet the recycling and disposal requirements of this subsection, participants in the systems established under this subsection, either individually or collectively, shall do all of the following:

(1) Identify a collection entity, other than a local government collection system, unless the local government agrees otherwise, through which the discarded batteries listed in paragraph “a”, subparagraph (1) shall be returned for collection and recycling or disposal.

(2) Inform each customer of the prohibition of disposal of batteries listed in paragraph “a”, subparagraph (1), and a safe and convenient return process available to the customer for recycling or proper disposal.

c. After July 1, 1996, nickel-cadmium, sealed lead acid, or mercuric oxide household batteries shall not be sold, distributed, or offered for sale in the state, unless a system required by this section is in operation.

d. The department may make recommendations to the commission to include other types of household or rechargeable batteries, not enumerated in paragraph “a”, subparagraph (1), in the requirements of this subsection.

e. This subsection does not apply to batteries subject to regulation under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

4. *Rules adopted.* The commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this section pursuant to chapter 17A.

92 Acts, ch 1215, §15; 95 Acts, ch 99, §1; 2007 Acts, ch 151, §1; 2011 Acts, ch 25, §140  
 Subsection 3, paragraph a, subparagraphs (2) and (3) amended

#### **455D.10B Batteries used in rechargeable consumer products.**

1. A person shall not distribute, sell, or offer for retail sale in the state a rechargeable consumer product manufactured on or after January 1, 1994, unless all of the following conditions are met:

a. The battery can be easily removed by the consumer, or is contained in a battery pack that is separate from the product and can be easily removed.

b. The battery, the instruction manual, and the product package are clearly labeled to indicate that the battery must be recycled or disposed of properly and includes the designation “Cd” or “Ni-Cd” for nickel-cadmium batteries and “Pb” or “Lead” for small lead batteries.

2. a. A rechargeable consumer product manufacturer may apply to the department for exemption from the requirements of subsection 1 if any of the following apply:

(1) The product cannot be redesigned or manufactured to comply with the requirements prior to January 1, 1994.

(2) The redesign of the product to comply with the requirements would result in significant danger to public health and safety.

(3) The battery poses no unreasonable hazard to public health, safety, or the environment

when placed in and processed or disposed of as part of mixed municipal solid waste, pursuant to section 455D.10A.

(4) The consumer product manufacturer has in operation a program to recycle used batteries in an environmentally sound manner.

b. A manufacturer of a product that is powered by a battery that cannot be easily removed who has been granted an exemption under this subsection shall label the product as required in subsection 1, paragraph “b”.

3. An exemption granted by the department under subsection 2, paragraph “a”, subparagraph (1), is limited to a maximum of two years, but may be renewed.

92 Acts, ch 1215, §16; 94 Acts, ch 1037, §1, 2; 2011 Acts, ch 25, §109  
Subsections 2 and 3 amended

#### **455D.11C Waste tire management fund.**

1. A waste tire management fund is created within the state treasury. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Notwithstanding section 12C.7, any interest or earnings on investments from moneys in the fund shall be credited to the fund. Moneys from the fund that are expended by the department in closing or bringing into compliance a waste tire collection site pursuant to section 455D.11A and later recouped by the department shall be credited to the fund.

2. Moneys in the waste tire management fund are appropriated and shall be used for the following purposes:

a. Thirty percent of the moneys shall be used for all of the following positions:

(1) One full-time equivalent position for the administration of permits and registrations for tire processing, storage, and hauling activities, and tire program initiatives.

(2) One and one-half full-time equivalent positions for waste tire-related compliance checks and inspections. The full-time equivalent positions shall be divided equally between the field offices in the state.

b. Ten percent of the moneys shall be used for a public education and awareness initiative related to the proper tire disposal options and environmental and health hazards posed by improper tire storage.

c. Thirty percent of the moneys shall be used for market development initiatives for waste tires.

d. Thirty percent of the moneys shall be used for waste tire stockpile abatement initiatives which would require a cost-share agreement with the landowner.

96 Acts, ch 1117, §3; 2004 Acts, ch 1173, §1; 2008 Acts, ch 1113, §116; 2011 Acts, ch 34, §103

Subsection 1 amended

#### **455D.15 Waste volume reduction and recycling fund.**

1. A waste volume reduction and recycling fund is created within the state treasury. Moneys received by the department from fees, including general revenue, federal funds, awards, wills, bequests, gifts, or other moneys designated shall be deposited in the state treasury to the credit of the fund. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Any interest and earnings on investments from money in the fund shall be credited to the fund, section 12C.7 notwithstanding.

2. The department shall award grants based upon the solid waste management hierarchy set forth in section 455B.301A, subsection 1. A grant shall not be awarded to a county, city, or central planning agency which has not complied with the requirements of a comprehensive solid waste management program and which has not complied with or demonstrated an intent to comply with the requirements of section 455B.306.

3. The fund shall be utilized for the following purposes:

a. To provide financial assistance to public and private entities to develop and implement waste reduction and minimization programs for Iowa industries.

- b. To provide financial assistance to public and private entities and to develop and implement programs to create and enhance markets for recyclable and other waste products.
- c. To develop and implement educational and technical assistance programs that support and encourage waste reduction and recycling efforts by Iowans.
- d. To administer the provisions of chapter 455B, division IV, part 1.
- e. The department may utilize up to ten percent of the fund to administer the provisions of this chapter.
- f. To provide grants to local communities or private individuals for projects which establish recycling collection centers, establish local curbside collection of separated recyclable waste materials, promote public awareness regarding waste volume reduction and the use of recyclable materials, and create markets for recyclable materials. Grants shall not be awarded for incineration.
- g. To provide technical assistance to local communities in establishing collection systems and composting facilities for yard waste.
- h. To fund the study required pursuant to section 455D.11, subsection 3, and to provide loans and grants for waste tire recycling and reprocessing projects.
- i. To carry out the functions of the department of natural resources concerning recycling.
- j. To promote the recycling of chlorofluorocarbons used as refrigerant.

89 Acts, ch 272, §15; 2011 Acts, ch 9, §6

Subsection 3, paragraph a stricken and former paragraphs b – k redesignated as a – j

**455D.26 Green advisory committee.** Repealed by its own terms; 2010 Acts, ch 1166, §2. Section repeal is effective January 1, 2012; 2010 Acts, ch 1166, §2

## CHAPTER 455E

### GROUNDWATER PROTECTION

#### **455E.11 Groundwater protection fund established — appropriations.**

1. a. A groundwater protection fund is created in the state treasury. Moneys received from sources designated for purposes related to groundwater monitoring and groundwater quality standards shall be deposited in the fund. Notwithstanding section 8.33, any unexpended balances in the groundwater protection fund and in any of the accounts within the groundwater protection fund at the end of each fiscal year shall be retained in the fund and the respective accounts within the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the groundwater protection fund or in any of the accounts within the groundwater protection fund shall be credited to the groundwater protection fund or the respective accounts within the groundwater protection fund. The fund may be used for the purposes established for each account within the fund.

b. The director shall include in the departmental budget prepared pursuant to section 455A.4, subsection 1, paragraph “c”, a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

c. The secretary of agriculture shall submit the report on a biennial basis to the governor in the same manner as provided in section 7A.3. The report shall include a proposal for the use of groundwater protection fund moneys, and uses of the groundwater protection fund moneys appropriated in the two previous fiscal years.

2. The following accounts are created within the groundwater protection fund:

a. A solid waste account. Moneys received from the tonnage fee imposed under section 455B.310 and from other sources designated for environmental protection purposes in relation to sanitary disposal projects shall be deposited in the solid waste account. Moneys shall be allocated as follows:

(1) After the one dollar and fifty-five cents is allocated pursuant to subparagraph (2), the

remaining moneys from the tonnage fee shall be used for funding alternatives to landfills and shall be allocated as follows:

(a) (i) Each fiscal year for the fiscal period beginning July 1, 2010, and ending June 30, 2014, not more than two hundred thousand dollars to the department for purposes of awarding a beautification grant each year to one organization that does all of the following:

(A) Assists communities and organizations in cleanup and beautification projects.

(B) Conducts research to assist in the understanding of reasons for littering and illegal dumping.

(C) Administers antilittering and beautification education programs.

(D) Increases public awareness of the costs of littering.

(ii) The grant recipient shall do all of the following:

(A) Expend not more than fifty percent of the moneys for a public education and awareness initiative designed to reduce litter and illegal dumping.

(B) Expend not more than fifty percent of the moneys for a community partnership program designed to support community beautification projects.

(iii) As a condition of the grant award each year, the department shall require the grant recipient to submit a written report to the department by the end of the fiscal year for which the grant is awarded. In addition to any other information required by the department, the report shall include information detailing the expenditure of all moneys received by the organization and the results achieved through the expenditure of the money.

(b) Fifty thousand dollars to the department to implement the special waste authorization program.

(c) One hundred sixty-five thousand dollars to the department to be used for the by-products and waste search service at the university of northern Iowa.

(d) Up to thirty percent of the fees remitted shall be used for grants to environmental management systems as provided in section 455J.7.

(e) Not more than four hundred thousand dollars to the department for purposes of providing funding assistance to eligible communities to address abandoned buildings by promoting waste abatement, diversion, selective dismantlement of building components, and recycling. Eligible communities include a city with a population of five thousand or fewer. Eligible costs for program assistance include but are not limited to asbestos and other hazardous material abatement and removal, the recovery processing of recyclable or reusable material through the selective dismantlement of abandoned buildings, and reimbursement for purchased recycled content materials used in the renovation of buildings. For projects that support community beautification, the department may elect to administer funding to eligible communities in collaboration with the organization awarded the beautification grant in accordance with subparagraph division (a), subparagraph subdivision (i).

(f) The balance of the remaining funds shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs. These funds may also be used to assist planning areas which have not been designated as environmental management systems in meeting the designation requirements of section 455J.3.

(2) One dollar and fifty-five cents shall be used as follows:

(a) Forty-eight percent to the department to be used for the following purposes:

(i) Eight thousand dollars shall be transferred to the Iowa department of public health for departmental duties required under section 135.11, subsections 18 and 19, and section 139A.21.

(ii) The administration and enforcement of a groundwater monitoring program and other required programs relating to solid waste management.

(iii) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301.

(iv) The waste management assistance program of the department.

(b) Sixteen percent to the university of northern Iowa to develop and maintain the Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.

(c) Six and one-half percent for the department to establish a program to provide competitive grants to regional coordinating councils for projects in regional economic development centers related to a by-products and waste exchange system. Grantees under this program shall coordinate activities with other available state or multistate waste exchanges, including but not limited to the by-products and waste search service at the university of northern Iowa. The department shall consult with the economic development authority and the waste reduction center at the university of northern Iowa in establishing criteria for and the awarding of grants under this program. The department shall expend not more than thirty thousand dollars of the moneys appropriated under this subparagraph division to contract with the by-products and waste search service at the university of northern Iowa to provide training and other technical services to grantees under the program. If regional economic development centers cease to exist, the department shall transfer existing contracts to one or more community colleges or councils of governments and shall revise the criteria and rules for this program to allow community colleges or councils of governments to be applicants for competitive grants.

(d) For the fiscal year beginning July 1, 2005, nine and one-half percent to the department to establish permanent household hazardous waste collection sites so that both urban and rural populations are served and so that collection services are available to the public on a regular basis. Beginning July 1, 2006, six and one-quarter percent to the department to establish permanent household hazardous waste collection sites so that both urban and rural populations are served and so that collection services are available to the public on a regular basis. Beginning July 1, 2007, three percent to the department to establish permanent household hazardous waste collection sites so that both urban and rural populations are served and so that collection services are available to the public on a regular basis. Beginning July 1, 2008, any moneys collected pursuant to this subparagraph division that remain unexpended at the end of a fiscal year for establishment of permanent household hazardous waste collection sites shall be used for purposes of subparagraph division (e).

(e) For the fiscal year beginning July 1, 2005, three percent to the department for payment of transportation costs related to household hazardous waste collection programs. Beginning July 1, 2006, six and one-quarter percent to the department for payment of transportation costs related to household hazardous waste collection programs. Beginning July 1, 2007, nine and one-half percent to the department for payment of transportation costs related to household hazardous waste collection programs.

(f) Eight and one-half percent to the department to provide additional toxic cleanup days or other efforts of the department to support permanent household hazardous material collection systems and special events for household hazardous material collection, and for the natural resource geographic information system required under section 455E.8, subsection 6. Departmental rules adopted for implementation of toxic cleanup days shall provide sufficient flexibility to respond to the household hazardous material collection needs of both small and large communities. Repayment moneys from the Iowa business loan program for waste reduction and recycling pursuant to section 455B.310, subsection 2, paragraph "b", Code 1993, and discontinued pursuant to 1993 Iowa Acts, ch. 176, section 45, shall be placed into this account to support household hazardous materials programs of the department.

(g) Three percent for the economic development authority to establish, in cooperation with the department of natural resources, a marketing initiative to assist Iowa businesses producing recycling or reclamation equipment or services, recyclable products, or products from recycled materials to expand into national markets. Efforts shall include the reuse and recycling of sawdust.

(h) Five and one-half percent to the department for the provision of assistance to public and private entities in developing and implementing waste reduction and minimization programs for Iowa industries.

b. An agriculture management account. Moneys collected from the groundwater protection fee levied pursuant to section 200.8, subsection 4, the portion of the fees collected pursuant to sections 206.8, subsection 2, and 206.12, subsection 4, and other moneys designated for the purpose of agriculture management shall be deposited in the agriculture

management account. The agriculture management account shall be used for the following purposes:

(1) Nine thousand dollars of the account is appropriated to the Iowa department of public health for carrying out the departmental duties under section 135.11, subsections 18 and 19, and section 139A.21.

(2) Two hundred thousand dollars of the moneys deposited in the agriculture management account is appropriated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the demonstration projects regarding agriculture drainage wells and sinkholes. Any remaining balance of the appropriation made for the purpose of funding such demonstration projects for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding such demonstration projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

(3) Of the remaining moneys in the account:

(a) Thirty-five percent is appropriated annually for the Leopold center for sustainable agriculture at Iowa state university of science and technology.

(b) Two percent is appropriated annually to the department and, except for administrative expenses, is transferred to the Iowa department of public health for the purpose of administering grants to counties and conducting oversight of county-based programs for the testing of private rural water supply wells, private rural water supply well sealing, and the proper closure of private rural abandoned wells and cisterns. Not more than thirty-five percent of the moneys is appropriated annually for grants to counties for the purpose of conducting programs of private rural water supply testing, private rural water supply well sealing, the proper closure of private rural abandoned wells and cisterns, or any combination thereof. An amount agreed to by the department of natural resources and the Iowa department of public health shall be retained by the department of natural resources for administrative expenses.

(i) A county applying for grants under this subparagraph division shall submit only one application. To be eligible for a grant, a county must have adopted standards for private water supply and private disposal facilities at least as stringent as the standards adopted by the commission. During each fiscal year, the amount granted each eligible applicant shall be the total funds available divided by the number of eligible counties applying. Upon receipt of the grant, the county may apply the funds to any one or more of the above three programs.

(ii) Not more than six percent of the moneys is appropriated annually to the state hygienic laboratory to assist in well testing. For purposes of this subparagraph division, "cistern" means an artificial reservoir constructed underground for the purpose of storing rainwater.

(c) The department shall allocate a sum not to exceed seventy-nine thousand dollars of the moneys appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the preparation of a detailed report and plan for the establishment on July 1, 1988, of the center for health effects of environmental contamination. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The report shall include the assemblage of all existing data relating to Iowa drinking water supplies, including characteristics of source, treatment, presence of contaminants, precise location, and usage patterns to facilitate data retrieval and use in research; and detailed organizational plans, research objectives, and budget projections for the anticipated functions of the center in subsequent years. The department may allocate annually a sum not to exceed nine percent of the moneys of the account to the center, beginning July 1, 1988.

(d) Thirteen percent of the moneys is appropriated annually to the department of agriculture and land stewardship for financial incentive programs related to agricultural drainage wells and sinkholes, for studies and administrative costs relating to sinkholes and agricultural drainage wells programs. Of the moneys allocated for financial incentive programs, the department may reimburse landowners for engineering costs associated with voluntarily closing agricultural drainage wells. The financial incentives allocated for voluntary closing of agricultural drainage wells shall be provided on a cost-share basis which shall not exceed fifty percent of the estimated cost or fifty percent of the actual cost,

whichever is less. Engineering costs do not include construction costs, including costs associated with earth moving.

c. A household hazardous waste account.

(1) The moneys collected pursuant to section 455F.7 and moneys collected pursuant to section 29C.8A which are designated for deposit, shall be deposited in the household hazardous waste account. Two thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 18 and 19, and section 139A.21. The remainder of the account shall be used to fund toxic cleanup days and the efforts of the department to support a collection system for household hazardous materials, including public education programs, training, and consultation of local governments in the establishment and operation of permanent collection systems, and the management of collection sites, education programs, and other activities pursuant to chapter 455F, including the administration of the household hazardous materials permit program by the department of revenue.

(2) The department shall submit to the general assembly, annually on or before January 1, an itemized report which includes but is not limited to the total amount of moneys collected and the sources of the moneys collected, the amount of moneys expended for administration of the programs funded within the account, and an itemization of any other expenditures made within the previous fiscal year.

d. A storage tank management account. All fees collected pursuant to section 455B.473, subsection 5, and section 455B.479, shall be deposited in the storage tank management account. Moneys deposited in the account shall be expended for the following purposes:

(1) One thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 18 and 19, and section 139A.21.

(2) The moneys remaining in the account after the appropriation in subparagraph (1) are appropriated from the storage tank management account to the department of natural resources for the administration of a state storage tank program pursuant to chapter 455B, division IV, part 8, and for programs which reduce the potential for harm to the environment and the public health from storage tanks.

(3) Each fiscal year, the department of natural resources shall enter into an agreement with the Iowa comprehensive petroleum underground storage tank fund board for the completion of administrative tasks during the fiscal year directly related to the evaluation and modification of risk based corrective action rules as necessary and processes that affect the administration in subparagraph (2).

87 Acts, ch 225, §111; 88 Acts, ch 1169, §9 – 13; 88 Acts, ch 1188, §2, 3; 88 Acts, ch 1190, §3; 89 Acts, ch 131, §41; 89 Acts, ch 272, §38; 89 Acts, ch 311, §28; 90 Acts, ch 1255, §30, 31; 90 Acts, ch 1260, §27, 28; 91 Acts, ch 257, §6; 91 Acts, ch 268, §237; 92 Acts, ch 1215, §18; 92 Acts, ch 1239, §21; 93 Acts, ch 176, §46; 94 Acts, ch 1023, §112; 94 Acts, ch 1173, §36; 94 Acts, ch 1177, §5; 95 Acts, ch 80, §3; 95 Acts, ch 97, §1; 95 Acts, ch 216, §35; 98 Acts, ch 1220, §22; 2000 Acts, ch 1066, §46 – 49; 2000 Acts, ch 1086, §1; 2001 Acts, ch 7, §13, 14; 2001 Acts, ch 24, §54; 2001 Acts, ch 124, §3 – 6; 2001 Acts, ch 129, §6; 2002 Acts, ch 1119, §176; 2002 Acts, ch 1162, §60 – 62; 2003 Acts, ch 145, §286; 2004 Acts, ch 1082, §5; 2004 Acts, ch 1101, §64; 2005 Acts, ch 33, §2, 3; 2006 Acts, ch 1178, §28; 2008 Acts, ch 1109, §3; 2008 Acts, ch 1126, §17, 33; 2009 Acts, ch 41, §136, 263; 2010 Acts, ch 1191, §24; 2010 Acts, ch 1193, §176; 2011 Acts, ch 25, §53, 110, 143; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 128, §23, 24, 60

See Iowa Acts for special provisions relating to appropriations in a given year

Code editor directives applied

Subsection 2, paragraph a, subparagraph (1), subparagraph division (a), subparagraph subdivision (ii), subparagraph part (B) amended

Subsection 2, paragraph a, subparagraph (1), NEW subparagraph division (e) and former subparagraph division (e) redesignated as (f)

Subsection 2, paragraph c amended

Subsection 2, paragraph d, subparagraph (3) amended

## CHAPTER 455G

### FUEL STORAGE TANKS AND DISPENSING INFRASTRUCTURE

Legislative findings; legislative intent; conditions upon finding  
of invalidity; 89 Acts, ch 131, §1, 2, 59  
See also chapter 101

#### SUBCHAPTER I

#### COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND

#### **455G.3 Establishment of Iowa comprehensive petroleum underground storage tank fund.**

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section, section 321.145, subsection 2, paragraph "a", and sections 455G.8 and 455G.9, and section 455G.11, Code 2003, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

2. The board shall assist Iowa's owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The treasurer of state may issue its bonds, or series of bonds, to assist the board, as provided in this chapter.

3. The purposes of this chapter shall include but are not limited to any of the following:

a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.

b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10, Code 1999.

c. To establish a marketability fund for the purposes as stated in section 455G.21.

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account or fund under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would

restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

5. For purposes of payment of refunds of the environmental protection charge under section 424.15 by the department of revenue, the treasurer of state shall allocate to the department of administrative services the total amount budgeted by the fund's board for environmental protection charge refunds. Any unused funds shall be remitted to the treasurer of state.

6. *a.* For the fiscal year beginning July 1, 2010, and each fiscal year thereafter, there is appropriated from the Iowa comprehensive petroleum underground storage tank fund to the department of natural resources two hundred thousand dollars for purposes of technical review support to be conducted by nongovernmental entities for leaking underground storage tank assessments.

*b.* Notwithstanding section 8.33, moneys appropriated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

7. *a.* For the fiscal year beginning July 1, 2010, there is appropriated from the Iowa comprehensive petroleum underground storage tank fund to the department of natural resources one hundred thousand dollars for purposes of database modifications necessary to accept batched external data regarding underground storage tank inspections conducted by nongovernmental entities.

*b.* Notwithstanding section 8.33, moneys appropriated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

8. *a.* For the fiscal year beginning July 1, 2010, and each fiscal year thereafter, there is appropriated from the Iowa comprehensive petroleum underground storage tank fund to the department of agriculture and land stewardship two hundred fifty thousand dollars for the sole and exclusive purpose of inspecting fuel quality at pipeline terminals and renewable fuel production facilities, including salaries, support, maintenance, and miscellaneous purposes.

*b.* Notwithstanding section 8.33, moneys appropriated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

9. Beginning September 1, 2010, the board shall administer safety training, hazardous material training, environmental training, and underground storage tank operator training in the state to be provided by an entity approved by the department of natural resources. The training provided pursuant to this subsection shall be available to any tank operator in the state at an equal and reasonable cost and shall not be conditioned upon any other requirements. Each fiscal year, the board shall not expend more than two hundred fifty thousand dollars from the Iowa comprehensive petroleum underground storage tank fund for purposes of administering this subsection.

89 Acts, ch 131, §44; 90 Acts, ch 1235, §19; 91 Acts, ch 159, §29; 95 Acts, ch 215, §11, 12; 98 Acts, ch 1065, §1; 98 Acts, ch 1068, §3, 4; 2000 Acts, ch 1226, §13, 30; 2001 Acts, ch 190, §21; 2002 Acts, ch 1050, §42; 2003 Acts, ch 145, §263; 2003 Acts, 1st Ex, ch 2, §198, 205; 2004 Acts, ch 1094, §2, 5, 6; 2005 Acts, ch 19, §61, 62; 2008 Acts, ch 1113, §117; 2010 Acts, ch 1061, §60; 2010 Acts, ch 1193, §177, 187, 195; 2011 Acts, ch 128, §25, 26

For temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions, see annual Iowa Acts of the general assembly

Subsections 6 - 8 amended

#### **455G.4 Governing board.**

##### *1. Members of the board.*

*a.* The Iowa comprehensive petroleum underground storage tank fund board is established consisting of the following members:

- (1) The director of the department of natural resources, or the director's designee.
- (2) The treasurer of state, or the treasurer's designee.

(3) An employee of the department of management who has been designated as a risk manager by the director of the department of management.

(4) Two public members appointed by the governor and confirmed by the senate to staggered four-year terms, except that, of the first members appointed, one public member shall be appointed for a term of two years and one for a term of four years. A public member shall have experience, knowledge, and expertise of the subject matter embraced within this chapter. The two public members shall have experience in either, or both, financial markets or insurance.

(5) Two owners or operators appointed by the governor as follows:

(a) One member shall be an owner or operator who is self-insured.

(b) One member shall be a member of the petroleum marketers and convenience stores of Iowa or its designee.

(6) The director of the legislative services agency, or the director's designee. The director under this subparagraph shall not participate as a voting member of the board.

b. A public member appointed pursuant to paragraph "a", subparagraph (4), shall not have a conflict of interest. For purposes of this section, a "*conflict of interest*" means an affiliation, within the twelve months before the member's appointment, with the regulated tank community, or with a person or property and casualty insurer offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated tank community.

c. The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board or made available to the fund. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The members shall elect a voting chairperson of the board from among the members of the board.

2. *Department cooperation with board.* The director of the department of natural resources shall cooperate with the board in the implementation of this part so as to minimize unnecessary duplication of effort, reporting, or paperwork and maximize environmental protection.

3. *Rules and emergency rules.*

a. The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish procedures for investigating and settling claims made against the fund, and otherwise implement and administer this chapter.

b. Rules necessary for the implementation and collection of the environmental protection charge shall be adopted.

c. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

d. The board shall adopt rules relating to appeal procedures which shall require the administrator to deliver notice of appeal to the affected parties within fifteen days of receipt of notice, require that the hearing be held within one hundred eighty days of the filing of the petition unless good cause is shown for the delay, and require that a final decision be issued no later than one hundred twenty days following the close of the hearing. The time restrictions in this paragraph may be waived by mutual agreement of the parties.

4. *Public bid.* All contracts entered into by the board, including contracts relating to community remediation, shall be awarded on a competitive basis to the maximum extent practical. In those situations where it is determined that public bidding is not practical, the basis for the determination of impracticability shall be documented by the board or its designee. This subsection applies only to contracts entered into on or after July 1, 1992.

5. *Contract approval.*

a. The board shall approve any contract entered into pursuant to this chapter if the cost of the contract exceeds seventy-five thousand dollars.

b. A listing of all contracts entered into pursuant to this chapter shall be presented at each board meeting and shall be made available to the public. The listing shall state the interested parties to the contract, the amount of the contract, and the subject matter of the contract.

c. The board shall be required to review and approve or disapprove the administrator's failure to approve a contract under section 455G.12A. Review by the board shall not be required for cancellation or replacement of a contract for a site included in a community remediation project or when an emergency situation exists.

6. *Reporting.* Beginning July 2003, the board shall submit a written report quarterly to the legislative council, the chairperson and ranking member of the committee on environment and energy independence in the senate, and the chairperson and ranking member of the committee on environmental protection in the house of representatives regarding changes in the status of the program including but not limited to the number of open claims by claim type; the number of new claims submitted and the eligibility status of each claim; a summary of the risk classification of open claims; the status of all claims at high-risk sites including the number of corrective action design reports submitted, approved, and implemented during the reporting period; total moneys reserved on open claims and total moneys paid on open claims; and a summary of budgets approved and invoices paid for high-risk site activities including a breakdown by corrective action design report, construction and equipment, implementation, operation and maintenance, monitoring, over excavation, free product recovery, site reclassification, reporting and other expenses, or a similar breakdown. In each report submitted by the board, the board shall include an estimated timeline to complete corrective action at all currently eligible high-risk sites where a corrective action design report has been submitted by a claimant and approved during the reporting period. The timeline shall include the projected year when a no further action designation will be obtained based upon the corrective action activities approved or anticipated at each claimant site. The timeline shall be broken down in annual increments with the number or percentage of sites projected to be completed for each time period. The report shall identify and report steps taken to expedite corrective action and eliminate the state's liability for open claims.

89 Acts, ch 131, §45; 91 Acts, ch 252, §13; 92 Acts, ch 1217, §3, 4; 93 Acts, ch 155, §1; 98 Acts, ch 1068, §5; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 110, §2 – 4; 2005 Acts, ch 19, §63 – 65; 2006 Acts, ch 1010, §118; 2008 Acts, ch 1031, §114; 2009 Acts, ch 133, §155; 2010 Acts, ch 1193, §178; 2011 Acts, ch 25, §54

Confirmation; see §2.32

Environmental protection charge, see chapter 424

Subsection 1, paragraph a, subparagraph (4) amended

#### **455G.9 Remedial program.**

1. *Limits of remedial account coverage.* Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of

natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1984, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

(b) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after January 1, 1985.

(d) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to September 1, 1990.

(e) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

(5) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph "a", subparagraph (6), subparagraph division (i). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

(6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph "a", subparagraph (6), but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph "a", subparagraph (1).

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to,

loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d. One hundred percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a “*responsible party*” for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. In such situations, the board may act as an agent for the county. Actual corrective action on the site shall be overseen by the department, the board, and a certified groundwater professional. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including but not limited to loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution. Reasonable acquisition costs do not include any taxes or costs related to the collection of taxes.

e. Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990, in connection with a tank owned or operated by a state agency or department which elects to participate in the remedial account pursuant to this paragraph. A state agency or department which does not receive a standing unlimited appropriation which may be used to pay for the costs of a corrective action may opt, with the approval of the board, to participate in the remedial account. As a condition of opting to participate in the remedial account, the agency or department shall pay all registration fees, storage tank management fees, environmental protection charges, and all other charges and fees upon all tanks owned or operated by the agency or department in the same manner as if the agency or department were a person required to maintain financial responsibility. Once an agency has opted to participate in the remedial program, it cannot opt out, and shall continue to pay all charges and fees upon all tanks owned or operated by the agency or department so long as the charges or fees are imposed on similarly situated tanks of a person required to maintain financial responsibility. The board shall by rule adopted pursuant to chapter 17A provide the terms and conditions for a state agency or department to opt to participate in the remedial account. A state agency or department which opts to participate in the remedial account shall be subject to the minimum copayment schedule of subsection 4, as if the state agency or department were a person required to maintain financial responsibility.

f. One hundred percent of the costs up to twenty thousand dollars incurred by the board under section 455G.12A, subsection 2, paragraph “b”, for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments under subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

g. (1) Corrective action for the costs of a release under all of the following conditions:

(a) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(b) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since December 31, 1975.

(c) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(d) The release was reported to the board by October 26, 1991.

(2) Corrective action costs and copayment amounts under this paragraph “g” shall be paid in accordance with subsection 4.

(3) A person requesting benefits under this paragraph “g” may establish that the conditions of subparagraph (1), subparagraph divisions (a), (b), and (c), are met through the use of supporting documents, including a personal affidavit.

h. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

i. Notwithstanding section 455G.1, subsection 2, corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no-further-action letter by the department of natural resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property and the applicant must not be a financial institution.

j. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was acquired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which it acquired, and does not become a responsible party by sale or transfer of property so acquired.

k. Pursuant to an agreement between the board and the department of natural resources, assessment and corrective action arising out of releases at sites for which a no further action certificate has been issued pursuant to section 455B.474, when the department determines that an unreasonable risk to public health and safety may still exist or that previously reported upon applicable target levels have been exceeded. At a minimum, the agreement shall address eligible costs, contracting for services, and conditions under which sites may be reevaluated.

l. Up to fifteen thousand dollars for the permanent closure of an underground storage tank system that does not meet performance standards for new or upgraded tanks or is otherwise required to be closed pursuant to rules adopted by the environmental protection commission pursuant to section 455B.474. Reimbursement is limited to costs approved by the board prior to the closure activities.

2. *Remedial account funding.* The remedial account shall be funded by that portion of the proceeds of the use tax imposed under chapter 423, subchapter III, and other moneys and revenues budgeted to the remedial account by the board.

3. *Trust fund to be established.* When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose.

4. *Minimum copayment schedule.*

a. An owner or operator shall be required to pay the greater of five thousand dollars or eighteen percent of the first eighty thousand dollars of the total costs of corrective action for that release, except for claims pursuant to section 455G.21, where the claimant is not a responsible party or potentially responsible party for the site for which the claim is filed.

b. If a site’s actual expenses exceed eighty thousand dollars, the remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, not to exceed one million dollars, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired

in connection with delinquent taxes, as provided in subsection 1, paragraph “d”, unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

5. *Recovery of gain on sale of property.*

a. If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

b. This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. *Recurring releases treated as a newly reported release.* A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the site cleanup report or in addition to the work actually performed.

7. *Expenses of cleanup not required.* When an owner or operator who is eligible for benefits under this chapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources may be covered under any of the accounts established under the fund only if approved by the board as cost-effective relative to the department accepted monitoring plan or relative to the repeal date specified in section 424.19. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup. The board shall seek to terminate the responsible party’s environmental liabilities at such sites prior to the board ceasing operation.

8. *Owner or operator defined.* For purposes of receiving benefits under this section, “owner or operator” means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

9. *Self-insureds.* For a self-insured as determined under 567 IAC 136.6(455B), to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met.

10. *Expenses incurred by governmental subdivisions and public works utilities.* The board shall adopt rules for reimbursement for reasonable expenses incurred by a governmental subdivision or public works utility for sampling, treating, handling, or disposing, as required by the department, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance, or repair of a utility or public improvement. The board may seek full recovery from a responsible party liable for the release for such expenses and for all other costs and reasonable attorney fees and costs of litigation for which moneys are expended by the fund. Any expense described in this subsection incurred by the fund constitutes a lien upon the property from which the release

occurred. A lien shall be recorded and an expense shall be collected in the same manner as provided in section 424.11.

89 Acts, ch 131, §50; 89 Acts, ch 307, §46; 90 Acts, ch 1235, §22 – 28; 90 Acts, ch 1267, §42 – 44; 91 Acts, ch 252, §14 – 24; 92 Acts, ch 1217, §7; 93 Acts, ch 155, §2 – 4; 95 Acts, ch 215, §16, 17; 98 Acts, ch 1065, §3 – 5; 99 Acts, ch 74, §1, 2; 2000 Acts, ch 1226, §15, 30; 2003 Acts, 1st Ex, ch 2, §201, 205; 2004 Acts, ch 1094, §3, 5, 6; 2007 Acts, ch 171, §7, 8; 2010 Acts, ch 1193, §180 – 184; 2011 Acts, ch 25, §111, 112, 141, 142

2010 amendment to subsection 4 takes effect April 29, 2010, and applies retroactively to January 1, 2010; 2010 Acts, ch 1193, §184

Subsection 1, paragraph a, subparagraphs (5) and (6) amended

Subsection 1, paragraphs f and g amended

Subsection 5 amended

#### **455G.12 Board authority for prioritization.**

1. If the board determines that, within the realm of sound business judgment and practice, prioritization of assistance is necessary in light of funds available for loan guarantees or insurance coverage, the board may develop rules for assistance or coverage prioritization based upon adherence or planned adherence of the owner or operator to higher than minimum environmental protection and safety compliance considerations.

2. Prior to the adoption of prioritization rules, the board shall at minimum review the following issues:

- a. The positive environmental impact of assistance prioritization.
- b. The economic feasibility, including the availability of private financing, for an owner or operator to obtain priority status.
- c. Any negative impact on Iowa's rural petroleum distribution network which could result from prioritization.
- d. Any similar prioritization systems in use by the private financing or insurance markets in this state, including terms, conditions, or exclusions.
- e. The intent of this chapter that the board shall maximize the availability of reasonably priced, financially sound insurance coverage or loan guarantee assistance.

89 Acts, ch 131, §53; 2011 Acts, ch 25, §143

Code editor directive applied

#### **455G.12A Cost containment authority.**

1. *Validity of contracts.* A contract in which one of the parties to the contract is an owner or operator of a petroleum underground storage tank, for goods or services which may be payable or reimbursable from the fund, is invalid unless and until the administrator has approved the contract as fair and equitable to the tank owner or operator, and found that the contract terms are within the range of usual and customary rates for similar or equivalent goods or services within the state, and found that the goods or services are necessary for the owner or operator to comply with fund or regulatory standards. An owner or operator may appoint the administrator as an agent for the purposes of negotiating contracts with suppliers of goods or services compensable by the fund. The administrator may select another contractor for goods or services other than the one offered by the owner or operator, if the scope of the proposed work or actual work of the offered contractor does not reflect the quality of workmanship required, or the costs are determined to be excessive.

#### *2. Contract approval.*

a. In the course of review and approval of a contract pursuant to this section, the administrator may require an owner or operator to obtain and submit three bids, provided that the administrator coordinates bid submission with the department. The administrator may require specific terms and conditions in a contract subject to approval.

b. The board shall have authority to contract for site cleanup reports. The board's responsibility for site cleanup reports is limited to those site cleanup reports subject to approval by the department of natural resources and required in connection with the remediation of a release which is eligible for benefits under section 455G.9. The site cleanup report shall address existing and available remedial technologies and the costs associated with the use of each technology. The board shall not have the authority to affect a contract which has been given written approval under this section.

3. *Exclusive contracts.*

a. The administrator may enter into a contract or an exclusive contract with the supplier of goods or services required by a class of tank owners or operators in connection with an expense payable or reimbursable from the fund, to supply a specified good or service for a gross maximum price, fixed rate, on an exclusive basis, or subject to another contract term or condition reasonably calculated to obtain goods or services for the fund or for tank owners and operators at a reasonable cost. A contract may provide for direct payment from the fund to a supplier.

b. The administrator may retain, subject to board approval, an independent person to assist in the review of work required in connection with a release or tank system for which fund benefits are sought, and to establish prevailing cost of goods and services needed. Nothing in this section is intended to preempt the regulatory authority of the department.

4. *Prior approval by administrator.* Unless emergency conditions exist, a contractor performing services pursuant to this section shall have the budget for the work approved by the administrator prior to commencement of the work. No expense incurred which is above the budgeted amount shall be paid unless the administrator approves such expense prior to its being incurred. All invoices or bills shall be submitted with appropriate documentation as deemed necessary by the board, no later than thirty days after the work has been performed. Neither the board nor an owner or operator is responsible for payment for work incurred which has not been previously approved by the board.

90 Acts, ch 1235, §40; 91 Acts, ch 252, §31, 32; 2011 Acts, ch 25, §113

Subsections 2 and 3 amended

**455G.13 Cost recovery enforcement.**

1. *Full recovery sought from owner.* The board shall seek full recovery from the owner, operator, or other potentially responsible party liable for the released petroleum which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs, including reasonable attorney fees and costs of litigation for which moneys are expended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

2. *Limitation of liability of owner or operator.* Except as provided in subsection 3:

a. The board or the department of natural resources shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the remedial account except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department of natural resources to impose or collect civil or administrative fines or penalties or fees. The remedial account shall not be held liable for any third-party liability.

b. An owner or operator's liability for a release for which coverage is admitted under the underground storage tank insurance fund established in section 455G.11, Code 2003, shall not exceed the amount of the deductible.

3. *Owner or operator not in compliance, subject to full and total cost recovery.* Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in subsection 1, if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department of natural resources or with this chapter and rules adopted under this chapter.

4. *Treble damages for certain violations.*

a. Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:

(1) Failed, without sufficient cause, to respond to a release of petroleum from the tank upon, or in accordance with, a notice issued by the director of the department of natural resources.

(2) After May 5, 1989, failed to perform any of the following:

(a) Failed to register the tank, which was known to exist or reasonably should have been known to exist.

(b) Intentionally failed to report a known release.

b. The punitive damages imposed under this subsection are in addition to any costs or expenditures recovered from the owner or operator pursuant to this chapter and in addition to any other penalty or relief provided by this chapter or any other law.

c. However, the state, a city, county, or other political subdivision shall not be liable for punitive damages.

5. *Lien on tank site.* Any amount for which an owner or operator is liable to the fund, if not paid when due, by statute, rule, or contract, or determination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11.

6. *Joinder of parties.* The department of natural resources has standing in any case or contested action related to the fund or a tank to assert any claim that the department may have regarding the tank at issue in the case or contested action, upon motion and sufficient showing by a party to a cost recovery or subrogation action provided for under this section, the court or the administrative law judge shall join to the action any potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section.

7. *Strict liability.* The standard of liability for a release of petroleum or other regulated substance as defined in section 455B.471 is strict liability.

8. *Third-party contracts not binding on board, proceedings against responsible party.* An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the remedial account for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable. Any such provision is null and void and of no force or effect.

9. *Later proceedings permitted against other parties.* The entry of judgment against a party to the action does not bar a future action by the board or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Notwithstanding section 668.5 no other potentially responsible party may seek contribution or any other recovery from an owner or operator eligible for assistance under the remedial account for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

10. *Claims against potentially responsible parties.*

a. Upon payment by the fund for corrective action or third-party liability pursuant to this chapter, the rights of the claimant to recover payment from any potentially responsible party, are assumed by the board to the extent paid by the fund. A claimant is precluded from receiving double compensation for the same injury.

b. In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

c. A claimant may elect to permit the board to pursue the claimant's cause of action for any injury not compensated by the fund against any potentially responsible party, provided the attorney general determines such representation would not be a conflict of interest. If

a claimant so elects, the board's litigation expenses shall be shared on a pro rata basis with the claimant, but the claimant's share of litigation expenses is payable exclusively from any share of the settlement or judgment payable to the claimant.

11. *Exclusion of punitive damages.* The fund shall not be liable in any case for punitive damages.

12. *Recovery or subrogation — installers and inspectors.* Notwithstanding any other provision contained in this chapter, the board or a person insured under the underground storage tank insurance fund established in section 455G.11, Code 2003, has no right of recovery or right of subrogation against an installer or an inspector who was insured by the underground storage tank insurance fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

89 Acts, ch 131, §54; 91 Acts, ch 252, §33 – 36; 98 Acts, ch 1068, §12, 13; 99 Acts, ch 114, §36; 2005 Acts, ch 19, §66, 67; 2011 Acts, ch 25, §114

Subsections 4 and 10 amended

### SUBCHAPTER III

#### E-85 GASOLINE STORAGE AND DISPENSING INFRASTRUCTURE

##### **455G.31 E-85 gasoline storage and dispensing infrastructure.**

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

(1) “*Dispenser*” includes a motor fuel pump, including but not limited to a motor fuel blender pump.

(2) “*E-85 gasoline*”, “*ethanol blended gasoline*”, and “*retail dealer*” mean the same as defined in section 214A.1.

(3) “*Gasoline storage and dispensing infrastructure*” means any storage tank located below ground or above ground and any associated equipment including but not limited to a pipe, hose, connection, fitting seal, or motor fuel pump, which is used to store, measure, and dispense gasoline by a retail dealer.

(4) “*Motor fuel pump*” means the same as defined in section 214.1.

*b.* Ethanol blended gasoline shall be designated in the same manner as provided in section 214A.2.

2. A retail dealer may use gasoline storage and dispensing infrastructure to store and dispense ethanol blended gasoline classified as E-9 or higher if the department of natural resources under this chapter or the state fire marshal under chapter 101 determines that it is compatible with the ethanol blended gasoline being used.

3. A retail dealer may use a dispenser that does not satisfy the requirement in subsection 2 to dispense ethanol blended gasoline classified as higher than E-10 if any of the following applies:

*a.* (1) The dispenser is listed by an independent testing laboratory as compatible for use with ethanol blended gasoline classified as E-9 or higher. In addition, the retail dealer must visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to section 455B.386.

(2) The state fire marshal shall issue an order as soon as practicable after determining that a commercially available dispenser is listed as compatible for use with E-85 gasoline by an independent testing laboratory. The state fire marshal shall publish the order in the Iowa administrative bulletin. A person shall not install a dispenser which would otherwise be permitted under subparagraph (1) after sixty days following the date that the order is published. A person who installed such dispenser before the sixty-day period expired may use the dispenser as provided in subparagraph (1) until four years after the date that the order is published.

(3) This paragraph “a” is repealed four years following the date that the order issued by the state fire marshal is published in the Iowa administrative bulletin as provided in subparagraph (2).

b. (1) The dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with E-85 gasoline. In addition, the retail dealer must install an under-dispenser containment system with electronic monitoring. The under-dispenser containment system shall comply with applicable rules adopted by the department of natural resources and the state fire marshal.

(2) If within ten years from the date that a dispenser described in subparagraph (1) is installed, the same model of dispenser is listed as compatible for use with E-85 gasoline by an independent testing laboratory, the dispenser shall be deemed as compatible for use with ethanol blended gasoline classified as E-9 or higher up to and including E-85 by the department of natural resources and the state fire marshal. However, if after that time, the same model of dispenser is not listed as compatible for use with E-85 gasoline by an independent testing laboratory, subparagraph (1) no longer applies, and the retail dealer must do any of the following:

(a) Upgrade or replace the dispenser as necessary to be listed as compatible for use with E-85 gasoline.

(b) Comply with the requirements in paragraph “a”.

2006 Acts, ch 1142, §25; 2006 Acts, ch 1185, §122; 2007 Acts, ch 22, §80; 2007 Acts, ch 211, §47 – 49; 2008 Acts, ch 1169, §22 – 25, 30; 2009 Acts, ch 105, §1; 2011 Acts, ch 34, §104

Subsection 1 amended

## CHAPTER 455H

### LAND RECYCLING AND REMEDIATION STANDARDS

#### SUBCHAPTER 1

#### GENERAL PROVISIONS

#### **455H.102 Scope.**

The environmental remediation standards established under this chapter shall be used for any response action or other site assessment or remediation that is conducted at a site enrolled pursuant to this chapter notwithstanding provisions regarding water quality in chapter 455B, division III; hazardous conditions in chapter 455B, division IV, part 4; hazardous waste and substance management in chapter 455B, division IV, part 5; underground storage tanks, other than petroleum underground storage tanks, in chapter 455B, division IV, part 8; and groundwater protection in chapter 455E.

97 Acts, ch 127, §2; 2011 Acts, ch 9, §7

Section amended

#### SUBCHAPTER 2

#### RESPONSE ACTION STANDARDS AND REVIEW PROCEDURES

#### **455H.201 Cleanup standards.**

1. a. A participant carrying out a response action shall take such response actions as necessary to assure that conditions in the affected area comply with any of the following, as applicable:

- (1) Background standards established pursuant to section 455H.202.
- (2) Statewide standards established pursuant to section 455H.203.

(3) Site-specific cleanup standards established pursuant to section 455H.204.

b. Any remediation standard which is applied must provide for the protection of the public health and safety and the environment.

2. A participant may use a combination of these standards to implement a site remediation plan and may propose to use the site-specific cleanup standards whether or not efforts have been made to comply with the background or statewide standards.

3. Until rules setting out requirements for background standards, statewide standards, or site-specific cleanup standards are finally adopted by the commission and effective, participants may utilize site-specific cleanup standards for any hazardous substance utilizing the procedures set out in the department's rules implementing risk-based corrective action for underground storage tanks and, where relevant, the United States environmental protection agency's guidance regarding risk assessment for superfund sites.

4. The standards may be complied with through a combination of response actions that may include, but are not limited to, treatment, removal, technological or institutional controls, and natural attenuation and other natural mechanisms, and can include the use of innovative or other demonstrated measures.

97 Acts, ch 127, §8; 2011 Acts, ch 25, §143

Code editor directive applied

#### **455H.204 Site-specific cleanup standards.**

1. Procedures to establish site-specific cleanup standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee. Site-specific cleanup standards must provide for the protection of the public health and safety and the environment.

2. Site-specific cleanup standards and appropriate response actions shall take into account all of the following provided, however, that an affected area shall not be required to be cleaned up to levels below or more restrictive than background levels, and in groundwater which is not a protected groundwater source, to a concentration level which presents an increased cancer risk of less than one in ten thousand:

a. The most appropriate exposure scenarios based on current or probable future residential, commercial, industrial, or other industry-accepted scenarios.

b. Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

c. Affected human or environmental receptors and exposure scenarios based on current or probable projected use scenarios.

d. Risk-based corrective action assessment principles which identify risks presented to the public health and safety or the environment by each released hazardous substance in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with the ASTM (American society for testing and materials) international standards applied to nonpetroleum and petroleum hazardous substances.

e. Other relevant site-specific risk-related factors such as the feasibility of available technologies, existing background levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of technological and institutional controls.

f. Cleanup shall not be required in an affected area that does not present any of the following:

(1) An increased cancer risk from a single contaminant at the point of exposure of five in one million for residential areas or one in ten thousand for nonresidential areas.

(2) An increased cancer risk from multiple contaminants or multiple routes of exposure greater than one in ten thousand.

(3) An increased noncancer health risk from a single contaminant at the point of exposure of greater than one, or greater than one-tenth for possible carcinogens.

(4) An increased noncancer risk to the same target human organ from multiple contaminants or multiple routes of exposure greater than one.

3. The concentration of a hazardous substance in an environmental medium of concern at an affected area where the site-specific standard has been selected shall not be required

to meet the site-specific standard if the site-specific standard is numerically less than the background level. In such cases, the background level shall apply.

4. Any participant electing to comply with site-specific standards established by this section shall submit, as appropriate, all of the following reports and evaluations for review and approval by the department:

a. (1) A site-specific risk assessment report and a cleanup plan. The site-specific risk assessment report must include, as appropriate, all of the following:

(a) Documentation and descriptions of procedures and conclusions from the site investigation to characterize the nature, extent, direction, rate of movement, volume, and composition of hazardous substances.

(b) The concentration of hazardous substances in environmental media of concern, including summaries of sampling methodology and analytical results.

(c) A fate and transport analysis to demonstrate that no exposure pathways exist.

(2) If no exposure pathways exist, a risk assessment report and a cleanup plan are not required and no remedy is required to be proposed or completed.

b. A final report demonstrating compliance with site-specific cleanup standards has been completed in accordance with the cleanup plan.

c. This section does not preclude a participant from submitting a site-specific risk assessment report and cleanup plan at one time to the department for review.

5. Upon submission of either a site-specific risk assessment report or a cleanup plan to the department, the department shall notify the participant of any deficiencies in the report or plan in a timely manner.

6. Owners and operators of underground storage tanks other than petroleum underground storage tanks, aboveground storage tanks, and pipelines which contain or have contained petroleum shall comply with the corrective action rules issued pursuant to chapter 455B, division IV, part 8, to satisfy the requirements of this section.

97 Acts, ch 127, §11; 2002 Acts, ch 1091, §2; 2004 Acts, ch 1086, §76; 2011 Acts, ch 25, §143  
Code editor directive applied

### SUBCHAPTER 3

#### EFFECTS OF PARTICIPATION

##### **455H.301 No further action letters.**

1. Once a participant demonstrates that an affected area meets applicable standards and the department has certified that the participant has met all requirements for completion, the department shall promptly issue a no further action letter to the participant.

2. a. A no further action letter shall state that the participant and any protected party are not required to take any further action at the site related to any hazardous substance for which compliance with applicable standards is demonstrated by the participant in accordance with applicable standards, except for continuing requirements specified in the no further action letter. If the participant was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, a no further action letter may provide that a further response action may be required, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare. A protected party who was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, may be required by the department to conduct a further response action, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare.

b. If a person transfers property to an affiliate in order for that person or the affiliate to obtain a benefit to which the transferor would not otherwise be eligible under this chapter or to avoid an obligation under this chapter, the affiliate shall be subject to the same obligations and obtain the same level of benefits as those available to the transferor under this chapter.

c. A no further action letter shall be void if the department demonstrates by clear, satisfactory, and convincing evidence that any approval under this chapter was obtained by

fraud or material misrepresentation, knowing failure to disclose material information, or false certification to the department.

3. The department shall provide, upon request, a no further action letter as to the affected area to each protected party.

4. The department shall condition the no further action letter upon compliance with any institutional or technological controls relied upon by the participant to demonstrate compliance with the applicable standards.

5. A no further action letter shall be in a form recordable in county real estate records as provided in chapter 558.

97 Acts, ch 127, §15; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 455J

### ENVIRONMENTAL MANAGEMENT SYSTEMS

#### **455J.6 Solid waste alternatives program advisory council.**

1. A solid waste alternatives program advisory council is established within the department. The council consists of the following voting members serving staggered three-year terms who shall be appointed by the director:

a. One member representing the Iowa recycling association.

b. One member representing the Iowa waste exchange.

c. One member representing the economic development authority's recycle Iowa program.

d. One member representing the Iowa society of solid waste administrators.

e. Three members representing solid waste planning areas of various sizes.

f. One member representing the Iowa chapter of the national solid wastes management association.

g. One member representing the department.

2. In appointing members to the council, the director shall include representatives from both public and private solid waste entities.

3. Members shall not be entitled to compensation, but shall be entitled to reimbursement for expenses pursuant to section 7E.6.

4. A majority of voting members shall not include any member who has a conflict of interest. A statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not prevent the council from performing the duties of the council.

2008 Acts, ch 1109, §9; 2011 Acts, ch 34, §105; 2011 Acts, ch 118, §85, 89

Code editor directive applied

Subsection 4 amended

## CHAPTER 455K

### ENVIRONMENTAL AUDIT PRIVILEGE AND IMMUNITY

#### **455K.4 Waiver of privilege — disclosure.**

1. The privilege described in section 455K.3 shall not apply to the extent that the privilege is expressly waived in writing by the owner or operator who prepared the environmental audit report or caused the report to be prepared.

2. Disclosure of an environmental audit report or any other information generated by

an environmental audit does not waive the privilege established in section 455K.3 if the disclosure meets any of the following criteria:

a. The disclosure is made to address or correct a matter raised by the environmental audit and the disclosure is made to any of the following:

(1) A person employed by the owner or operator, including temporary and contract employees.

(2) A legal representative of the owner or operator.

(3) An officer or director of the regulated facility or operation or a partner of the owner or operator.

(4) An independent contractor retained by the owner or operator.

b. The disclosure is made under the terms of a confidentiality agreement between any person and the owner or operator of the audited facility or operation.

3. A party to a confidentiality agreement described in subsection 2, paragraph “b”, who violates that agreement is liable for damages caused by the disclosure and for any other penalties stipulated in the confidentiality agreement.

4. Information that is disclosed under subsection 2, paragraph “b”, is confidential and is not subject to disclosure under chapter 22.

5. The protections provided by federal or state law shall be afforded to individuals who disclose information to law enforcement authorities.

6. The provisions of this chapter shall not abrogate the protections provided by federal and state law regarding confidentiality and trade secrets.

98 Acts, ch 1109, §4; 2011 Acts, ch 106, §15, 17

Subsection 4 amended

## CHAPTER 456

### GEOLOGICAL SURVEY

Chapter transferred from ch 460A in Code 2003 pursuant to  
Code editor directive; 2002 Acts, 2nd Ex, ch 1003, §260, 262

#### 456.1 Geological survey created — definitions.

1. A geological survey of the state is created within the department.

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

a. “*Department*” means the department of natural resources created under section 455A.2.

b. “*Director*” means the director of the department.

[C97, §2497; C24, 27, 31, 35, 39, §4549; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.1]  
86 Acts, ch 1245, §1881

C93, §460A.1

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.1

2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 456A

### REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

This chapter not enacted as a part of this title; transferred from  
chapter 107 in Code 1993

#### 456A.17 Funds — restrictions.

1. The following four funds are created in the state treasury:

a. A state fish and game protection fund.

b. A state conservation fund.

c. An administration fund.

d. A county conservation board fund.

2. The state fish and game protection fund, except as otherwise provided, consists of all moneys accruing from license fees and all other sources of revenue arising under the fish and wildlife programs. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the state fish and game protection fund shall be credited to that fund.

3. The county conservation board fund consists of all moneys credited to it by law or appropriated to it by the general assembly.

4. The state conservation fund, except as otherwise provided, consists of all other funds accruing to the department for the purposes embraced by this chapter.

5. The administration fund shall consist of an equitable portion of the gross amount of the state fish and game protection fund and the state conservation fund, to be determined by the commission, sufficient to pay the expense of administration entailed by this chapter.

6. All receipts and refunds and reimbursements related to activities funded by the administration fund are appropriated to the administration fund. All refunds and reimbursements relating to activities of the state fish and game protection fund shall be credited to the state fish and game protection fund.

7. Notwithstanding section 8.33, revenues deposited in the state conservation fund, and remaining in the state conservation fund on June 30 of any fiscal year shall not revert to the general fund of the state but shall remain available for expenditure for one year after the close of the fiscal year during which such revenues were deposited. Any such revenues remaining unexpended at the end of the one-year period during which the revenues are available for expenditure shall revert to the general fund of the state.

8. The department may apply for a loan for the construction of facilities for the collection and treatment of waste water and for the supply, treatment, and distribution of drinking water under the state water pollution control works and drinking water facilities financing program as established in sections 455B.291 through 455B.299. In order to provide for the repayment of a loan granted under the financing program, the commission may impose a lien on not more than ten percent of the annual revenues from user fees and related revenue derived from park and recreation areas under chapter 461A which are deposited in the state conservation fund. If a lien is established as provided in this paragraph, repayment of the loan is the first priority on the revenues received and dedicated for the loan repayment each year.

[C31, §1703-d23, 1820; C35, §1703-g17; C39, §1703.44; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.17; 82 Acts, ch 1084, §1]

84 Acts, ch 1262, §3; 86 Acts, ch 1244, §23; 86 Acts, ch 1245, §1830, 1831

C93, §456A.17

94 Acts, ch 1107, §72; 95 Acts, ch 98, §2; 2002 Acts, ch 1162, §64; 2002 Acts, 2nd Ex, ch 1003, §242, 262; 2003 Acts, ch 17, §1, 2; 2010 Acts, ch 1034, §3, 4; 2011 Acts, ch 25, §55

Subsection 4 amended

#### **456A.19 Expenditures.**

All funds accruing to the fish and game protection fund, except an equitable portion of the administration fund, shall be expended solely in carrying on fish and wildlife activities. Expenditures incurred by the department in carrying on the activities shall be only on authorization by the general assembly.

The department shall by October 1 of each year submit to the department of management for transmission to the general assembly a detailed estimate of the amount required by the department during the succeeding year for carrying on fish and wildlife activities. The estimate shall be in the same general form and detail as required by law in estimates submitted by other state departments.

Any unexpended balance at the end of the biennium shall revert to the fish and game protection fund.

All administrative expense shall be paid from the administration fund.

All other expenditures shall be paid from the state conservation fund.

All expenditures under this chapter are subject to approval by the director of management and the director of the department of administrative services.

All moneys credited to the county conservation board fund shall be used to provide grants to county conservation boards to provide funding for the purposes of chapter 350. These grants are in addition to moneys appropriated to the conservation boards from the county boards of supervisors. The grants shall be made to the conservation boards based upon the needs of the boards. Applications shall be made by the boards to the commission.

[C35, §1703-g19; C39, §1703.46; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.19]

84 Acts, ch 1262, §4; 86 Acts, ch 1245, §1833, 1834; 88 Acts, ch 1134, §25; 88 Acts, ch 1158, §18

C93, §456A.19

94 Acts, ch 1107, §73; 95 Acts, ch 214, §22; 2002 Acts, ch 1162, §65; 2003 Acts, ch 108, §79; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §56

Unnumbered paragraph 5 amended

#### **456A.33B Lake restoration plan and report.**

1. a. It is the intent of the general assembly that the department of natural resources shall develop annually a lake restoration plan and report that shall be submitted to the joint appropriations subcommittee on transportation, infrastructure, and capitals and the legislative services agency by no later than January 1 of each year. The plan and report shall include the department's plans and recommendations for lake restoration projects to receive funding consistent with the process and criteria provided in this section, and shall include the department's assessment of the progress and results of projects funded with moneys appropriated under this section.

b. The department shall recommend funding for lake restoration projects that are designed to achieve the following goals:

- (1) Ensure a cost-effective, positive return on investment for the citizens of Iowa.
- (2) Ensure local community commitment to lake and watershed protection.
- (3) Ensure significant improvement in water clarity, safety, and quality of Iowa lakes.
- (4) Provide for a sustainable, healthy, functioning lake system.
- (5) Result in the removal of the lake from the impaired waters list.

2. The process and criteria the department shall utilize to recommend funding for lake restoration projects shall be as follows:

a. The department shall develop an initial list of not more than thirty-five significant public lakes to be considered for funding based on the feasibility of restoring each lake and the use or potential use of the lake, if restored. The list shall include lake projects under active development that the department shall recommend be given priority for funding so long as progress toward completion of the projects remains consistent with the goals of this section.

b. The department shall meet with representatives of communities where lakes on the initial list are located to provide an initial lake restoration assessment and to explain the process and criteria for receiving lake restoration funding. Communities with lakes not included on the initial list may petition the director of the department for a preliminary lake restoration assessment and explanation of the funding process and criteria. The department shall work with representatives of each community to develop a joint lake restoration action plan. At a minimum, each joint action plan shall document the causes, sources, and magnitude of lake impairment, evaluate the feasibility of the lake and watershed restoration options, establish water quality goals and a schedule for attainment, assess the economic benefits of the project, identify the sources and amounts of any leveraged funds, and describe the community's commitment to the project, including local funding. The community's commitment to the project may include moneys to fund a lake diagnostic study and watershed assessment, including development of a TMDL (total maximum daily load).

c. Each joint lake restoration plan shall comply with the following guidelines:

- (1) Biologic controls will be utilized to the maximum extent, wherever possible.
- (2) If proposed, dredging of the lake will be conducted to a mean depth of at least ten feet to gain water quality benefits unless a combination of biologic and structural controls is sufficient to assure water quality targets will be achieved at a shallower average water depth.

(3) The costs of lake restoration will include the maintenance costs of improvements to the lake.

(4) Delivery of phosphorous and sediment from the watershed will be controlled and in place before lake restoration begins. Loads of phosphorous and sediment, in conjunction with in-lake management, will meet or exceed the following water quality targets:

(a) Clarity. A four-and-one-half-foot Secchi depth will be achieved fifty percent of the time from April 1 through September 30.

(b) Safety. Beaches will meet water quality standards for recreational use.

(c) Biota. A diverse, balanced, and sustainable aquatic community will be maintained.

(d) Sustainability. The water quality benefits from the restoration efforts will be sustained for at least fifty years.

d. The department shall evaluate the joint action plans and prioritize the plans based on the criteria required in this section. The department's annual lake restoration plan and report shall include the prioritized list and the amounts of state and other funding the department recommends for each lake restoration project. The department may seek public comment on its recommendations prior to submitting the plan and report to the general assembly.

2006 Acts, ch 1179, §26; 2007 Acts, ch 22, §81, 82; 2011 Acts, ch 25, §143

Code editor directive applied

#### **456A.36 Timber buyers.**

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

a. "Employee" means a person in service or under contract for hire, expressed or implied, oral or written, who is engaged in any phase of the enterprise or business.

b. "Timber" means trees, standing or felled, and logs which can be used for sawing or processing into lumber for building or structural purposes or for the manufacture of an article. However, "timber" does not include firewood, Christmas trees, fruit or ornamental trees or wood products not used or to be used for building, structural, manufacturing, or processing purposes.

c. "Timber buyer" means a person engaged in the business of buying timber from the timber growers for sawing into lumber, for processing, or for resale, but does not include a person who occasionally purchases timber for sawing or processing for the person's own use and not for resale. "Timber buyer" includes a person who contracts with a timber grower on a shared-profit basis to harvest timber from the timber grower's land.

d. "Timber grower" means the owner, tenant, or operator of land in this state who has an interest in, or is entitled to receive a part of the proceeds from, the sale of timber grown in this state and includes a person exercising authority to sell timber.

2. a. (1) A timber buyer shall file with the commission a surety bond signed by the person as principal and a corporate surety authorized to engage in the business of executing surety bonds within the state. In lieu of a corporate surety a timber buyer may, with the approval of the commission, file a bond signed by the timber buyer as principal and accompanied by a bank certificate of deposit in a form approved by the commission showing to the satisfaction of the commission that funds equal to the amount of the required bond are on deposit in a bank to be held by the bank for the period covered by the certificate. The funds shall be made payable upon demand to the director, subject to the provisions of this section, for the use and benefit of the people of the state and for the use and benefit of a timber grower from whom the timber buyer purchased and who is not paid by the timber buyer or for the use and benefit of a timber grower whose timber has been cut by the timber buyer or the timber buyer's agents, and who has not been paid.

(2) The principal amount of the bond shall be ten percent of the total amount paid to timber growers during the preceding year, plus ten percent of the total amount due or delinquent and unpaid to timber growers at the end of the preceding year, and ten percent of the market value of growers' shares of timber harvested during the previous year. However, the total amount of the bond shall be not less than three thousand dollars and not more than fifteen thousand dollars.

(3) The bond or surety shall not be canceled or altered except upon at least sixty days' notice in writing to the commission.

(4) Bonds shall be in the form approved by the director, be conditioned to secure an honest cutting and accounting for timber purchased by the timber buyer, secure payment to the timber growers, and insure the timber growers against all fraudulent acts of the timber buyer in the purchase and cutting of the timber of this state.

b. If a timber buyer fails to pay when due an amount due a timber grower for timber purchased, or fails to pay legally determined damages for timber wrongfully cut by a timber buyer or the buyer's agent, or commits a violation of this section, an action on the bond for forfeiture may be commenced. The action is not exclusive and is in addition to other legal remedies available.

c. The timber grower, the owner of timber cut, or the director may bring action on the bond for payment of the amount due from proceeds of the bond in the district court of the county in which the place of business of the timber buyer is situated or in any other lawful venue.

d. The attorney general, upon request of the commission, shall institute proceedings to have the bond of the timber buyer forfeited for violation of any of the provisions of this section or for noncompliance with a commission rule. A timber buyer whose bond has been forfeited shall not engage in the business of buying timber for one year after the forfeiture.

e. If the commission realizes more than the amount of liability from the security, after deducting expenses incurred in converting the security into money, the commission shall pay the excess to the timber buyer who furnished the security.

3. The following are violations of this section:

a. For a timber buyer to fail to pay, as agreed, for timber purchased.

b. For a timber buyer to cut or cause to be cut or appropriate timber not purchased.

c. For a timber buyer to willfully make a false statement in connection with the bond or other information required to be given to the commission or a timber grower.

d. For a timber buyer to fail to honestly account to the timber grower or the commission for timber purchased or cut if the buyer is under a duty to do so.

e. For a timber buyer to commit a fraudulent act in connection with the purchase or cutting of timber.

f. For a timber buyer to transport timber without written proof of ownership or the written consent of the owner.

g. For a person to purchase timber without obtaining, prior to taking possession of the timber, written proof of the vendor's ownership of the timber or the written consent of the owner of the timber. The purchaser shall keep the written proof of ownership or consent on file for at least three months from the date the timber was released to the purchaser's possession.

4. a. With the written consent of the timber buyer, the commission, its agents and other employees may inspect the premises and records of the timber buyer.

b. If the timber buyer refuses admittance, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath to the district court of the county in which the premises or records are located for the issuance of a search warrant.

c. In the application the director shall state that an inspection of the premises or record designated in the application may result in evidence tending to reveal the existence of violations of the provisions of this section or rule issued by the commission pursuant to this section. The application shall describe the premises or records to be inspected, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute or rule pursuant to which inspection is to be made.

d. The court may issue a search warrant, after examination of the applicant and any witnesses, if the court is satisfied that there is probable cause to believe the existence of the allegations contained in the application.

e. In making investigations, examinations, or surveys pursuant to the authority of this

subsection, the director must execute the warrant in a reasonable manner within ten days after its date of issuance.

5. A person who engages in business as a timber buyer without filing a bond or surety with the commission or in violation of any of the provisions of this section, or a timber buyer who refuses to permit inspection of premises, books, accounts, or records as provided in this section is guilty of a serious misdemeanor.

6. The commission may promulgate rules as necessary to carry out the provisions of this section.

7. The commission may, by application to a district court, obtain an injunction restraining a person who engages in the business of timber buying in this state from engaging in the business until that person complies with this section. Upon refusal or neglect to obey the order of the court, the court may compel obedience by proceedings for contempt.

[C81, §107.36]

C93, §456A.36

96 Acts, ch 1073, §1, 2; 2011 Acts, ch 25, §115

Subsection 2 amended

## CHAPTER 456B

### SPECIAL PROVISIONS — NATURAL RESOURCES DEPARTMENT

This chapter not enacted as a part of this title; transferred from  
chapter 108 in Code 1993

#### **456B.7 Stream control on private lands.**

1. Upon receiving consent in writing from the landowner, the department may enter upon private lands containing waters and streams draining into state-owned lakes and streams, for any or all of the following purposes:

- a. Deepening.
- b. Filling.
- c. Widening.
- d. Contracting.
- e. Improving and protecting banks.
- f. Constructing spillways and discharge structures.
- g. Controlling erosion on tributary land.
- h. Providing structures or other works conducive to the regulation of stream flow.

2. Any action taken by the commission under this section is subject to the approval of the environmental protection commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.7; 82 Acts, ch 1199, §53, 96]

86 Acts, ch 1245, §1847

C93, §456B.7

2011 Acts, ch 25, §143

Code editor directive applied

#### **456B.12 Inventory of protected wetlands.**

1. The department shall inventory the wetlands and marshes of each county and make a preliminary designation as to which constitute protected wetlands. The department shall consult with the county conservation board in making the preliminary designations. Upon completion of the inventory with preliminary designations, the department shall use an existing map or prepare a map and a list of the marshes and wetlands which are designated as protected wetlands in each county. The department shall file at least one copy of the list and map with the county conservation board and the county recorder. The department shall notify the landowners affected by the preliminary wetlands designation by certified mail. The notice shall state that any person may challenge the designation of the protected wetlands or may request the designation of additional marshes or wetlands as protected wetlands, by doing one of the following:

a. Filing a petition for a hearing with the director within sixty days following the date of notice. The petition shall state specifically the reasons for disputing the preliminary designations of the department. The hearing shall be held in the county within sixty days following the expiration of the sixty-day period for filing petitions.

b. Filing a request for mediation with the farm mediation service as provided in section 654A.16 within sixty days following the date of the notice. The department shall participate in mediation as provided in section 654A.16.

2. Within sixty days following the completion of the hearing, or the issuance of a mediation release in which both parties agree to the designation or no agreement is reached, the director shall issue an order designating the protected wetlands in the county. The order shall be considered a final decision of the department in a contested case for the purposes of judicial review pursuant to chapter 17A.

90 Acts, ch 1199, §2

C91, §108.12

C93, §456B.12

2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 459

### ANIMAL AGRICULTURE COMPLIANCE ACT

Chapter transferred from sections in chapter 455B and from chapter 455J in Code 2003 pursuant to Code editor directive; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

#### SUBCHAPTER III

#### ANIMAL FEEDING OPERATIONS

#### — WATER QUALITY

##### **459.303 Confinement feeding operations — permit requirements.**

1. The department shall approve or disapprove applications for permits for the construction, including the expansion, of confinement feeding operation structures, as provided by rules adopted pursuant to this chapter. The department’s decision to approve or disapprove a permit for the construction of a confinement feeding operation structure shall be based on whether the application is submitted according to procedures required by the department and the application meets standards established by the department. A person shall not begin construction of a confinement feeding operation structure requiring a permit under this section, unless the department first approves the person’s application and issues to the person a construction permit. The department shall provide conditions for requiring when a person must obtain a construction permit.

a. Except as provided in paragraph “b”, a person must obtain a permit to construct any of the following:

(1) A confinement feeding operation structure if after construction its confinement feeding operation would have an animal unit capacity of at least one thousand animal units.

(2) The confinement feeding operation structure is an unformed manure storage structure.

b. A person is not required to obtain a permit to construct a confinement feeding operation structure if any of the following apply:

(1) The confinement feeding operation structure, if constructed, would be part of a small animal feeding operation. However, the person must obtain a permit under this section if the confinement feeding operation structure is an unformed manure storage structure.

(2) The confinement feeding operation structure is part of a confinement feeding

operation which is owned by a research college conducting research activities as provided in section 459.318.

2. The department shall issue a construction permit upon approval of an application. The department shall approve the application if the application is submitted to the county board of supervisors in the county where the proposed confinement feeding operation structure is to be located as required pursuant to section 459.304, and the application meets the requirements of this chapter. If a county submits an approved recommendation pursuant to a construction evaluation resolution filed with the department, the application must also achieve a satisfactory rating produced by the master matrix used by the board or department under section 459.304. The department shall approve the application regardless of whether the applicant is required to be issued a construction permit.

3. The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. An indemnity fee as provided in section 459.502 that the department shall deposit into the livestock remediation fund created in section 459.501.

b. A manure management plan as provided in section 459.312 and manure management plan filing fee as provided in section 459.400.

c. A construction permit application fee as provided in section 459.400.

d. A livestock odor mitigation evaluation certificate issued by Iowa state university as provided in section 266.49. The department shall not obtain, maintain, or consider the results of an evaluation. The applicant is not required to submit the certificate if any of the following applies:

(1) The confinement feeding operation is twice the minimum separation distance required from the nearest object or location from which a separation distance is required pursuant to section 459.202 on the date of the application, not including a public thoroughfare.

(2) The owner of each object or location which is less than twice the minimum separation distance required pursuant to section 459.202 from the confinement feeding operation on the date of the application, other than a public thoroughfare, executes a document consenting to the construction.

(3) The applicant submits a document swearing that Iowa state university has failed to furnish a certificate to the applicant within forty-five days after the applicant requested the university to conduct a livestock odor mitigation evaluation as provided in section 266.49.

(4) The application is for a permit to expand a confinement feeding operation, if the confinement feeding operation was first constructed before January 1, 2009.

(5) Iowa state university does not provide for a livestock odor mitigation evaluation effort as provided in section 266.49, for any reason, including because funding is not available.

4. The applicant may submit a master matrix as completed by the applicant.

5. a. A confinement feeding operation meets threshold requirements under this subsection if the confinement feeding operation after construction of a proposed confinement feeding operation structure would have a minimum animal unit capacity of the following:

(1) Three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation or cattle maintained as part of a cattle operation.

(2) One thousand two hundred fifty animal units for swine maintained as part of a swine farrowing and gestating operation.

(3) Two thousand seven hundred fifty animal units for swine maintained as part of a farrow-to-finish operation.

(4) Four thousand animal units for cattle maintained as part of a cattle operation.

b. The department shall not approve an application for a construction permit unless the following apply:

(1) If the application is for a permit to construct an unformed manure storage structure, the application must include a statement approved by a professional engineer certifying that the construction of the unformed manure storage structure complies with the construction design standards required in this subchapter.

(2) If the application is for a permit to construct three or more confinement feeding operation structures, the application must include a statement providing that the construction

of the confinement feeding operation structures will not impede drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction. For a confinement feeding operation that meets threshold requirements, the statement must be approved by a professional engineer. Otherwise, if the application is for a permit to construct a formed manure storage structure, the statement must be part of the construction design statement as provided in section 459.306.

(3) If the application is for a permit to construct a formed manure storage structure, other than for a confinement feeding operation meeting threshold requirements, the applicant must include a construction design statement as provided in section 459.306. An application for a permit to construct a formed manure storage structure as part of a confinement feeding operation that meets threshold requirements must include a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the requirements of this subchapter.

(4) The department may only require that an application for a permit to construct a formed manure storage structure or egg washwater storage structure that is part of a confinement feeding operation meeting threshold requirements include an engineering report, construction plans, or specifications prepared by a licensed professional engineer or the natural resources conservation service of the United States department of agriculture.

6. As a condition to approving an application for a construction permit, the department may require any of the following:

a. The installation of a related pollution control device or practice, including but not limited to the installation and operation of a water pollution monitoring system for an unformed manure storage structure.

b. The department's approval of the installation of any proposed system to permanently lower the groundwater table at a site as part of the construction of an unformed manure storage structure, as is necessary to ensure that the unformed manure storage structure does not pollute groundwater sources, including providing for standards as provided in section 459.308.

7. a. The department shall not issue a permit to a person under this section if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending, as provided in section 459.317.

b. The department shall not issue a permit to a person under this section for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under section 459.604.

98 Acts, ch 1209, §26, 53

C99, §455B.200A

2002 Acts, ch 1137, §28, 29, 68, 70, 71; 2002 Acts, 2nd Ex, ch 1003, §251, 259 – 262

C2003, §459.303

2003 Acts, ch 44, §74; 2003 Acts, ch 108, §83; 2008 Acts, ch 1174, §11 – 14; 2011 Acts, ch 81, §11

Implementation of subsection 3, paragraph d, is contingent upon receipt of sufficient funds by Iowa state university; 2008 Acts, ch 1174,

§13

Code editor directive applied

#### **459.310 Distance requirements.**

1. Except as provided in subsections 3 and 4, the following shall apply:

a. A confinement feeding operation structure shall not be constructed closer than five hundred feet away from the surface intake of an agricultural drainage well. A confinement feeding operation structure shall not be constructed closer than one thousand feet from a wellhead, cistern of an agricultural drainage well, or known sinkhole. However, the department may adopt rules requiring an increased separation distance under this paragraph in order to protect the integrity of a water of the state. The increased separation distance shall not be more than two thousand feet. If the department exercises its discretion to increase the separation distance requirement, the department shall not approve an

application for the construction of a confinement feeding operation structure within that separation distance as provided in section 459.303.

b. A confinement feeding operation structure shall not be constructed if the confinement feeding operation structure as constructed is closer than any of the following:

- (1) Five hundred feet away from a water source other than a major water source.
- (2) One thousand feet away from a major water source.
- (3) Two thousand five hundred feet away from a designated wetland.

c. (1) A water source, other than a major water source, shall not be constructed, expanded, or diverted, if the water source as constructed, expanded, or diverted is closer than five hundred feet away from a confinement feeding operation structure.

(2) A major water source shall not be constructed, expanded, or diverted, if the major water source as constructed, expanded, or diverted is closer than one thousand feet from a confinement feeding operation structure.

(3) A designated wetland shall not be established, if the designated wetland is closer than two thousand five hundred feet away from a confinement feeding operation structure.

2. Except as provided in subsection 4, a confinement feeding operation structure shall not be constructed on land that is part of a one hundred year floodplain as designated by rules adopted by the department pursuant to section 459.301.

3. A separation distance required in subsection 1 shall not apply to any of the following:

a. A location or object and a farm pond or privately owned lake, as defined in section 462A.2.

b. A confinement feeding operation building, an egg washwater storage structure, or a manure storage structure constructed with a secondary containment barrier. The department shall adopt rules providing for the construction and use of a secondary containment barrier, including construction design standards.

4. A separation distance required in subsection 1 or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subsection 2 shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures that are part of the confinement feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any eighteen-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subsection 1 than any other confinement feeding operation structure which is part of the operation.

(5) The formed manure storage structure meets or exceeds the requirements of section 459.307.

b. (1) A formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, pursuant to a variance granted by the department. In granting the variance, the department shall make a finding of all of the following:

(a) The replacement formed manure storage structure replaces the confinement feeding operation's existing manure storage and handling facilities.

(b) The replacement formed manure storage structure complies with standards adopted pursuant to section 459.307.

(c) The replacement formed manure storage structure more likely than not provides a

higher degree of environmental protection than the confinement feeding operation's existing manure storage and handling facilities.

(2) If the formed manure storage structure will replace any existing manure storage structure, the department shall, as a condition of granting the variance, require that the replaced manure storage structure be properly closed.

5. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as provided in section 460.205.

95 Acts, ch 195, §26

CS95, §455B.204

98 Acts, ch 1209, §35, 53; 2002 Acts, ch 1137, §44, 45, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.310

2003 Acts, ch 84, §3 – 6; 2003 Acts, ch 108, §84, 85; 2011 Acts, ch 25, §143

Code editor directive applied

#### **459.312 Manure management plan — requirements.**

1. The following persons shall submit a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section to the department:

a. The owner of a confinement feeding operation, other than a small animal feeding operation, if any of the following apply:

(1) The confinement feeding operation was constructed after May 31, 1985, regardless of whether the confinement feeding operation structure was required to be constructed pursuant to a construction permit.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to section 459.303 or whether the person has submitted a prior manure management plan.

b. A person who applies manure from a confinement feeding operation, other than a small animal feeding operation, which is located in another state, if the manure is applied on land located in this state.

2. Not more than one confinement feeding operation shall be covered by a single manure management plan.

3. The owner of a confinement feeding operation who is required to submit a manure management plan under this section shall submit an updated manure management plan to the department on an annual basis. The department shall provide for a date that each updated manure management plan is required to be submitted to the department. The department may provide for staggering the dates on which updated manure management plans are due. To satisfy the requirements of an updated manure management plan, an owner of a confinement feeding operation may, in lieu of submitting a complete plan, file a document stating that the manure management plan has not changed, or state all of the changes made since the original manure management plan or a previous updated manure management plan was submitted and approved.

4. a. The department shall deliver a copy of the manure management plan or require the person submitting the manure management plan to deliver a copy of the manure management plan to all of the following:

(1) The county board of supervisors in the county where the manure storage structure owned by the person is located.

(2) The county board of supervisors in the county where the manure storage structure is proposed to be constructed. If the person is required to be issued a permit for the construction of the manure storage structure as provided in section 459.303, the manure management plan shall accompany the application for the construction permit as provided in section 459.303.

(3) The county board of supervisors in the county where the manure is to be applied.

b. The manure management plan shall be filed with the county board of supervisors. The county auditor or other county officer may accept the manure management plan on behalf of the board.

5. A person shall not remove manure from a manure storage structure which is part of a

confinement feeding operation for which a manure management plan is required under this section, unless the department approves a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section. The manure management plan shall be submitted by the owner of the confinement feeding operation as provided by the department in accordance with section 459.302. The owner of a confinement feeding operation required to submit a manure management plan for the construction of a manure storage structure may remove manure from another manure storage structure that is constructed, if the department has approved a manure management plan covering that manure storage structure. The department may adopt rules allowing a person to remove manure from a manure storage structure until the manure management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the department.

6. The department shall not approve an original manure management plan unless the plan is accompanied by a manure management plan filing fee required pursuant to section 459.400. The department shall not approve an updated manure management plan unless the updated manure management plan is accompanied by an annual compliance fee required pursuant to section 459.400.

7. a. The department shall not approve an application for a permit to construct a confinement feeding operation structure unless the owner of the confinement feeding operation applying for approval submits an original manure management plan together with the application for the construction permit as provided in section 459.303.

b. The department shall not file a construction design statement as provided in section 459.306 unless the owner of the confinement feeding operation structure submits an original manure management plan together with the construction design statement. The construction design statement and manure management plan may be submitted as part of an application for a construction permit as provided in section 459.303.

8. A manure management plan must be authenticated by the person required to submit the manure management plan as required by the department in accordance with section 459.302.

9. The department shall approve or disapprove a manure management plan according to procedures established by the department:

a. For an original manure management plan submitted due to the construction of a confinement feeding operation structure, the department shall approve or disapprove the manure management plan as follows:

(1) If the confinement feeding operation structure is constructed pursuant to a construction permit issued pursuant to section 459.303, the manure management plan shall be approved or disapproved as part of the construction permit application.

(2) If the confinement feeding operation structure is not constructed pursuant to a construction permit issued pursuant to section 459.303, the manure management plan shall be approved or disapproved within sixty days from the date that the department receives the manure management plan.

b. For an original manure management plan submitted for a reason other than the construction of a confinement feeding operation structure, the manure management plan shall be approved within sixty days from the date that the department receives the manure management plan.

c. For an updated manure management plan, the manure management plan shall be approved within thirty days from the date that the department receives the updated manure management plan.

10. A manure management plan shall include all of the following:

a. Restrictions on the application of manure based on all of the following:

(1) Calculations necessary to determine the land area required for the application of manure from a confinement feeding operation based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the manure management plan, and according to requirements adopted by the department.

(2) A phosphorus index. The department shall establish a phosphorus index by rule in order to determine the manner and timing of the application to a land area of manure originating from a confinement feeding operation. The phosphorus index shall provide for

the application of manure on a field basis. The phosphorus index shall be used to determine application rates, based on the number of pounds of phosphorus that may be applied per acre and application practices. The phosphorus index shall be based on the field office technical guide for Iowa as published by the United States department of agriculture, natural resources conservation service, which sets forth nutrient management standards.

b. Manure nutrient levels as determined by either manure testing or accepted standard manure nutrient values.

c. Manure application methods, timing of manure application, and the location of the manure application.

d. If the location of the application is on land other than land owned by the person applying for the construction permit, the plan shall include a copy of each written agreement executed between the person and the landowner where the manure will be applied.

e. An estimate of the annual animal production and manure volume or weight produced by the confinement feeding operation.

f. Methods, structures, or practices to prevent or diminish soil loss and potential surface water pollution.

g. Methods or practices to minimize potential odors caused by the application of manure by the use of spray irrigation equipment.

h. A description of land identified for the application of liquid manure due to an emergency if allowed pursuant to section 459.313A. The owner must identify the land in the original manure management plan or in the next updated manure management plan required to be submitted to the department following the application.

11. A confinement feeding operation classified as a habitual violator as provided in section 459.604 shall submit a manure management plan to the department on an annual basis, which must be approved by the department for the following year of operation. The manure management plan shall be a replacement original manure management plan rather than a manure management plan update. However, the habitual violator required to submit a replacement original manure management plan must submit an annual compliance fee in the same manner as if the habitual violator were submitting an updated manure management plan.

12. A person required to submit a manure management plan to the department shall maintain a current manure management plan and maintain records sufficient to demonstrate compliance with the manure management plan. Chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

a. Upon waiver by the person receiving the permit.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

13. The department may inspect the confinement feeding operation at any time during normal working hours, and may inspect records required to be maintained as part of the manure management plan. The department shall regularly inspect a confinement feeding operation if the operation or a person holding a controlling interest in the operation is classified as a habitual violator pursuant to section 459.604. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection.

14. A person required to authenticate a manure management plan submitted to the department who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than the assessment of a civil penalty pursuant to section 459.603.

95 Acts, ch 195, §25

CS95, §455B.203

98 Acts, ch 1209, §30 – 32, 53; 2002 Acts, ch 1137, §38 – 41, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §256, 257, 259, 260, 262

C2003, §459.312  
2003 Acts, ch 108, §86; 2009 Acts, ch 41, §137, 138; 2009 Acts, ch 155, §2; 2011 Acts, ch 25, §143

Code editor directive applied

SUBCHAPTER IV  
ANIMAL AGRICULTURE COMPLIANCE  
FUND — FEES

**459.401 Animal agriculture compliance fund.**

1. An animal agriculture compliance fund is created in the state treasury under the control of the department. The compliance fund is separate from the general fund of the state.

2. The compliance fund is composed of three accounts, the general account, the assessment account, and the educational program account.

a. The general account is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the compliance fund. Unless otherwise specifically provided in statute, moneys required to be deposited in the compliance fund shall be deposited into the general account. The general account shall include moneys deposited into the account from all of the following:

(1) The construction permit application fee required pursuant to section 459.303.

(2) The manure management plan filing fee required pursuant to section 459.312.

(3) Educational program fees required to be paid by commercial manure service representatives or confinement site manure applicators pursuant to section 459.400.

(4) A commercial manure service license fee as provided in section 459.400.

(5) The collection of civil penalties assessed by the department and interest on civil penalties, arising out of violations involving animal feeding operations as provided in sections 459.602, 459.603, 459A.502, and 459B.402.

b. The assessment account is composed of moneys collected from the annual compliance fee required pursuant to section 459.400.

c. The educational program account is composed of moneys collected from the commercial manure service license fee and the educational program fee required pursuant to section 459.400.

3. Moneys in the compliance fund are appropriated to the department exclusively to pay the expenses of the department in administering and enforcing the provisions of subchapters II and III as necessary to ensure that animal feeding operations comply with all applicable requirements of those provisions, including rules adopted or orders issued by the department pursuant to those provisions. The moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. The department shall not transfer moneys from the compliance fund's assessment account to another fund or account, including but not limited to the fund's general account.

4. Moneys in the fund, which may be subject to warrants written by the director of the department of administrative services, shall be drawn upon the written requisition of the director of the department of natural resources or an authorized representative of the director.

5. Notwithstanding section 8.33, any unexpended balance in an account of the compliance fund at the end of the fiscal year shall be retained in that account. Notwithstanding section 12C.7, subsection 2, interest, earnings on investments, or time deposits of the moneys in an account of the compliance fund shall be credited to that account.

2002 Acts, ch 1137, §6, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §247, 259, 260, 262; 2003 Acts, ch 145, §286; 2003 Acts, ch 163, §17 – 20, 23; 2003 Acts, ch 179, §73; 2004 Acts, ch 1086, §78; 2005 Acts, ch 136, §36; 2009 Acts, ch 155, §33, 34

For future strike of subsection 2, paragraph a, subparagraph (5), effective July 1, 2012, see 2011 Acts, ch 128, §35, 45  
Section not amended; footnote added

SUBCHAPTER V  
MANURE STORAGE INDEMNITY  
FUND — FEES

**459.501 Livestock remediation fund.**

1. A livestock remediation fund is created as a separate fund in the state treasury under the control of the department. The general fund of the state is not liable for claims presented against the fund.

2. The fund consists of moneys from indemnity fees remitted by permittees to the department as provided in section 459.502; moneys from indemnity fees remitted by persons required to submit manure management plans to the department pursuant to section 459.503; sums collected on behalf of the fund by the department through legal action or settlement; moneys required to be repaid to the department by a county pursuant to this subchapter; interest, property, and securities acquired through the use of moneys in the fund; or moneys contributed to the fund from other sources.

3. *a.* The moneys collected under this section shall be deposited in the fund and shall be appropriated to the department for the following exclusive purposes:

(1) To provide moneys for cleanup of abandoned facilities as provided in section 459.505, and to pay the department for costs related to administering the provisions of this subchapter. For each fiscal year, the department shall not use more than one percent of the total amount which is available in the fund or ten thousand dollars, whichever is less, to pay for the costs of administration.

(2) To allocate moneys to the department of agriculture and land stewardship for the payment of expenses incurred by the department of agriculture and land stewardship associated with providing for the sustenance and disposition of livestock in immediate need of sustenance pursuant to chapter 717. The department of natural resources shall allocate any amount of unencumbered and unobligated moneys demanded in writing by the department of agriculture and land stewardship as provided in this subparagraph. The department of natural resources shall complete the allocation upon receiving the demand.

*b.* Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose than provided in this section.

4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department. The treasurer of state is authorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this subchapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of the department of administrative services pursuant to the order of the department. The fiscal year of the fund begins July 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

5. The following shall apply to moneys in the fund:

*a.* (1) The executive council may authorize payment of moneys as an expense paid from the appropriations addressed in section 7D.29 and in the manner provided in section 7D.10A in an amount necessary to support the fund, including the following:

(a) The payment of claims as provided in section 459.505.

(b) The allocation of moneys to the department of agriculture and land stewardship for the payment of expenses incurred by the department of agriculture and land stewardship associated with providing for the sustenance and disposition of livestock pursuant to chapter 717.

(2) Notwithstanding subparagraph (1), the executive council's authorization for payment shall be provided only if the amount of moneys in the fund, which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending

or unsettled claims, the amount to be allocated to the department of agriculture and land stewardship, and any amount required to be credited to the general fund of the state under this subsection, is less than one million dollars.

b. The department of natural resources shall credit an amount to the fund from which the expense authorized by the executive council as provided in paragraph “a” was appropriated which is equal to an amount allocated to support the livestock remediation fund by the executive council under paragraph “a”. However, the department shall only be required to credit the moneys to such fund if the moneys in the livestock remediation fund which are not obligated or encumbered, and not counting the department’s estimate of the cost to the livestock remediation fund for pending or unsettled claims, the amount to be allocated to the department of agriculture and land stewardship, and any amount required to be transferred to the fund from which appropriated as described in this paragraph, are in excess of two million five hundred thousand dollars. The department is not required to credit the total amount to the fund from which appropriated as described in this paragraph during any one fiscal year.

95 Acts, ch 195, §5

CS95, §204.2

98 Acts, ch 1209, §3, 50

C99, §455J.2

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.501

2003 Acts, ch 44, §76; 2003 Acts, ch 52, §2, 3, 6; 2003 Acts, ch 145, §286; 2011 Acts, ch 81, §1; 2011 Acts, ch 131, §35, 158

Subsections 1, 3, and 5 amended

#### **459.502 Indemnity fees required — construction permits.**

1. An indemnity fee shall be assessed upon permittees which shall be paid to and collected by the department, prior to issuing a permit for the construction of a confinement feeding operation as provided in section 459.303. The amount of the fees shall be based on the following:

a. If the confinement feeding operation has an animal unit capacity of less than one thousand animal units, the following shall apply:

(1) For all animals other than poultry, the amount of the fee shall be ten cents per animal unit of capacity for confinement feeding operations.

(2) For poultry, the amount of the fee shall be four cents per animal unit of capacity for confinement feeding operations.

b. If the confinement feeding operation has an animal unit capacity of one thousand or more animal units but less than three thousand animal units, the following shall apply:

(1) For all animals other than poultry, the amount of the fee shall be fifteen cents per animal unit of capacity for confinement feeding operations.

(2) For poultry, the amount of the fee shall be six cents per animal unit of capacity for confinement feeding operations.

c. If the confinement feeding operation has an animal unit capacity of three thousand or more animal units, the following shall apply:

(1) For all animals other than poultry, the amount of the fee shall be twenty cents per animal unit of capacity for confinement feeding operations.

(2) For poultry, the amount of the fee shall be eight cents per animal unit of capacity for confinement feeding operations.

2. The department shall deposit moneys collected from the fees into the fund according to procedures adopted by the department.

95 Acts, ch 195, §6

CS95, §204.3

98 Acts, ch 1209, §4, 50

C99, §455J.3

2002 Acts, ch 1137, §54 – 56, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.502

2011 Acts, ch 25, §143

Code editor directive applied

**459.503A Indemnity fee — waiver and reinstatement.**

The indemnity fee required under sections 459.502 and 459.503 shall be waived and the fee shall not be assessable or owing if, at the end of any three-month period, unobligated and unencumbered moneys in the livestock remediation fund, not counting the department's estimate of the cost to the fund for pending or unsettled claims, exceed three million dollars. The department shall reinstate the indemnity fee under those sections if unobligated and unencumbered moneys in the fund, not counting the department's estimate of the cost to the fund for pending or unsettled claims, are less than two million dollars.

2003 Acts, ch 52, §4, 6; 2011 Acts, ch 81, §11

Code editor directive applied

SUBCHAPTER VI

ENFORCEMENT

**459.602 Air quality violations — civil penalty.**

A person who violates subchapter II shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109. Any civil penalty collected shall be deposited in the animal agriculture compliance fund created in section 459.401.

2002 Acts, ch 1137, §24, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 128, §36, 45

Section not amended; footnote added

**459.603 Water quality violations — civil penalty.**

A person who violates subchapter III shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109 or 455B.191. Any civil penalty collected shall be deposited in the animal agriculture compliance fund created in section 459.401.

2002 Acts, ch 1137, §51, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262; 2007 Acts, ch 82, §4

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 128, §37, 45

Section not amended; footnote added

**459.604 Habitual violators — classification — penalties.**

1. a. The department may impose a civil penalty upon a habitual violator which shall not exceed twenty-five thousand dollars for each day the violation continues. The increased penalty may be assessed for each violation committed subsequent to the violation which results in classifying the person as a habitual violator. A person shall be classified as a habitual violator if the person has committed three or more violations as described in this subsection. To be considered a violation that is applicable to a habitual violator determination, a violation must have been committed on or after January 1, 1995. In addition, each violation must have been referred to the attorney general for legal action under this chapter, and each violation must be subject to the assessment of a civil penalty or a court conviction, in the five years prior to the date of the latest violation provided in this subsection, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A person shall be removed from the classification of habitual violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. A violation must relate to one of the following:

(1) The construction or operation of a confinement feeding operation structure, or the installation or use of a related pollution control device or practice, for which the person must obtain a permit, in violation of this chapter, or rules adopted by the department, including the terms or conditions of the permit.

(2) Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for a confinement feeding operation structure, or the installation of a related pollution control device or practice for which the person must obtain a construction permit.

(3) Failing to obtain a permit or approval by the department in violation of this chapter or departmental rule which requires a permit to construct or operate a confinement feeding operation or use a confinement feeding operation structure, anaerobic lagoon, or a pollution control device or practice which is part of a confinement feeding operation.

(4) Operating a confinement feeding operation, including a confinement feeding operation structure, or a related pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

(5) Failing to submit a manure management plan as required pursuant to section 459.312, or operating a confinement feeding operation without having a manure management plan approved by the department.

*b.* This subsection shall not apply unless the department has previously notified the person of the person's classification as a habitual violator. The department shall notify persons classified as habitual violators of their classification, additional restrictions imposed upon the persons pursuant to their classification, and special civil penalties that may be imposed upon the persons. The notice shall be sent to the persons by certified mail.

2. Moneys assessed and collected in civil penalties and interest earned on civil penalties, arising out of a violation involving an animal feeding operation, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262; 2003 Acts, ch 108, §87; 2011 Acts, ch 25, §143

For future amendment to subsection 2, effective July 1, 2012, see 2011 Acts, ch 128, §38, 45  
Code editor directive applied

## CHAPTER 459A

### ANIMAL AGRICULTURE COMPLIANCE ACT FOR OPEN FEEDLOT OPERATIONS

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### **459A.103 Special terms.**

For purposes of this chapter, all of the following shall apply:

1. *a.* Two or more open feedlot operations under common ownership or common management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal.

*b.* For purposes of determining whether two or more open feedlot operations are adjacent, all of the following shall apply:

(1) At least one open feedlot operation structure must be constructed on or after July 17, 2002.

(2) An open feedlot operation structure which is part of one open feedlot operation is separated by less than one thousand two hundred fifty feet from an open feedlot operation structure which is part of the other open feedlot operation.

*c.* (1) For purposes of determining whether two or more open feedlot operations are under

common ownership, a person must hold an interest in each of the open feedlot operations as any of the following:

(a) A sole proprietor.

(b) A joint tenant or tenant in common.

(c) A holder of a majority equity interest in a business association as defined in section 202B.102, including but not limited to as a shareholder, partner, member, or beneficiary.

(2) An interest in the open feedlot operation under subparagraph (1), subparagraph division (b) or (c), which is held directly or indirectly by the person's spouse or dependent child shall be attributed to the person.

d. For purposes of determining whether two or more open feedlot operations are under common management, a person must have significant control of the management of the day-to-day operations of each of the open feedlot operations. Common management does not include control over a contract livestock facility by a contractor, as defined in section 202.1.

2. An open feedlot operation structure is “constructed” when any of the following occurs:

a. Excavation commences for a proposed open feedlot operation structure or proposed expansion of an existing open feedlot operation structure.

b. Forms for concrete are installed for a proposed open feedlot operation structure or the proposed expansion of an existing open feedlot operation structure.

c. Piping for the movement of open feedlot effluent is installed within or between open feedlot operation structures as proposed or proposed to be expanded.

3. a. In calculating the animal unit capacity of an open feedlot operation, the animal unit capacity shall not include the animal unit capacity of any confinement feeding operation building as defined in section 459.102, which is part of the open feedlot operation.

b. Notwithstanding paragraph “a”, only for purposes of determining whether an open feedlot operation must obtain an operating permit, the animal unit capacity of the animal feeding operation includes the animal unit capacities of both the open feedlot operation and the confinement feeding operation if the animals in the open feedlot operation and the confinement feeding operation are all in the same category or type of animals as used in the definitions of large and medium concentrated animal feeding operations in 40 C.F.R. pt. 122. In all other respects the confinement feeding operation shall be governed by chapter 459 and the open feedlot operation shall be governed by this chapter.

4. An open feedlot operation structure is abandoned if the open feedlot operation structure has been razed, removed from the site of an open feedlot operation, filled in with earth, or converted to uses other than an open feedlot operation structure so that it cannot be used as an open feedlot operation structure without significant reconstruction.

5. All distances between locations or objects provided in this chapter shall be measured in feet from their closest points.

6. The regulation of open feedlot effluent shall be construed as also regulating settled open feedlot effluent and solids.

7. “Seasonal high-water table” means the seasonal high-water table as determined by a professional engineer pursuant to the following requirements:

a. The seasonal high-water table shall be determined by evaluating soil profile characteristics such as color and mottling from soil corings, soil test pits, or other soil profile evaluation methods, water level data from soil corings or other sources, and other pertinent information.

b. If a drainage tile line to artificially lower the seasonal high-water table is installed as provided in section 459A.302, the level to which the seasonal high-water table will be lowered will be the seasonal high-water table.

2005 Acts, ch 136, §3; 2006 Acts, ch 1030, §45; 2008 Acts, ch 1191, §144, 147, 148; 2011 Acts, ch 25, §116

Subsection 1, paragraph c amended

SUBCHAPTER II  
DOCUMENTATION

**459A.206 Settled open feedlot effluent basins — soils and hydrogeologic report.**

1. A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to section 459A.205 shall meet design standards as required by a soils and hydrogeologic report.

2. The report shall be submitted with the construction permit application as provided in section 459A.205. The report shall include all of the following:

a. A description of the steps to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the basin.

b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D-2487-92 or D-2488-90.

c. The results of at least three soil corings reflecting the continuous soil profile taken for each basin. The soil corings shall be taken and used in determining subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for construction. The soil corings shall be taken as follows:

(1) By a qualified person ordinarily engaged in the practice of taking soil cores and in performing soil testing.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found near the corners and the deepest point of the proposed basin. The soil corings shall be taken to a minimum depth of ten feet below the bottom elevation of the basin.

(3) By a method such as hollow stem auger or other method that identifies the continuous soil profile and does not result in the mixing of soil layers.

2005 Acts, ch 136, §8; 2011 Acts, ch 25, §143

Code editor directive applied

SUBCHAPTER V  
ENFORCEMENT

**459A.502 Violations — civil penalty.**

A person who violates this chapter shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.191. Any civil penalty collected and interest on a civil penalty shall be deposited in the animal agriculture compliance fund created in section 459.401. A person shall not be subject to a penalty under this section and a penalty under section 459.603 for the same violation.

2005 Acts, ch 136, §19

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 128, §39, 45  
Section not amended; footnote added

## CHAPTER 459B

### DRY BEDDED CONFINEMENT FEEDING OPERATIONS

#### SUBCHAPTER IV

#### ENFORCEMENT

##### **459B.402 Violations — civil penalty.**

A person who violates section 459B.301 shall be subject to the same penalty as provided in section 459.602, and a person who violates any other provision of this chapter shall be subject to the same penalty as provided in section 459.603. Any civil penalty collected shall be deposited in the animal agriculture compliance fund created in section 459.401.

2009 Acts, ch 155, §17, 18

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 128, §40, 45  
Section not amended; footnote added

## CHAPTER 460

### AGRICULTURAL DRAINAGE WELLS AND SINKHOLES

Chapter transferred from §159.28 – 159.29B and chapter 455I in  
Code 2003 pursuant to Code editor directive;  
2002 Acts, ch 1137, §68, 71;  
2002 Acts, 2nd Ex, ch 1003, §260, 262

#### SUBCHAPTER II

#### AGRICULTURAL DRAINAGE WELLS — REGULATION

##### **460.202 Preventing surface water drainage into agricultural drainage wells.**

Not later than December 31, 2001, all of the following shall apply:

1. *a.* An owner of land on which an agricultural drainage well is located shall prevent surface water from draining into the agricultural drainage well. The landowner shall comply with rules, which shall be adopted by the department, in consultation with the division, required to carry out this section. The landowner shall do all of the following:

(1) If the land has a surface water intake emptying into an agricultural drainage well, including a surface water intake located in a road ditch, the landowner shall remove the surface water intake.

(2) If the land has a cistern connecting to an agricultural drainage well, the landowner shall construct and maintain sidewalls surrounding the cistern in order to prevent surface water runoff directly emptying into the agricultural drainage well.

(3) If the land has an agricultural drainage well, the landowner shall ensure that the agricultural drainage well and related drainage system are adequately ventilated in a manner that does not allow surface water to directly drain into the agricultural drainage well.

(4) The landowner shall install a locked cover over the agricultural drainage well or its cistern in order to prevent unauthorized access to the agricultural drainage well or its cistern.

*b.* This subsection does not require a person to remove a tile line that drains into an agricultural drainage well if the tile line does not have a surface water intake. This subsection also does not prohibit a person from installing a tile line, if the installed tile line does not increase an agricultural drainage well area.

2. An agricultural drainage well shall be inspected to ensure compliance with this section, as required by the county board of supervisors in the county in which the agricultural drainage well is located.

3. The department shall adopt guidelines as necessary to assist counties in performing inspections as provided in this section. The guidelines shall not affect the authority of a county to designate a person to perform inspections.

97 Acts, ch 193, §5

CS97, §4551.2

98 Acts, ch 1173, §1; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.202

2011 Acts, ch 25, §143

Code editor directive applied

#### **460.206 Penalties.**

1. *a.* A person who violates section 460.202 or 460.203 is subject to a civil penalty of not more than one thousand dollars. However, if a person is found to have violated a section and again violates the section by not taking action necessary to correct a previous violation within sixty days after the person was found to have committed the previous violation, the person is subject to a civil penalty not to exceed five thousand dollars. If a person is convicted of violating a section two or more times and again violates that section by not taking action necessary to correct a previous violation within sixty days after the person was found to have committed the last previous violation, the person is subject to a civil penalty not to exceed fifteen thousand dollars.

*b.* A person who violates section 460.205 is subject to a civil penalty not to exceed five thousand dollars.

2. Moneys collected from the assessment of civil penalties and interest on civil penalties as provided for in this section shall be deposited in the livestock remediation fund as created in section 459.501.

97 Acts, ch 193, §9

CS97, §4551.6

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.206

2011 Acts, ch 81, §11

Code editor directive applied

### SUBCHAPTER III

#### AGRICULTURAL DRAINAGE WELLS — REGISTRATION — ALTERNATIVE DRAINAGE SYSTEMS — SINKHOLES

#### **460.302 Agricultural drainage wells.**

1. An owner of an agricultural drainage well shall register the well with the department of natural resources by September 30, 1988. The department of agriculture and land stewardship, in cooperation with the department of natural resources, shall adopt rules, pursuant to chapter 17A, which provide for an appeals process for violations of this subsection.

2. An owner of an agricultural drainage well and a landholder whose land is drained by the well or wells of another person shall develop, in consultation with the department of agriculture and land stewardship and the department of natural resources, a plan which proposes alternatives to the use of agricultural drainage wells by July 1, 1998.

*a.* Financial incentive moneys may be allocated from the financial incentive portion of the agriculture management account of the groundwater protection fund to implement alternatives to agricultural drainage wells.

*b.* An owner of an agricultural drainage well and a landholder whose land is drained by the well or wells of another person shall not be eligible for financial incentive moneys pursuant to paragraph “*a*” if the owner fails to register the well with the department of natural resources by September 30, 1988, or if the owner fails to develop a plan for alternatives in

cooperation with the department of agriculture and land stewardship and the department of natural resources.

3. The department shall:

a. (1) On July 1, 1987 initiate a pilot demonstration and research project concerning elimination of groundwater contamination attributed to the use of agricultural chemicals and agricultural drainage wells. The project shall be established in a location in north central Iowa determined by the department to be the most appropriate. A demonstration project shall also be established in northeast Iowa to study techniques for the cleanup of sinkholes.

(2) The agricultural drainage well pilot project shall be designed to identify the environmental, economic, and social problems presented by continued use or closure of agricultural drainage wells and to monitor possible contamination caused by agriculture land management practices and agricultural chemical use relative to agricultural drainage wells.

b. Develop alternative management practices based upon the findings from the demonstration projects to reduce the infiltration of synthetic organic compounds into the groundwater through agricultural drainage wells and sinkholes.

c. Examine alternatives and the costs of implementation of alternatives to the use of agricultural drainage wells, and examine the legal, technical, and hydrological constraints for integrating alternative drainage systems into existing drainage districts.

4. Financial incentive moneys expended through the use of the financial incentive portion of the agriculture management account may be provided by the department to landowners in the project areas for employing reduced chemical farming practices and land management techniques.

5. The secretary may appoint interagency committees and groups as needed to coordinate the involvement of agencies participating in department sponsored projects. The interagency committees and groups may accept grants and funds from public and private organizations.

6. The department shall publish a report on the status and findings of the pilot demonstration projects on or before July 1, 1989, and each subsequent year of the projects. The department of agriculture and land stewardship shall develop a priority system for the elimination of chemical contamination from agricultural drainage wells and sinkholes. The priority system shall incorporate available information regarding the significance of contamination, the number of registered wells in the area, and the information derived from the report prepared pursuant to this subsection. The highest priority shall be given to agricultural drainage wells for which the above criteria are best met, and the costs of necessary action are at the minimum level.

7. Beginning July 1, 1993, the department shall initiate an ongoing program to meet the goal of eliminating chemical contamination caused by the use of agricultural drainage wells by January 1, 1995, based upon the findings of the report published pursuant to subsection 6.

8. Notwithstanding the prohibitions of section 455B.267, subsection 4, an owner of an agricultural drainage well may make emergency repairs necessitated by damage to the drainage well to minimize surface runoff into the agricultural drainage well, upon the approval of the county board of supervisors or the board's designee of the county in which the agricultural drainage well is located. The approval shall be based upon the following conditions:

a. The well has been registered in accordance with both state and federal law.

b. The applicant will institute management practices including alternative crops, reduced application of chemicals, or other actions which will reduce the level of chemical contamination of the water which drains into the well.

c. The owner submits a written statement that approved emergency repairs are necessary and do not constitute a basis to avoid the eventual closure of the well if closure is later determined to be required. If a county board of supervisors or the board's designee approves the emergency repair of an agricultural drainage well, the county board of supervisors or the board's designee shall notify the department of natural resources of the approval within thirty days of the approval.

87 Acts, ch 225, §303

CS87, §159.29

88 Acts, ch 1188, §1; 90 Acts, ch 1027, §1 – 4; 94 Acts, ch 1198, §32; 96 Acts, ch 1219, §65; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.302

2011 Acts, ch 25, §143

Code editor directive applied

**460.304 Agricultural drainage well water quality assistance program.**

1. The soil conservation division shall establish an agricultural drainage well water quality assistance program as provided by rules which shall be adopted by the division pursuant to chapter 17A. The program shall be supported from moneys deposited in the agricultural drainage well water quality assistance fund created pursuant to section 460.303.

2. To the extent that moneys are available to support the program, the division shall expend moneys from the fund to do the following:

a. (1) Provide cost-share moneys to persons closing agricultural drainage wells in accordance with the priority system established pursuant to section 460.302. In conjunction with closing agricultural drainage wells, the division shall award cost-share moneys to carry out the following projects:

(a) Construct alternative drainage systems.

(b) Establish water quality practices other than constructing alternative drainage systems, including but not limited to converting land to wetlands.

(2) The amount of moneys allocated in cost-share payments to a person qualifying under the program shall not exceed seventy-five percent of the estimated cost of carrying out the project or seventy-five percent of the actual cost of carrying out the project, whichever is less.

b. Contract with persons to obtain technical assessments in agricultural drainage well areas, including but not limited to areas having a predominance of shallow bedrock or karst terrain as the division determines is necessary to carry out a project.

3. a. A person who owns an interest in land within a designated agricultural drainage well area shall not be eligible to participate in the program, if the person is any of the following:

(1) A party to a pending legal or administrative action, including a contested case proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(2) Is classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

b. Noncrop acres located within a designated agricultural drainage well area shall not be eligible to benefit from the program.

c. The department of natural resources shall cooperate with the division by providing information necessary to administer this subsection.

97 Acts, ch 193, §3

CS97, §159.29B

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.304

2006 Acts, ch 1057, §2; 2007 Acts, ch 22, §83; 2011 Acts, ch 25, §117, 143

Code editor directive applied

Subsection 3, paragraph b, unnumbered paragraph 2 designated as paragraph c

## CHAPTER 461A

### PUBLIC LANDS AND WATERS

This chapter not enacted as a part of this title;  
transferred from chapter 111 in Code 1993

**461A.3A Restore the outdoors program — appropriation.**

1. The department shall establish a restore the outdoors program. The purpose of the program is to provide funding for projects involving existing vertical infrastructure as defined

in section 8.57, subsection 6, paragraph “c”, or the construction of new vertical infrastructure if the new construction is required due to increased demand for facilities at the park or if it is not cost-effective to repair or renovate the existing vertical infrastructure. Projects shall be limited to existing state parks and other public facilities managed by the department.

2. There is appropriated from the rebuild Iowa infrastructure fund for each fiscal year of the fiscal period beginning July 1, 1997, and ending June 30, 2001, the sum of three million dollars to the department for use in the restore the outdoors program. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining at the end of a fiscal year shall not revert but shall remain available for expenditure during the following fiscal year for purposes of the restore the outdoors program.

3. The department shall provide in its annual budget documentations to the governor and general assembly a report on the use of moneys under the program since the last report and the projected use of future moneys.

97 Acts, ch 215, §37; 98 Acts, ch 1219, §19, 26; 2011 Acts, ch 25, §118

Subsection 2, unnumbered paragraph 2 numbered as subsection 3

#### **461A.76 Contracts with local authorities.**

1. Notwithstanding anything in chapter 468, subchapter I, parts 1 through 5, to the contrary, county boards of supervisors and trustees having control of any levee or drainage district established thereunder, including joint levee or drainage districts, may enter into contracts and agreements with municipalities or corporations authorized to establish water recreational areas under the provisions of this division. Such contracts or agreements shall be in writing and may be made prior to or after the establishment of a water recreational area. If made prior to the establishment of a water recreational area they may be made conditional upon the final establishment of such area and if conditional upon such final establishment may be entered into prior to the hearing provided for in section 461A.63.

2. Such contracts or agreements may embrace any of the following subjects:

- a. For the impoundment of drainage waters to create artificial lakes or ponds.
- b. For compensation to drainage districts for drainage improvements destroyed or rendered useless by the establishment of water recreational areas and the structures, waters or works thereof.
- c. For the diversion of waters from established drainage ditches or tile drains to other channels.
- d. For sanitary measures and precautions.
- e. For the control of water levels in lakes, ponds or impoundments of water to avoid damage to or malfunction of drainage facilities.
- f. For the construction of additional drainage facilities promoting the interests of either or both of the contracting parties.
- g. For the granting of easements or licenses by one party to the other.
- h. For the payment of money by one contracting party to the other in consideration of acts or performance of the other party required by such contract or agreement.

3. When any expenditure of levee or drainage district funds is proposed by the authority contained in this section and where the estimated expenditure will exceed fifty percent of the original total cost of the district and subsequent improvements therein as defined by section 468.126, the same procedure respecting notice and hearing shall be followed as is provided in said section 468.126, for repair proposals where the estimated cost of the repair exceeds fifty percent of the original total cost of the district and subsequent improvements therein.

[C66, 71, 73, 75, 77, 79, 81, §111.76]

C93, §461A.76

2011 Acts, ch 34, §106

Section amended

#### **461A.79 Public outdoor recreation and resources.**

1. Fifty percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on land acquisition and capital improvements in carrying out this chapter. Acquisition projects, both fee-simple and less-than-fee, from

willing sellers, may be for purposes of establishment or expansion of state parks, public hunting areas, natural areas, public fishing areas, water access sites, trail corridors, and other acquisition projects that are in accord with this chapter. Notwithstanding the exemption provided by section 427.1, land acquired under this subsection is subject to the full consolidated levy of property taxes which shall be paid from revenues available to be expended under this subsection. Capital improvements may be either new developments or rehabilitative in nature. Lake and watershed restoration projects are eligible for funding under this subsection. Not more than fifty percent of the revenues available to be expended under this subsection may be used by the commission to enter into agreements with county conservation boards and county boards of supervisors in those counties without conservation boards to carry out the purposes of this subsection. The agreement shall not provide for the payment by the commission of more than seventy-five percent of the cost of the project and the agreement shall specify that the county conservation board or county board of supervisors, whichever is applicable, shall provide funds for the remaining cost of the project covered by the agreement. Moneys available to be expended under this subsection may be used for the matching of federal funds.

2. Forty-five percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on the state recreation tourism grant program. This program shall provide matching grants to cities and unincorporated communities for purposes of developing or improving recreational projects or tourist attractions. A city or unincorporated community may submit an application to the commission for a matching grant, except that an unincorporated community shall submit the application through the county board of supervisors. Applications shall be reviewed by the advisory council for public outdoor recreation and resources. The advisory council shall submit recommendations to the commission regarding possible recipients and grant amounts. Grants made to an unincorporated community shall be paid to the county board of supervisors to be used for the project of the unincorporated community. The amount of the grant shall not exceed fifty percent of the cost of the development or improvement to be made and the application must demonstrate that the city or unincorporated community will provide the required matching funds.

3. Five percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on advertising which shall promote the use of recreational facilities and tourist attractions in the state. The commission shall enter into an agreement with the economic development authority for the expenditure of these funds for this purpose.

4. Moneys available to be expended for purposes of this section for public outdoor recreation and resources shall be credited to or deposited to the general fund of the state and appropriations made for purposes of this section shall be allocated as provided in this section. Moneys credited to or deposited to the general fund of the state pursuant to this subsection are subject to the requirements of section 8.60.

84 Acts, ch 1262, §1

C85, §111.79

86 Acts, ch 1245, §1877; 91 Acts, ch 260, §1212; 92 Acts, ch 1163, §28

C93, §461A.79

93 Acts, ch 131, §18; 94 Acts, ch 1107, §74; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **461A.80 Public outdoor recreation and resources advisory council.**

1. An advisory council for public outdoor recreation and resources appropriations made for the purposes of section 461A.79 is created. The council shall consist of a public member appointed by the governor from each congressional district, the chairperson of the commission, the director, and a designee of the economic development authority. No more than three public members shall belong to the same political party. The council shall elect a chairperson annually from among the council's members, and the director shall serve as council secretary. Persons already serving in an elected or appointed governmental capacity are not eligible to serve as council members.

2. The advisory council shall meet annually, in July, and upon the call of the chairperson of the advisory council. The advisory council shall make policy recommendations to the commission regarding the projects and programs to be funded from funds available for public outdoor recreation and resources from appropriations made for the purposes of section 461A.79.

3. Each county conservation board of those counties which are located in a congressional district shall nominate one person from the congressional district for appointment to the advisory council. The commission shall compile a list of the nominations of the county conservation boards for each congressional district and shall provide this list to the governor. The governor shall appoint one member from each congressional district from the nominations as provided. Appointments shall be made for three-year terms beginning July 1 in the year of appointment. A person shall not serve more than two terms. A vacancy shall be filled for the unexpired term in the same manner as the original appointment was made.

The public members of the advisory council shall be reimbursed for actual and necessary expenses for each day employed in the official discharge of their duties. The expenses shall be paid from the administration fund of the commission. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

84 Acts, ch 1262, §2

C85, §111.80

86 Acts, ch 1245, §1866, 1877

C93, §461A.80

94 Acts, ch 1107, §75; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 462A

### WATER NAVIGATION REGULATIONS

This chapter not enacted as a part of this title;  
transferred from chapter 106 in Code 1993

#### 462A.2 Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

1. “*Alcohol concentration*” means the number of grams of alcohol per any of the following:
  - a. One hundred milliliters of blood.
  - b. Two hundred ten liters of breath.
  - c. Sixty-seven milliliters of urine.
2. “*Alcoholic beverage*” includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.
3. “*Authorized emergency vessel*” means any vessel which is designated or authorized by the commission for use in law enforcement, search and rescue, and disaster work.
4. “*Boat livery*” means a person who holds a vessel for hire, renting, leasing, or chartering including hotels, motels, or resorts which furnish a vessel to guests as part of the services of the business.
5. “*Certificate*” means a certificate of title.
6. “*Chemical test*” means an analysis of a person’s blood, breath, urine, or other bodily substance for the determination of the presence of alcohol, a controlled substance, or a drug.
7. “*Commission*” means the natural resource commission.
8. “*Controlled substance*” means any drug, substance, or compound that is regulated under chapter 124, including any counterfeit substance or simulated controlled substance, as well as any metabolite or derivative of the drug, substance, or compound.
9. “*Cut-off switch*” means an operable factory-installed or dealer-installed emergency cut-off engine stop switch that is installed on a personal watercraft.
10. “*Cut-off switch lanyard*” means the cord used to attach the person of the operator of a personal watercraft to the cut-off switch.

11. “*Dealer*” means a person who engages in whole or in part in the business of buying, selling, or exchanging vessels either outright or on conditional sale, bailment, lease, security interest, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

12. “*Department*” means the department of natural resources.

13. “*Director*” means the director of the department or the director’s designee.

14. “*Established place of business*” means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer’s or manufacturer’s books and records are kept and a large share of the dealer’s or manufacturer’s business is transacted.

15. “*Farm pond*” means a body of water wholly on the lands of a single owner, or a group of joint owners, which does not have any connection with any public waters and which is less than ten surface acres.

16. “*Inboard*” means a vessel in which the engine is located internally, the propulsion system is rigidly attached to the engine, and the propulsion mechanism is within the confines of the vessel’s extreme length and beam.

17. “*Inboard-outdrive*” means a vessel in which the power plant or engine is located inside of the vessel and the propulsion mechanism is located outside of the transom.

18. “*Inflatable vessel*” means a vessel which achieves and maintains its intended shape and buoyancy by inflation.

19. “*Lienholder*” means a person holding a security interest.

20. “*Manufacturer*” means a person engaged in the business of manufacturing or importing new and unused vessels, or new and unused outboard motors, for the purpose of sale or trade.

21. “*Motorboat*” means any vessel propelled by an inboard, inboard-outdrive, or outboard engine, whether or not such engine is the principal source of propulsion.

22. “*Navigable waters*” means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months in one out of every ten years.

23. “*Nonresident*” means every person who is not a resident of this state.

24. “*Operate*” means to navigate or otherwise use a vessel or motorboat. For the purposes of section 462A.12, subsection 2, sections 462A.14, 462A.14A, 462A.14B, 462A.14C, 462A.14D, and 462A.14E, and section 462A.23, subsection 2, paragraph “b”, “*operate*”, when used in reference to a motorboat, means the motorboat is powered by a motor which is running, and when used in reference to a sailboat, means the sailboat is either powered by a motor which is running, or has sails hoisted and is not propelled by a motor, and is under way.

25. “*Operator*” means a person who operates or is in actual physical control of a vessel.

26. “*Owner*” means a person, other than a lienholder, having the property right in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a vessel or motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

27. “*Passenger*” means a person carried on board a vessel, including the operator, and anyone towed by a vessel on water skis, surfboards, inner tubes, or similar devices.

28. “*Peace officer*” means:

a. A member of the state patrol.

b. A police officer under civil service as provided in chapter 400.

c. A sheriff.

d. A regular deputy sheriff who has had formal police training.

e. Any other certified law enforcement officer as defined in section 80B.3, who has satisfactorily completed an approved course relating to operating while intoxicated, either at the Iowa law enforcement academy or in a law enforcement training program approved by the department of public safety.

29. “*Person*” means an individual, partnership, firm, corporation, or association.

30. “*Personal watercraft*” means a vessel, less than sixteen feet in length, which is

propelled by a water jet pump or similar machinery as its primary source of motor propulsion and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than being operated by a person sitting, standing, or kneeling inside the vessel.

31. “*Privately owned lake*” means any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.

32. “*Proceeds*” includes whatever is received when collateral or proceeds are sold, exchanged, collected, or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks, and the like are cash “*proceeds*”. All other proceeds are “*noncash proceeds*”.

33. “*Sailboard*” means a windsurfing vessel with a mount for a sail, a daggerboard, and a small skeg.

34. “*Sailboat*” means any watercraft operated with a sail.

35. “*Security interest*” means an interest which is reserved or created by an agreement which secures payment or performance of an obligation and is valid against third parties generally.

36. “*Serious injury*” means the same as defined in section 702.18.

37. “*State of principal use*” means the state on whose waters a vessel is used or to be used most during a calendar year.

38. “*Undocumented vessel*” means any vessel which is not required to have, and does not have, a valid marine document issued by the bureau of customs or a foreign government.

39. “*Use*” means to operate, navigate, or employ a vessel. A vessel is in use whenever it is upon the water.

40. “*Vessel*” means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Ice boats are watercraft.

41. “*Vessel for hire or commercial vessel*” means a vessel for the use of which a fee of any nature is imposed, including vessels furnished as a part of lodge, hotel, or resort services.

42. “*Wake*” means any movement of water created by a vessel which adversely affects the activities of another person who is involved in activities approved for that area or which may adversely affect the natural features of the shoreline.

43. “*Watercraft*” means any vessel which through the buoyance force of water floats upon the water and is capable of carrying one or more persons.

44. “*Waters of this state under the jurisdiction of the commission*” means any navigable waters within the territorial limits of this state, and the marginal river areas adjacent to this state, exempting only farm ponds and privately owned lakes.

45. “*Writing fee*” means the amount paid by the boat owner to the county recorder for handling the transaction.

[C97, §2511; C24, 27, 31, §1691; C35, §1703-e1; C39, §1703.01, 1703.09, 1703.10; C46, 50, 54, 58, §106.1, 106.9, 106.10; C62, 66, 71, 73, 75, 77, 79, 81, §106.2; 82 Acts, ch 1028, §2, 3]

86 Acts, ch 1245, §1823 – 1826; 87 Acts, ch 134, §1, 2; 88 Acts, ch 1008, §1; 88 Acts, ch 1134, §24; 92 Acts, ch 1131, §1

C93, §462A.2

2000 Acts, ch 1099, §1; 2002 Acts, ch 1133, §1; 2005 Acts, ch 35, §31; 2007 Acts, ch 28, §2; 2008 Acts, ch 1031, §53; 2010 Acts, ch 1073, §3; 2011 Acts, ch 24, §1

Subsection 24 amended

#### **462A.5 Registration and identification number.**

1. The owner of each vessel required to be numbered by this state shall register it every three years with the commission through the county recorder of the county in which the owner resides, or, if the owner is a nonresident, the owner shall register it in the county in which such vessel is principally used. The commission shall develop and maintain an electronic system for the registration of vessels pursuant to this chapter. The commission shall establish forms and procedures as necessary for the registration of all vessels.

a. The owner of the vessel shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed

and signed by the owner of the vessel and shall be accompanied by the appropriate fee, and the writing fee specified in section 462A.53. Upon applying for registration, the owner shall display a bill of sale, receipt, or other satisfactory proof of ownership as provided by the rules of the commission to the county recorder. If the county recorder is not satisfied as to the ownership of the vessel or that there are no undisclosed security interests in the vessel, the county recorder may register the vessel but shall, as a condition of issuing a registration certificate, require the applicant to follow the procedure provided in section 462A.5A. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records of the recorder's office and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the vessel, the passenger capacity of the vessel, and the name and address of the owner. In the use of all vessels except nonpowered sailboats, nonpowered canoes, and commercial vessels, the registration certificate shall be carried either in the vessel or on the person of the operator of the vessel when in use. In the use of nonpowered sailboats, nonpowered canoes, or commercial vessels, the registration certificate may be kept on shore in accordance with rules adopted by the commission. The operator shall exhibit the certificate to a peace officer upon request or, when involved in an occurrence of any nature with another vessel or other personal property, to the owner or operator of the other vessel or personal property.

b. A vessel that has an expired registration certificate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

c. On all vessels except nonpowered sailboats the owner shall cause the identification number to be painted on or attached to each side of the bow of the vessel in such size and manner as may be prescribed by the rules of the commission. On nonpowered boats the number may be placed at alternate locations as prescribed by the rules of the commission. All numbers shall be maintained in a legible condition at all times.

d. No number, other than the number awarded to a vessel under the provisions of this chapter or granted reciprocity pursuant to this chapter, shall be painted, attached or otherwise displayed on either side of the bow of such vessel.

e. The owner of each vessel must display and maintain, in a legible manner and in a prominent spot on the exterior of such vessel, other than the bow, the passenger capacity of the vessel which must conform with the passenger capacity designated on the registration certificate.

2. When an agency of the United States government shall have in force an overall system of identification numbering for vessels, the numbering system prescribed by the commission pursuant to this chapter, shall be in conformity therewith.

3. a. The registration fees for vessels subject to this chapter are as follows:

(1) For vessels of any length without motor or sail, twelve dollars.

(2) For motorboats or sailboats less than sixteen feet in length, twenty-two dollars and fifty cents.

(3) For motorboats or sailboats sixteen feet or more, but less than twenty-six feet in length, thirty-six dollars.

(4) For motorboats or sailboats twenty-six feet or more, but less than forty feet in length, seventy-five dollars.

(5) For motorboats or sailboats forty feet in length or more, one hundred fifty dollars.

(6) For all personal watercraft, forty-five dollars.

b. Every registration certificate and number issued becomes delinquent at midnight April 30 of the last calendar year of the registration period unless terminated or discontinued in accordance with this chapter. After January 1, 2007, an unregistered vessel and a renewal of registration may be registered for the three-year registration period beginning May 1 of that year. When unregistered vessels are registered after May 1 of the second year of the three-year registration period, such unregistered vessels may be registered for the remainder of the current registration period at two-thirds of the appropriate registration fee. When unregistered vessels are registered after May 1 of the third year of the three-year

registration period, such unregistered vessels may be registered for the remainder of the current registration period at one-third of the appropriate registration fee.

c. If a timely application for renewal is made, the applicant shall receive the same registration number allocated to the applicant for the previous registration period. If the application for registration for the three-year registration period is not made before May 1 of the last calendar year of the registration period, the applicant shall be charged a penalty of five dollars.

4. a. If a person, after registering a vessel, moves from the address shown on the registration certificate, the person shall, within ten days, notify the county recorder in writing of the old and new address. If appropriate, the county recorder shall forward all past records of the vessel to the recorder of the county in which the owner resides.

b. If the name of a person, who has registered a vessel, is changed, the person shall, within ten days, notify the county recorder of the former and new name.

c. No fee shall be paid to the county recorder for making the changes mentioned in this subsection, unless the owner requests a new registration certificate showing the change, in which case a fee of one dollar plus a writing fee shall be paid to the recorder.

d. If a registration certificate is lost, mutilated or becomes illegible, the owner shall immediately make application for and obtain a duplicate registration certificate by furnishing information satisfactory to the county recorder. A fee of one dollar plus a writing fee shall be paid to the county recorder for a duplicate registration certificate.

e. If a vessel, registered under this chapter, is destroyed or abandoned, the destruction or abandonment shall be reported to the county recorder and the registration certificate shall be forwarded to the office of the county recorder within ten days after the destruction or abandonment.

5. All records of the commission and the county recorder, other than those declared by law to be confidential for the use of the commission and the county recorder, shall be open to public inspection during office hours.

6. The owner of each vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto shall register it every three years with the county recorder in the same manner prescribed for undocumented vessels and shall cause the registration validation decal to be placed on the vessel in the manner prescribed by the rules of the commission. When the vessel bears the identification required in the documentation, it is exempt from the placement of the identification numbers as required on undocumented vessels. The fee for such registration is twenty-five dollars plus a writing fee.

7. If the owner of a currently registered vessel places the vessel in storage, the owner shall return the registration certificate to the county recorder with an affidavit stating that the vessel is placed in storage and the effective date of the storage. The county recorder shall notify the commission of each registered vessel placed in storage. When the owner of a stored vessel desires to renew the vessel's registration, the owner shall apply to the county recorder and pay the registration fees plus a writing fee as provided in subsections 1 and 3 without penalty. No refund of registration fees shall be allowed for a stored vessel.

8. The registration certificate shall indicate if the vessel is subject to the requirement of a certificate of title and the county from which the certificate of title is issued.

[C97, §2512; S13, §2512; C24, 27, 31, §1694; C35, §1703-e3, 1703-e7; C39, §1703.03, 1703.07, 1703.08; C46, 50, 54, 58, §106.3, 106.7, 106.8; C62, 66, 71, 73, 75, 77, 79, 81, §106.5; 82 Acts, ch 1028, §6 – 9]

84 Acts, ch 1082, §1, 2; 85 Acts, ch 110, §1; 87 Acts, ch 134, §3; 92 Acts, ch 1101, §1

C93, §462A.5

2000 Acts, ch 1019, §2; 2002 Acts, ch 1113, §9; 2005 Acts, ch 137, §4 – 7; 2007 Acts, ch 28, §3, 4; 2011 Acts, ch 25, §119, 143

For applicable scheduled fines, see §805.8B, subsection 1, paragraph a

Code editor directive applied

Subsection 4 amended

**462A.9 Classification and required equipment.**

1. Vessels subject to the provisions of this chapter shall be divided into four classes as follows:

- a. Class I. Less than sixteen feet in length.
- b. Class II. Sixteen feet or over and less than twenty-six feet in length.
- c. Class III. Twenty-six feet or over and less than forty feet in length.
- d. Class IV. Forty feet or over.

2. Every vessel, in all weathers, from sunset to sunrise, shall carry and exhibit the following lights when underway, and during that time shall exhibit no other lights which may be mistaken for those required except that the international lighting system as approved by the United States coast guard will be accepted for use on motorboats on the waters of this state.

a. Every motorboat of classes I and II shall carry the following lights:

(1) A bright white light aft to show all around the horizon.

(2) A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

b. Every motorboat of classes III and IV shall carry the following lights:

(1) A bright white light in the fore part of the vessel as near the bow as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

(2) A bright white light aft to show all around the horizon and higher than the white light forward.

(3) A green light on the starboard side so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. A red light on the port side, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

c. Vessels of classes I and II, when propelled by sail alone, shall carry the combined lantern, but not the white light aft prescribed by this section. Vessels of classes III and IV when so propelled, shall carry the colored side lights, suitably screened, but not the white lights required by this section.

d. Every white light required by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light required by this section shall be of such character as to be visible at a distance of at least one mile. The term "visible" in this section, when applied to lights, shall mean visible on a dark night with clear atmosphere.

e. When propelled by sail and machinery, such motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

3. Every vessel shall carry and exhibit such other lights required by the rules and regulations of the commission.

4. Every motorboat of class II, III or IV shall be provided with an efficient whistle or other sound producing appliance.

5. Every motorboat of class III or IV shall be provided with an efficient bell.

6. Every vessel shall carry at least one life preserver, life belt, ring buoy or other device, of the sort prescribed by the rules of the commission, for each passenger, so placed as to be readily accessible. This does not apply to a vessel which is a racing shell used in the sport of sculling or to a sailboard while used for windsurfing.

7. Every motorboat shall be provided with such number, size and type of fire extinguishers capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the commission. Such fire extinguishers shall, at all times, be kept in condition for immediate and effective use and shall be so placed as to be readily accessible. Vessels powered by outboard motors of ten horsepower or less, need not carry the extinguishers as provided herein.

8. *a.* The provisions of subsections 4, 5 and 7 of this section shall not apply to motorboats while competing in any race conducted pursuant to section 462A.16 or, if such boats are designed and used solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

*b.* The operator of a motorboat, while engaged in such race, must wear a crash helmet and life preserver.

9. Every motorboat shall have the carburetor or carburetors of every engine therein, except outboard motors, using a liquid of a volatile nature as fuel, equipped with such efficient flame arrestor, backfire trap or other similar device as may be prescribed by the rules and regulations of the commission.

10. Every motorboat, except open boats, using any liquid of a volatile nature as fuel, shall be provided with the means prescribed by the rules of the commission for properly and efficiently ventilating the bilges of the engines and fuel tank compartments so as to remove any explosive or flammable gases.

11. The commission is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary for the safety of operators and passengers.

12. The commission is hereby authorized to establish such pilot rules as may be necessary for the safe operation of vessels on the waters of this state under the jurisdiction of the commission.

13. An owner of a personal watercraft equipped with a cut-off switch shall maintain the cut-off switch and the accompanying cut-off switch lanyard in an operable, fully functional condition.

14. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

[S13, §2514-a; C24, 27, 31, §1697; C39, §1703.10 – 1703.13; C46, 50, 54, 58, §106.10 – 106.13; C62, 66, 71, 73, 75, 77, 79, 81, §106.9; 82 Acts, ch 1028, §11 – 13]

92 Acts, ch 1131, §3; 92 Acts, ch 1163, §26

C93, §462A.9

2007 Acts, ch 28, §6; 2011 Acts, ch 25, §143

For applicable scheduled fines, see §805.8B, subsection 1, paragraphs a and b  
Code editor directive applied

#### **462A.14 Operating a motorboat or sailboat while intoxicated.**

1. A person commits the offense of operating a motorboat or sailboat while intoxicated if the person operates a motorboat or sailboat on the navigable waters of this state in any of the following conditions:

*a.* While under the influence of an alcoholic beverage or other drug or a combination of such substances.

*b.* While having an alcohol concentration of .08 or more.

*c.* While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

*a.* A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, up to five hundred dollars of the fine may be waived. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Prohibition of operation of a motorboat or sailboat for one year, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsection 12, and a course for drinking drivers.

b. An aggravated misdemeanor for a second offense, punishable by all of the following:

(1) Imprisonment in the county jail or community-based correctional facility for not less than seven days.

(2) Assessment of a fine of not less than one thousand five hundred dollars nor more than five thousand dollars.

(3) Prohibition of operation of a motorboat or sailboat for two years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

c. A class "D" felony for a third offense and each subsequent offense, punishable by all of the following:

(1) Imprisonment in the county jail for a determinate sentence of not more than one year but not less than thirty days, or committed to the custody of the director of the department of corrections. A person convicted of a third or subsequent offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513 or the offender may be committed to treatment in the community under the provisions of section 907.13.

(2) Assessment of a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars.

(3) Prohibition of operation of a motorboat or sailboat for six years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

d. A class "D" felony for any offense under this section resulting in serious injury to persons other than the defendant, if the court determines that the person who committed the offense caused the serious injury, and shall be imprisoned for a determinate sentence of not more than five years but not less than thirty days, or committed to the custody of the director of the department of corrections, and assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for one year in addition to any other period of time the defendant would have been ordered not to operate if no injury had occurred in connection with the violation. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

e. A class "B" felony for any offense under this section resulting in the death of persons other than the defendant, if the court determines that the person who committed the offense caused the death, and shall be imprisoned for a determinate sentence of not more than twenty-five years, or committed to the custody of the director of the department of corrections. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for six years. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

3. a. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 462A.14A.

(5) If the offense under this section results in bodily injury to a person other than the defendant.

b. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license or privilege revocation under this section:

a. Any conviction under this section within the previous twelve years shall be counted as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to an offense defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1. However, a person who refuses a test pursuant to section 462A.14B may be subject to imposition of the penalties under that section in addition to the penalties under this section if the person violates both sections, even though the actions arise out of the same event or occurrence.

6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

7. a. This section does not apply to a person operating a motorboat or sailboat while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle, or motorboat or sailboat.

b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was

operating or in physical control of a motorboat or sailboat is presumed to be the alcohol concentration at the time of operating or being in physical control of the motorboat or sailboat.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was operating or in physical control of a motorboat or sailboat is presumed to show the presence of such controlled substance or other drug in the defendant at the time of operating or being in physical control of the motorboat or sailboat.

c. The nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances adopted by the department of public safety shall be utilized in prosecutions under this section.

9. a. In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, "emergency response" means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph "b" or paragraph "c", if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1.

11. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

12. a. All substance abuse evaluations required under this section shall be completed at the defendant's expense.

b. In addition to assignment to substance abuse evaluation and treatment under this section, the court shall order any defendant convicted under this section to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86.

c. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

d. The court may prescribe the length of time for the evaluation and treatment or the court may request that the community college or licensed substance abuse program conducting the course for drinking drivers which the defendant is ordered to attend or the treatment program to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

e. Upon successfully completing a course for drinking drivers or an ordered substance abuse treatment program, a court may place the defendant on probation for six months and as a condition of probation, the defendant shall attend a program providing posttreatment services relating to substance abuse as approved by the court.

f. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

g. A defendant who fails to carry out the order of the court shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

h. In addition to any other condition of probation, the defendant shall attend a program providing substance abuse prevention services or posttreatment services related to substance abuse as ordered by the court. The defendant shall report to the defendant's probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

13. a. Upon a second or subsequent offense in violation of section 462A.14, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in this state providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

b. The court may prescribe the length of time for the evaluation and treatment or the court may request that the hospital to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the program of the hospital or institution or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

c. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

[C97, §2513; S13, §2513; C24, 27, 31, §1695; C35, §1703-e5; C39, §1703.05; C46, 50, 54, 58, §106.5, 106.28; C62, 66, 71, 73, 75, 77, 79, 81, §106.14; 82 Acts, ch 1028, §18]

C93, §462A.14

2000 Acts, ch 1099, §2; 2000 Acts, ch 1232, §74; 2007 Acts, ch 10, §176; 2011 Acts, ch 24, §2  
Subsection 1, paragraph b amended

#### **462A.26 Right-of-way rules — speed and distance rules — zoning water areas.**

1. Vessel traffic shall be governed by the following rules:

a. Passing from rear — keep to the operator's left.

b. Passing head on — keep to the operator's right.

c. Passing at right angles — vessel at the right has the right-of-way.

d. Manually propelled vessels have the right-of-way over all other vessels.

e. Sailboats have the right-of-way over all motor driven vessels. Motorboats, when meeting or overtaking sailboats, shall always pass on the leeward side.

f. Any vessel backing from a landing has the right-of-way over incoming vessels.

g. When necessary to protect the public health, safety, and welfare due to the physical nature and characteristics of any waters under the jurisdiction of the commission, the commission may promulgate further rules governing vessel traffic on such waters.

2. The commission may adopt rules governing all activities on waters and ice of this state under the jurisdiction of the commission, including impoundments constructed by or in cooperation with the federal government, when necessary and desirable to permit appropriate utilization of specific water areas, consistent with section 462A.3. The rules may include rules relating to the following:

a. Zoning as to area, activity, vessel, or vehicle, speed, and time of day during which specified activities are permitted.

b. Horsepower, size, and types of vessels and vehicles which may be operated.

c. Safety precautions and practices required.

3. Except as provided in special rules promulgated under this chapter, the following speed and distance regulations apply:

a. On all waters under the jurisdiction of the commission:

(1) A motorboat shall not be operated at speeds greater than five miles per hour when within one hundred feet of another craft traveling at five miles per hour or less.

(2) Motorboats shall maintain a minimum passing or meeting distance of fifty feet when both boats are traveling at speeds greater than five miles per hour.

(3) A motorboat shall not be operated at a speed exceeding ten miles per hour unless vision is unobstructed at least two hundred feet ahead.

b. On all inland lakes and federal impoundments under the jurisdiction of the commission, a motorboat shall not be operated within three hundred feet of shore at a speed greater than ten miles per hour.

[C39, §1703.14; C46, 50, 54, 58, §106.14; C62, 66, §106.26; C71, 73, 75, 77, 79, 81, §106.26, 106.31; 82 Acts, ch 1028, §22]

C93, §462A.26

2011 Acts, ch 25, §57

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b  
Subsection 3, paragraph b amended

#### **462A.71 Reciprocity.**

1. The director, with the consent of the commission, may enter into agreements with the appropriate regulatory agencies of other states as necessary or convenient to carry out the purposes of this chapter and not inconsistent with this chapter, and may do all acts contained in the agreements.

2. The agreements may include, but are not restricted to, the following provisions:

a. Regulations in regard to registration, numbering, and equipment of vessels.

b. Operating requirements for vessels and vessel operators.

c. Enforcement activity of officers.

[82 Acts, ch 1028, §36]

C83, §106.71

C93, §462A.71

2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 463C

### HONEY CREEK PARK DEVELOPMENT

#### **463C.17 Exemption from certain laws.**

The authority, the department, and their agents and contracts entered into by the authority, the department, and their agents, in carrying out public and essential governmental functions are exempt from the laws of the state which provide for competitive bids, term length, and hearings in connection with contracts, except as provided in section 12.30. However, the exemption from competitive bid laws in this section shall not be construed to apply to contracts for the development or construction of facilities in the park, including but not limited to lodges, campgrounds, cabins, and golf courses.

2005 Acts, ch 178, §59, 64; 2007 Acts, ch 215, §116; 2011 Acts, ch 25, §58

Section amended

## CHAPTER 465A

### OPEN SPACE LANDS

This chapter not enacted as a part of this title;  
transferred from chapter 111E in Code 1993  
Intent that highway scenic routes program  
be coordinated with open space program, §306D.1(2)

#### 465A.1 Statement of purpose — intent.

1. The general assembly finds that:
    - a. Iowa's most significant open space lands are essential to the well-being and quality of life for Iowans and to the economic viability of the state's recreation and tourism industry.
    - b. Many areas of high national significance in the state have not received adequate public protection to keep them free of visual blight, resource degradation, and negative impacts from inappropriate land use and surrounding development. Some of these areas include national park service and United States fish and wildlife service properties, national landmarks and trails, the Des Moines river greenbelt, the great river road, areas where interstate highways enter the state, cross major rivers, and pass by other areas of national significance, major state park and recreation areas, unique and protected water areas, and significant natural, geological, scenic, historic, and cultural properties of the state.
    - c. While state and federal funds are generally available for the acquisition and protection of fish and wildlife areas and habitats as well as boating access to public waters, funding programs for public open space acquisition and protection have not been adequate to meet needs.
    - d. Relative to other midwestern states, Iowa ranks last in the proportion of land acquired and protected for public open space.
  2. a. A program shall be established to:
    - (1) Educate the citizens of the state about the needs and urgency of protecting the state's open spaces.
    - (2) Plan for the protection of the state's significant open space areas.
    - (3) Acquire and protect those properties on a priority basis through a variety of appropriate means.
  - b. In addition to other goals for the program, it is intended that a minimum of ten percent of the state's land area be included under some form of public open space protection by the year 2000.
- 87 Acts, ch 174, §1  
CS87, §111E.1  
C93, §465A.1  
2011 Acts, ch 25, §120  
Section amended

#### 465A.2 Statewide open space acquisition and protection program — objectives and agency duties.

1. The department of natural resources has the following duties in undertaking programs to meet the objectives stated in section 465A.1.
  - a. Prepare and conduct new education and awareness programs designed to create greater public understanding of the needs, issues, and opportunities for protecting the state's significant open spaces. The department shall incorporate the recommendations of other state agencies and private sector organizations which have interests in open space protection. The department may enter into contracts with other agencies and the private sector for preparing and conducting these programs.
  - b. Prepare a statewide, long-range plan for the acquisition and protection of significant open space lands throughout the state as identified in section 465A.1. The department of transportation, economic development authority, and department of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies with lands in the state shall be directly involved in preparing the plan. The plan shall include, but is not limited to, the following elements:

(1) Specific acquisition and protection needs and priorities for open space areas based on the following sequence of priorities:

- (a) National.
- (b) Regional.
- (c) Statewide.
- (d) Local.

(2) Identification of open space acquisition and protection techniques available or needed to carry out the plan.

(3) Additional education and awareness programs which are needed to encourage the acquisition and protection of areas identified in the plan.

(4) Management needs including maintenance, rehabilitation, and improvements.

(5) Funding levels needed to accomplish the statewide open space programs.

(6) Recommendations as to how federal programs can be modified or developed to assist the state's open space programs.

c. Acquire and protect open space properties as identified by priority in the plan as funding is made available for this purpose. In acquiring and protecting open space, the department shall:

(1) Accept applications for funding assistance from federal agencies, other state agencies, regional organizations, county conservation boards, city park and recreation agencies, and private organizations with an interest in open spaces.

(2) Obtain the maximum efficiency of funds appropriated for this program through the use of acquisition and protection techniques that provide the degree of protection required at the lowest cost.

(3) Encourage the provision of supporting or matching funds; however, the absence of these funds shall not prevent the approval of those projects of clear national importance.

2. The department may enter into contracts with private consultants for preparing all or part of the plan required under subsection 1, paragraph "b". The plan shall be submitted to the general assembly by July 1, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state and federal agencies and private organizations with interests in open space protection. The comments shall be submitted to the general assembly.

3. The department may initiate pilot acquisition and protection projects prior to completion of the open space plan if the pilot projects have high national significance as identified in section 1, subsection 2.

87 Acts, ch 174, §2

CS87, §111E.2

C93, §465A.2

2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 465B

### RECREATION TRAILS

This chapter not enacted as a part of this title;  
transferred from chapter 111F in Code 1993

#### **465B.2 Statewide trails development program.**

1. The state department of transportation shall undertake the following actions to establish a program to meet the objective stated in section 465B.1:

a. Prepare a long-range plan for the acquisition, development, promotion, and management of recreation trails throughout the state. The plan shall identify needs and opportunities for recreation trails of different kinds having national, statewide, regional, and multicounty importance. Recommendations in the plan shall include but not be limited to:

- (1) Specific acquisition needs and opportunities for different types of trails.

(2) Development needs including trail surfacing, restrooms, shelters, parking, and other needed facilities.

(3) Promotional programs which will encourage Iowans and state visitors to increase use of trails.

(4) Management activities including maintenance, enforcement of rules, and replacement needs.

(5) Funding levels needed to accomplish the statewide trails objectives.

(6) Ways in which trails can be more fully incorporated with parks, cultural sites, and natural resource sites.

b. Include, within the plan, recommendations for standards for establishing functional classifications for all types of recreation trails as well as a system for determining jurisdictional control over trails. Levels of jurisdiction may be vested in the state, counties, cities, and private organizations.

2. a. The state department of transportation may enter into contracts for the preparation of the trails plan. The department shall involve the department of natural resources, the Iowa department of economic development, and the department of cultural affairs in the preparation of the plan. The recommendations and comments of organizations representing different types of trail users and others with interests in this program shall also be incorporated in the preparation of the trails plan and shall be submitted with the plan to the general assembly. The plan shall be submitted to the general assembly no later than January 15, 1988. Existing trail projects involving acquisition or development may receive funding prior to the completion of the trails plan.

b. The department shall give priority to funding the acquisition and development of trail portions which will complete segments of existing trails. The department shall give preference to the acquisition of trail routes which use existing or abandoned railroad right-of-ways, river valleys, and natural greenbelts. Multiple recreational use of routes for trails, other forms of transportation, utilities, and other uses compatible with trails shall be given priority.

c. The department may acquire property by negotiated purchase and hold title to property for development of trails. The department may enter into agreements with other state agencies, political subdivisions of the state, and private organizations for the planning, acquisition, development, promotion, management, operations, and maintenance of recreation trails.

3. The department may adopt rules under chapter 17A to carry out a trails program.

87 Acts, ch 173, §2

CS87, §111F.2

C93, §465B.2

2011 Acts, ch 34, §107

Section amended

### **465B.3 Involvement of other agencies.**

The department of natural resources, the economic development authority, and the department of cultural affairs shall assist the state department of transportation in developing the statewide plan for recreation trails, in acquiring property, and in the development, promotion, and management of recreation trails.

87 Acts, ch 173, §3

CS87, §111F.3

C93, §465B.3

2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 466A

### WATERSHED IMPROVEMENT GRANTS

#### **466A.2 Watershed improvement fund.**

1. A watershed improvement fund is created in the state treasury which shall be administered by the treasurer of state upon direction of the watershed improvement review board. Moneys appropriated to the fund and any other moneys available to and obtained or accepted by the treasurer of state for placement in the fund shall be deposited in the fund. Additionally, payments of interest, recaptures of awards, and other repayments to the fund shall be deposited in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund. Notwithstanding section 8.33, moneys in the fund that remain unencumbered or unobligated at the end of the fiscal year shall not revert, but shall remain available for the same purpose in the succeeding fiscal year. The moneys in the fund shall be used exclusively for carrying out the purposes of the fund as provided in this section. Moneys appropriated to the treasurer of state and deposited in the fund shall not be used by the treasurer of state for administrative purposes.

2. The purposes of the watershed improvement fund are the following:

a. Enhancement of water quality in the state through a variety of impairment-based, locally directed watershed improvement grant projects. Innovative water quality projects shall be encouraged.

b. Positively affecting the management and use of water for the purposes of drinking, agriculture, recreation, sport, and economic development in the state.

c. Ensuring public participation in the process of determining priorities related to water quality including but not limited to all of the following:

(1) Agricultural runoff and drainage.

(2) Stream bank erosion.

(3) Municipal discharge.

(4) Storm water runoff.

(5) Unsewered communities.

(6) Industrial discharge.

(7) Livestock runoff.

(8) Structures and conservation systems for the prevention and mitigation of floods within the watershed of the project.

(9) Removal of channels of waterways to allow waterways to meander.

2005 Acts, ch 159, §4; 2007 Acts, ch 211, §38; 2009 Acts, ch 146, §5

For future amendment to subsection 1, effective July 1, 2012, see 2011 Acts, ch 128, §41, 45  
Section not amended; footnote added

#### **466A.3 Watershed improvement review board.**

1. A watershed improvement review board is established.

a. The board shall consist of all of the following voting members, appointed by the named entity or entities and approved by the governor:

(1) One member of the agribusiness association of Iowa.

(2) One member of the Iowa association of water agencies.

(3) One member of the Iowa environmental council.

(4) One member of the Iowa farm bureau federation.

(5) One member of the Iowa pork producers association.

(6) One member of the Iowa rural water association.

(7) One member of the Iowa soybean association.

(8) One member representing soil and water conservation districts of Iowa.

(9) One member of the Iowa association of county conservation boards.

(10) One person representing the department of agriculture and land stewardship.

(11) One person representing the department of natural resources.

b. The board shall also include four members of the general assembly who shall serve as ex officio, nonvoting members. Not more than one member from each house shall be from

the same political party. Two state senators shall be appointed, one by the majority leader of the senate and one by the minority leader of the senate. Two state representatives shall be appointed, one by the speaker of the house of representatives and one by the minority leader of the house of representatives. The legislator members shall serve terms as provided in section 69.16B. A legislator member may designate another person to attend a board meeting if the member is unavailable. Only the legislator member is eligible for per diem and expenses as provided in section 2.10.

2. A voting member other than a representative of a state agency shall be compensated as provided in section 7E.6 and is allowed actual and necessary expenses incurred in the performance of their duties. The moneys used to pay for compensation and expenses shall be paid from available interest or earnings on moneys in the fund.

3. *a.* The voting members of the board shall serve three-year staggered terms commencing and ending as provided in section 69.19. If a vacancy occurs, a successor shall be appointed in the same manner and subject to the same qualifications as the original appointment, to serve the remainder of the term.

*b.* The voting members of the board shall elect a chairperson and vice chairperson annually from the voting membership of the board. A majority of the voting members of the board constitutes a quorum. If the chairperson and vice chairperson are unable to preside over the board due to absence or disability, a majority of the voting members present may elect a temporary chairperson by a majority vote providing a quorum is present.

4. The watershed improvement review board shall do all of the following:

*a.* Award local watershed improvement grants and monitor the progress of local watershed improvement projects awarded grants. A local watershed improvement grant may be awarded for an original period not to exceed five years. However, during those five years, the board may extend the period of the award for up to five additional years after the date that the original period would have ended. Each local watershed improvement grant awarded shall not exceed ten percent of the moneys appropriated for the grants during a fiscal year.

*b.* Assist with the development of monitoring plans for local watershed improvement projects.

*c.* Review monitoring results before, during, and after completion of a local watershed improvement project.

*d.* Review costs and benefits of mitigation practices utilized by a project.

*e.* By January 31, annually, submit an electronic report to the governor and the general assembly regarding the progress of the watershed improvement projects during the previous calendar year.

*f.* Elicit the expertise of other organizations for technical assistance in the work of the board.

*g.* Independently develop and adopt administrative rules pursuant to chapter 17A to administer this chapter.

5. A watershed improvement review board member who also serves on a local watershed improvement committee shall abstain from voting on a local watershed improvement grant application submitted by the same local watershed improvement committee of which the person is a member. A member of the general assembly shall abstain from participating on any issue relating to a watershed which is in the member's legislative district.

2005 Acts, ch 159, §5; 2006 Acts, ch 1010, §121; 2006 Acts, ch 1185, §86; 2008 Acts, ch 1156, §48, 58; 2008 Acts, ch 1189, §33; 2009 Acts, ch 44, §1

For future amendments to subsection 4, unnumbered paragraph 1, and paragraph a, effective July 1, 2012, see 2011 Acts, ch 128, §42, 43, 45

Section not amended; footnote added

#### **466A.5 Administration.**

The soil conservation division of the department of agriculture and land stewardship shall provide administrative support to the board. Not more than one percent of the total moneys deposited in the watershed improvement fund on July 1 of a fiscal year or fifty thousand

dollars, whichever is less, is appropriated each fiscal year to the division for the purposes of assisting the watershed improvement review board in administering this chapter.

2005 Acts, ch 159, §7

For future amendment to this section, effective July 1, 2012, see 2011 Acts, ch 128, §44, 45  
Section not amended; footnote added

## CHAPTER 466B

### SURFACE WATER PROTECTION, FLOOD MITIGATION, AND WATERSHED MANAGEMENT

#### SUBCHAPTER I

#### SURFACE WATER PROTECTION AND FLOOD MITIGATION

##### **466B.3 Water resources coordinating council.**

1. *Council established.* A water resources coordinating council is established within the department of agriculture and land stewardship.

2. *Purpose.* The purpose of the council shall be to preserve and protect Iowa's water resources, and to coordinate the management of those resources in a sustainable and fiscally responsible manner. In the pursuit of this purpose, the council shall use an integrated approach to water resource management, recognizing that insufficiencies exist in current approaches and practices, as well as in funding sources and the utilization of funds. The integrated approach used by the council shall attempt to overcome old categories, labels, and obstacles with the primary goal of managing the state's water resources comprehensively rather than compartmentally.

3. *Accountability.* The success of the council's efforts shall ultimately be measured by the following outcomes:

- a. Whether the citizens of Iowa can more easily organize local watershed projects.
- b. Whether the citizens of Iowa can more easily access available funds and water quality program resources.
- c. Whether the funds, programs, and regulatory efforts coordinated by the council eventually result in a long-term improvement to the quality of surface water in Iowa.
- d. Whether the potential for flood damage in each watershed in the state has been reduced.

4. *Membership.* The council shall consist of the following members:

- a. The director of the department of natural resources or the director's designee.
- b. The director of the soil conservation division of the department of agriculture and land stewardship or the director's designee.
- c. The director of the department of public health or the director's designee.
- d. The administrator of the homeland security and emergency management division of the department of public defense or the administrator's designee.
- e. The dean of the college of agriculture and life sciences at Iowa state university or the dean's designee.
- f. The dean of the college of public health at the university of Iowa or the dean's designee.
- g. The dean of the college of natural sciences at the university of northern Iowa or the dean's designee.

- h. The director of the department of transportation or the director's designee.
- i. The director of the economic development authority or the director's designee.
- j. The executive director of the Iowa finance authority or the executive director's designee.
- k. The secretary, who shall be the chairperson, or the secretary's designee. As the chairperson, and in order to further the coordination efforts of the council, the secretary may invite representatives from any other public agency, private organization, business,

citizen group, or nonprofit entity to give public input at council meetings, provided the entity has an interest in the coordinated management of land resources, soil conservation, flood mitigation, or water quality. The secretary shall also invite and solicit advice from the following:

(1) The director of the Iowa water science center of the United States geological survey or the director's designee.

(2) The state conservationist from the Iowa office of the United States department of agriculture's natural resources conservation service or the state conservationist's designee.

(3) The executive director for Iowa from the United States department of agriculture's farm services agency or the executive director's designee.

(4) The state director for Iowa from the United States department of agriculture's office of rural development or the state director's designee.

(5) The director of region seven of the United States environmental protection agency or the director's designee.

(6) The corps commander from the United States army corps of engineers' Rock Island district or the commander's designee.

*l.* The dean of the college of engineering at the university of Iowa or the dean's designee.

*m.* The director of the rebuild Iowa office or the director's designee, until June 30, 2011.\*

5. *Meetings and quorum.*

*a.* The council shall be convened by the secretary of agriculture at least quarterly.

*b.* A majority of the members fixed by statute shall constitute a quorum, and any action taken by the council must be adopted by a majority of the voting membership.

6. *Duties and powers.*

*a.* The council shall engage in the regular coordination of water resource-related functions, including protection strategies, planning, assessment, prioritization, review, concurrence, advocacy, and education.

*b.* In coordinating water resource-related functions, the council may do all of the following:

(1) Consider the steps necessary to address the planning, management, and implementation of water resource improvement.

(2) Identify ways to facilitate communication and participation among all water resource stakeholders, including owners of land in Iowa whether they are residents or not.

(3) Identify inefficiencies in current programs and recommend ways to eliminate duplicative services.

(4) Improve the availability and management of water resource information.

(5) Provide incentives for, and recognition of, environmental excellence.

(6) Regularly assess and identify measurable improvements in water quality.

(7) Oversee the complete, statewide regional watershed assessment, prioritization, and planning process described in section 466B.5, including a short-term interim program and a long-term comprehensive state water quality and quantity plan updated every five years as provided in sections 466B.5 and 466B.6.

(8) Develop a protocol which identifies high-priority watersheds, including local and community-based subwatersheds, and which appropriately directs resources to those watersheds.

(9) Review best available technologies on a regular basis, so that investments of time and program resources can be prioritized and directed to projects that will best and most effectively improve water quality and reduce flood damage within regional and community subwatersheds.

(10) Review voluntary, performance-based standards for water resource management, land management, and soil conservation.

(11) Develop a protocol for assigning multiagency teams to regional watersheds and local subwatersheds and guide those teams in the coordination of citizen and agency activities within those watersheds.

(12) Engage in dialogue with, and pursue efforts to make cooperative agreements with, other states when a watershed extends beyond borders of this state.

(13) Enter into agreements and make contracts with third parties for the performance of duties imposed by this chapter.

(14) Prepare a memorandum of understanding identifying the roles and responsibilities of council members in the coordination of the implementation of community-based subwatershed improvement plans. The memorandum shall be a commitment by the agencies participating in council meetings to reach consensus regarding communications with subwatershed planning units.

c. The council shall develop recommendations for policies and funding promoting a watershed management approach to reduce the adverse impact of future flooding on this state's residents, businesses, communities, and soil and water quality. The council shall consider policies and funding options for various strategies to reduce the impact of flooding including but not limited to additional floodplain regulation; wetland protection, restoration, and construction; the promulgation and implementation of statewide storm water management standards; conservation easements and other land management; perennial ground cover and other agricultural conservation practices; pervious pavement, bioswales, and other urban conservation practices; and permanent or temporary water retention structures. In developing recommendations, the council shall consult with hydrological and land use experts, representatives of cities, counties, drainage and levee districts, agricultural interests, and soil and water conservation districts, and other urban and regional planning experts.

2008 Acts, ch 1034, §3; 2009 Acts, ch 41, §139; 2009 Acts, ch 146, §8 – 12; 2010 Acts, ch 1061, §62; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 119, §1 – 5

\* The rebuild Iowa office was repealed June 30, 2011, pursuant to 2009 Acts, ch 169, §10; corrective legislation is pending

Code editor directive applied

Subsection 1 amended

Subsection 4, paragraph c stricken and former paragraphs d – n redesignated as c – m

Subsection 4, paragraph k, unnumbered paragraph 1 amended

Subsection 5, paragraph a amended

Subsection 6, paragraph c amended

#### **466B.5 Regional watershed assessment, planning, and prioritization.**

1. *Regional watershed assessment program.* The department of natural resources shall create a regional watershed assessment program. The program shall assess all the regional watersheds in the state.

a. The statewide assessment shall be conducted at the rate of approximately one-fifth of the watersheds per year, and an initial full assessment shall be completed within five years. Thereafter, the department of natural resources shall review and update the assessments on a regular basis.

b. Each regional watershed assessment shall provide a summary of the overall condition of the watershed. The information provided in the summary may include land use patterns, soil types, slopes, management practices, stream conditions, and both point and nonpoint source impairments.

c. In conducting a regional watershed assessment, the department of natural resources may provide opportunities for local data collection and input into the assessment process.

2. *Planning and prioritization.* In conducting the regional watershed assessment program, the department of natural resources shall provide hydrological and geological information sufficient for the water resources coordinating council to prioritize watersheds statewide and for the various communities in those watersheds to plan remedial efforts in their local communities and subwatersheds.

3. *Report to council.* Upon completion of the statewide assessment, and upon updating the assessments, the department of natural resources shall report the results of the assessment to the council and the general assembly, and shall make the report publicly available.

2008 Acts, ch 1034, §5; 2011 Acts, ch 119, §6

Section amended

#### **466B.6 Community-based subwatershed improvement plans.**

1. *Facilitation of community-based subwatershed plans.* After the department of natural

resources' completion of the initial regional watershed assessment, and after the council's prioritization of the regional watersheds, the council shall designate one or more of the agencies represented on the council to facilitate the development and implementation of local, community-based subwatershed improvement plans.

2. *Assessment, planning, prioritization, and implementation.* In facilitating the development of community-based subwatershed improvement plans, the agency or agencies designated by the council shall, based on the results of the regional watershed assessment program, identify critical subwatersheds within priority regional watersheds and recruit communities, citizen groups, local governmental entities, or other stakeholders to engage in the assessment, planning, prioritization, and implementation of a local community-based subwatershed improvement plan. The agency or agencies designated by the council may assist in the formation of a group of initial local community-based subwatershed improvement plans that can be implemented as pilot projects, in order to develop an effective process that can be replicated across the state.

2008 Acts, ch 1034, §6; 2011 Acts, ch 119, §7

Subsection 1 amended

#### **466B.7 Community-based subwatershed monitoring.**

1. *Monitoring assistance.* After completion of the statewide regional watershed assessment and prioritization, and throughout the implementation of local community-based subwatershed improvement plans, the department of natural resources shall assist communities with the monitoring and measurement of local subwatersheds. The monitoring and measurement shall be designed for the particular needs of individual communities.

2. *Data collection and use.* Local communities in which the department of natural resources conducts subwatershed monitoring shall use the information to support subwatershed planning activities, do local data collection, and identify priority areas needing additional resources. Local communities shall also collect data over time and use the data to evaluate the impacts of their management efforts.

2008 Acts, ch 1034, §7; 2011 Acts, ch 119, §8

Section amended

#### **466B.8 Wastewater and storm water infrastructure assessment.**

The department of natural resources shall assess and prioritize communities within a watershed presenting the greatest level of risk to water quality and the health of residents. This prioritization shall include both sewer and unsewered communities.

2008 Acts, ch 1034, §8; 2011 Acts, ch 119, §9

Section amended

#### **466B.9 Rulemaking authority.**

The department of natural resources and the department of agriculture and land stewardship shall have the power and authority reasonably necessary to carry out the duties imposed by this chapter. As to the department of natural resources, this includes rulemaking authority to carry out the regional watershed assessment program described in section 466B.5. As to the department of agriculture and land stewardship, this includes rulemaking authority to assist in the implementation of community-based subwatershed improvement plans.

2008 Acts, ch 1034, §9; 2011 Acts, ch 119, §10

Section amended

### SUBCHAPTER III

### WATERSHED PLANNING ACTIVITIES

#### **466B.31 Watershed planning advisory council.**

1. A watershed planning advisory council is established for purposes of assembling a diverse group of stakeholders to review research and make recommendations to various

state entities regarding methods to protect water resources in the state, assure an adequate supply of water, mitigate and prevent floods, and coordinate the management of those resources in a sustainable, fiscally responsible, and environmentally responsible manner. The advisory council may seek input from councils of governments or other organizations in the development of its recommendations. The advisory council shall meet once a year and at other times as deemed necessary to meet the requirements of this section. The advisory council may appoint a task force to assist the advisory council in completing its duties.

2. The watershed planning advisory council shall consist of all of the following members:

a. The voting members of the advisory council shall include all of the following:

(1) One member selected by the Iowa association of municipal utilities.

(2) One member selected by the Iowa league of cities.

(3) One member selected by the Iowa association of business and industry.

(4) One member selected by the Iowa water pollution control association.

(5) One member selected by the Iowa rural water association.

(6) One member selected by growing green communities.

(7) One member selected by the Iowa environmental council.

(8) One member selected by the Iowa farm bureau federation.

(9) One member selected by the Iowa corn growers association.

(10) One member selected by the Iowa soybean association.

(11) One member selected by the Iowa pork producers council.

(12) One member selected by the soil and water conservation districts of Iowa.

(13) One person representing the department of agriculture and land stewardship selected by the secretary of agriculture.

(14) One person representing the department of natural resources selected by the director.

(15) Two members selected by the Iowa conservation alliance.

(16) One member selected by the Iowa drainage district association.

(17) One member selected by the agribusiness association of Iowa.

(18) One member selected by the Iowa floodplain and stormwater management association.

(19) One member selected by Iowa rivers revival.

b. The nonvoting members of the advisory council shall include all of the following:

(1) Two members of the senate. One senator shall be appointed by the majority leader of the senate and one senator shall be appointed by the minority leader of the senate.

(2) Two members of the house of representatives. One member shall be appointed by the speaker of the house of representatives and one member shall be appointed by the minority leader of the house of representatives.

3. By December 1 of each year, the watershed planning advisory council shall submit a report to the governor, the general assembly, the department of agriculture and land stewardship, the department of natural resources, and the water resources coordinating council. The report shall include recommendations regarding all of the following:

a. Improving water quality and optimizing the costs of voluntarily achieving and maintaining water quality standards.

b. Creating economic incentives for voluntary nonpoint source load reductions, point source discharge reductions beyond those required by the federal Water Pollution Control Act, implementation of pollution prevention programs, wetland restoration and creation, and the development of emerging pollution control technologies.

c. Facilitating the implementation of total maximum daily loads, urban storm water control programs, and nonpoint source management practices required or authorized under the federal Water Pollution Control Act. This paragraph shall not be construed to obviate the requirement to develop a total maximum daily load for waters that do not meet water quality standards as required by section 303(d) of the federal Water Pollution Control Act or to delay implementation of a total maximum daily load that has been approved by the department and the director.

d. Providing incentives, methods, and practices for the development of new and more accurate and reliable pollution control quantification protocols and procedures, including but

not limited to development of policy based on information and data that is publicly available and that can be verified and evaluated.

e. Providing greater flexibility for broader public involvement through community-based, nonregulatory, and performance-driven watershed management planning.

f. Assigning responsibility for monitoring flood risk, flood mitigation, and coordination with federal agencies.

g. Involving cities, counties, and other local and regional public and private entities in watershed improvement including but not limited to incentives for participation in a watershed management authority created under this chapter.

4. Each year, the voting members of the advisory council shall designate one voting member as chairperson.

2010 Acts, ch 1116, §1; 2011 Acts, ch 131, §98, 158

Subsection 2, paragraph a, NEW subparagraphs (17) – (19)

## CHAPTER 468

### LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

#### SUBCHAPTER I

#### ESTABLISHMENT

#### PART 1

#### GENERAL

#### **468.2 Presumption and construction of laws.**

1. The drainage of surface waters from agricultural lands and all other lands, including state-owned lakes and wetlands, or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare.

2. The provisions of this subchapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands.

[S13, §1989-a1, -a46; C24, 27, 31, 35, 39, §7422, 7594; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.2, 455.182]

89 Acts, ch 126, §2

CS89, §468.2

2011 Acts, ch 59, §1, 4

Subsection 1 amended

#### **468.12 Report.**

1. The engineer shall make full written report to the county auditor, setting forth:

a. The starting point, route, and terminus of each ditch, drain, and levee and the character and location of all other improvements.

b. A plat and profile, showing all ditches, drains, levees, settling basins, and other improvements, the course, length, and depth of each ditch, the length, size, and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty-acre tract or fraction thereof as right-of-way, or for settling basin or basins, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor. Said plat shall describe the width of the right-of-way to be taken from each forty-acre tract or fraction thereof.

c. The boundary of the proposed district, including therein by color or other designation other lands that will be benefited or otherwise affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.

d. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.

e. The probable cost of the proposed improvements, together with such other facts and recommendations as the engineer shall deem material.

2. Where the proposed district contemplates as its object flood control or soil conservance the engineer shall include in the report data describing any soil conservance or flood control improvements, the nature of the improvements, and other data as prescribed by the department of natural resources.

[S13, §1989-a2; C24, 27, 31, 35, 39, §7438; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.18; 82 Acts, ch 1199, §70, 96]

89 Acts, ch 126, §2

CS89, §468.12

2011 Acts, ch 25, §143

Code editor directive applied

#### **468.40 Rules of classification.**

In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

In estimating the benefits as to the lands not traversed by said improvement, they shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow and relieves and protects the same from damage by erosion.

When the land is a state-owned lake or state-owned wetland, the commissioners shall ascertain the benefits realized from removing excess water and shall not consider any benefit realized if the state-owned lake or state-owned wetland were drained or converted to another land use.

[S13, §1989-a13; SS15, §1989-a12; C24, 27, 31, 35, 39, §7467; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.47]

89 Acts, ch 126, §2

CS89, §468.40

2011 Acts, ch 59, §2, 4

NEW unnumbered paragraph 3

#### **468.43 Public highways and state-owned lands.**

1. When any public highway or other public land extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway or other public land, and the board of supervisors shall assess the same against such highway and land.

2. Such assessments against primary highways and other state-owned lands under the jurisdiction of the state department of transportation shall be paid by the state department from the primary road fund on due certification of the amount by the county treasurer to the department, and against all secondary roads and other county owned lands under the jurisdiction of the board of supervisors, from county funds.

3. When state-owned land under the jurisdiction of the department of natural resources is situated within a levee or drainage district, the commissioners assessing benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to the land, and the board of supervisors shall assess the amount against the

land. In estimating benefits to land which is a state-owned lake or state-owned wetland, the commissioners shall ascertain benefits as provided in section 468.40.

4. The assessments against lands under the jurisdiction of the department of natural resources shall be paid as an expense from the appropriations addressed in section 7D.29, if authorized by the executive council upon certification of the amount by the county treasurer.

[S13, §1989-a19, -a26; C24, 27, 31, 35, 39, §7470; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.50]

83 Acts, ch 123, §183, 209; 85 Acts, ch 267, §3; 86 Acts, ch 1008, §1; 89 Acts, ch 126, §2  
CS89, §468.43

97 Acts, ch 194, §1; 2011 Acts, ch 59, §3, 4; 2011 Acts, ch 131, §36, 158

Unnumbered paragraphs 1 – 4 editorially designated as subsections 1 – 4  
Subsections 3 and 4 amended

#### **468.57 Installment payments — waiver.**

1. If the owner of any land against which a levy exceeding one hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing endorsed upon any improvement certificate referred to in section 468.70, or in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the property, then such owner shall have the following options:

a. To pay one-third of the amount of the assessment at the time of filing the agreement; one-third within twenty days after the engineer in charge certifies to the auditor that the improvement is one-half completed; and the remaining one-third within twenty days after the improvement has been completed and accepted by the board. All installments shall be without interest if paid at said times, otherwise the assessments shall bear interest from the date of the levy at a rate determined by the board notwithstanding chapter 74A, payable annually, and be collected as other taxes on real estate, with like interest for delinquency.

b. To pay the assessments in not less than ten nor more than twenty equal installments, with the number of payments and interest rate determined by the board, notwithstanding chapter 74A. The first installment of each assessment, or the total amount if less than one hundred dollars, is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of the levy as set by the board to the first day of December following the due date. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the first semiannual payment of ordinary taxes. All future installments of an assessment may be paid on any date by payment of the then outstanding balance plus interest to the next December 1, or additional annual installments may be paid after the current installment has been paid before December 1 without interest. A payment must be for the full amount of the next installment. If installments remain to be paid, the next annual installment with interest added to December 1 will be due. After December 1, if a drainage assessment is not delinquent, a property owner may pay one-half or all of the next annual installment of principal and interest of a drainage assessment prior to the delinquency date of the installment. When the next installment has been paid in full, successive principal installments may be prepaid. The county treasurer shall accept the payments of the drainage assessment, and shall credit the next annual installment or future installments of the drainage assessment to the extent of the payment or payments, and shall remit the payments to the drainage fund. If a property owner elects to pay one or more principal installments in advance, the pay schedule shall be advanced by the number of principal installments prepaid. Each installment of an assessment with interest on the unpaid balance is delinquent from October 1 after its due date. However, when the last day of September is a Saturday or Sunday, that amount shall be delinquent from the second business day of October. Taxes assessed pursuant to this chapter which become delinquent

shall bear the same delinquent interest as ordinary taxes. When collected, the interest must be credited to the same drainage fund as the drainage special assessment.

2. The provisions of this section and of sections 468.58 through 468.61 may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of section 468.126.

[S13, §1989-a26, -a27; SS15, §1989-a12; C24, 27, 31, 35, 39, §7484; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.64]

85 Acts, ch 163, §2; 86 Acts, ch 1099, §1; 89 Acts, ch 126, §2

CS89, §468.57

92 Acts, ch 1016, §37; 94 Acts, ch 1035, §2; 95 Acts, ch 57, §24; 97 Acts, ch 121, §26; 2011 Acts, ch 25, §143; 2011 Acts, ch 109, §4

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 1, paragraph b amended

#### **468.65 Reclassification.**

1. When, after a drainage or levee district has been established, except districts established by mutual agreement in accordance with section 468.142, and the improvements thereof constructed and put in operation, there has been a material change as to lands occupied by highway or railroad right-of-way or in the character of the lands benefited by the improvement, or when a repair, improvement, or extension has become necessary, the board may consider whether the existing assessments are equitable as a basis for payment of the expense of maintaining the district and of making the repair, improvement or extension. If they find the same to be inequitable in any particular, they shall by resolution express such finding, appoint three commissioners possessing the qualifications prescribed in section 468.38 and order a reclassification as follows:

a. If they find the assessments to be generally inequitable they shall order a reclassification of all property subject to assessment, such as lands, highways, and railroads in said district.

b. If the inequity ascertained by the board is limited to the proportion paid by highways or railroads, a general reclassification of all lands shall not be necessary but the commissioners may evaluate and determine the fair proportion to be paid by such highways or railroads or both as provided in sections 468.42 and 468.43.

c. Any benefits of a character for which levee or drainage districts may be established and which are attributable to or enhanced by the improvement or by the repair, improvement, or extension thereof, shall be a proper subject of consideration in a reclassification notwithstanding the district may have been originally established for a limited purpose.

d. (1) If after a district has been reclassified, the board in its judgment concludes there were errors in the reclassification or there is an inequitable assessment of benefits, the board may on its own motion, after notice to the landowners involved as provided in sections 468.14 through 468.18 and by resolution, order the district or any portion of the district to again be reclassified as prescribed in this section and in section 468.67.

(2) The board may include in its resolution an order to the commissioners that they prepare special common outlet classifications, if needed, in conjunction with the reclassification of the district.

2. Such reclassification when finally adopted shall remain the basis for all future assessments unless revised as provided in this subchapter, parts 1 through 5.

[C24, 27, 31, 35, 39, §7492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.72]

89 Acts, ch 126, §2

CS89, §468.65

91 Acts, ch 80, §3; 2011 Acts, ch 25, §121

Section amended

#### **468.184 Land classification and assessment in district.**

1. a. (1) When a levee district shall have been located and finally established; or

(2) When the required proceedings have been taken to enlarge, extend, strengthen, raise, relocate, reconstruct, or improve any existing levee; or

(3) When the required proceedings have been held to annex additional lands to said levee district or to exclude or eliminate lands from said levee district; or

(4) When a plan of the United States government for the construction of any levee, or a portion of a levee, in said levee district, or for the enlarging, extending, strengthening, raising, relocating, reconstructing, or improving any existing levee, or a portion thereof, in accordance with any such plan in said levee district, has been heretofore or hereafter adopted by such levee district under the provisions of sections 468.201 through 468.216; or

(5) When the board shall, as authorized by section 468.65, determine that the assessments of benefits of said levee district against the lands in said levee district are generally inequitable the board may by resolution, or if a petition is filed by more than one-third of the owners, including corporations, of land within said levee district and who in the aggregate own more than one-third of the value of the land and land improvements in said levee district as the value thereof is then shown by the general tax records of the county or counties in which such land and land improvements are located, requesting the board to do so, the board shall order the lands in said levee district and the improvements on the land in said levee district classified or reclassified in accordance with the assessed taxable value of said land and land improvements as the same are then shown and as the same may be thereafter shown by the assessment roll of the county or counties in which said land and land improvements are located.

b. The assessed taxable value of any land, including land improvements exempt from general taxation but subject to assessment for levee purposes, shall be determined by the county assessor who shall make such determination in accordance with the rules of assessment applicable to adjacent lands and without any additional compensation therefor.

2. a. If the board orders classification or reclassification of lands as authorized in subsection 1, the board shall fix a time and place for a hearing to be held upon the action of the board in ordering such classification or reclassification, which hearing shall be held at the county seat of the county having the largest acreage in said levee district. The board shall cause notice of the time and place of such hearing to be served by the county auditor or auditors upon each person whose name appears as owner of lands or land improvements within the levee district in the transfer books of the auditor's office in the county or counties in which said levee district is located, naming that person, and also upon the person or persons in actual occupancy of any tract of land or land improvements located in said levee district, without naming that person or persons. Such notice shall be for the same time and served in the same manner as is provided for the establishment of a levee district, and such notice shall state:

(1) The aggregate estimated costs and expenses which the board proposes to assess under such classification or reclassification;

(2) The total aggregate assessed taxable value of all lands and land improvements in said levee district;

(3) That the said classification or reclassification of benefits will be based on the assessed taxable value of all lands and improvements to lands located in said levee district;

(4) That each tract of land and each land improvement in said levee district will be assessed for its pro rata share of said costs and expenses based upon the ratio that the assessed value of each tract of land and the assessed value of each land improvement bears to the total assessed taxable value of all lands and all land improvements in said district; and

(5) That all objections to said method of classification or reclassification shall be in writing and filed with the auditor of the county in which said land or land improvements are located before the time set for said hearing or with the board of trustees of said district at or before the time set for such hearing.

b. The notice need not show the amount of such costs and expenses to be apportioned to each such owner or to any particular tract of land or land improvement within such levee district.

3. If at or before the time set for said hearing as to such classification or reclassification, there shall have been filed with the county auditor, or auditors in case the district extends into more than one county, or with said board, a remonstrance or remonstrances or objections to such method of classification or reclassification signed by owners of land

and land improvements in the levee district aggregating sixty percent of the total assessed value of the lands plus land improvements in said district as shown by the taxing records in said county or counties in which said district is located, the board shall abandon the alternative method of classification or reclassification herein authorized. The board may then proceed to classify the lands in said levee district as authorized under sections 468.38 through 468.44 or may proceed to reclassify the same as authorized under section 468.65 unless said remonstrances and objections filed as above provided are filed by a majority of the landowners in the levee district and these remonstrants and objectors in the aggregate own seventy percent or more of the acreage of lands in the levee district and, in writing, object to any reclassification of any kind, then the board shall not reclassify the lands within the district under the provision of this section nor shall the same be reclassified under the provisions of section 468.65.

4. At the time fixed or at any adjourned hearing if the remonstrances and objections filed at or before the hearing are not signed by sufficient number of owners, or the owners signing such remonstrances and objections do not meet the requirements hereinabove provided, then the board shall fully consider all objections and remonstrances and shall make a determination as to whether or not the costs and expenses shall be assessed:

- a. By the alternative method hereinabove set forth; or
- b. As provided by sections 468.38 through 468.44; or
- c. That the land should be reclassified as provided in section 468.65; or
- d. On the basis of a then existing classification of lands.

5. If the board shall determine that the cost and expenses shall be assessed on the basis of assessed taxable value as provided in subsections 1 through 4, then such basis shall be used for all future assessments made for the purposes of said levee district except if said assessed taxable value of lands and land improvements in said levee district may be changed or revised by the county assessor in the county or counties in which the same are located for general tax purposes, then any such revision made in the assessed taxable value by any such county assessor shall automatically constitute a revision of the classification of such land or land improvements for future assessments made by the board for the purpose of said levee district.

6. In lieu of the hearing provided for in subsections 1 through 5, the board may, and if the petition of owners provided for in subsections 1 through 5 so asks, the board shall call for an election for the purpose of determining the question of classification on the basis of assessed value of lands and land improvements. The question may be submitted at a regular election of the district or at a special election called for that purpose. It shall not be mandatory for the county commissioner of elections to conduct the elections, however provisions of sections 49.43 through 49.47 and of subchapter III of this chapter, insofar as the same are applicable, shall govern all such elections, and the question to be submitted shall be set forth in the notice of election. If sixty percent of the votes cast be in favor of the proposed change in assessment, it shall become effective for all future assessments as heretofore provided in this section. If the question should fail, no new election on the subject may be called for a period of one year.

7. When a levee district has been established and constructed, as an alternative to the other methods prescribed by law, upon reclassification, the levee district may adopt a method of classification and assessment uniform as to all land in the district, including railroad land, public highways and other public land and land exempt from general taxation, based on the total amount to be assessed divided by the total acres within the district. This method of classification and assessment may be adopted either by hearing or by election and shall become effective as heretofore provided in this section.

8. When a drainage district or drainage and levee district has been established and constructed, and after the lands therein have been classified in accordance with the provisions of sections 468.39, 468.40, and 468.41 or reclassified in accordance with section 468.65, the district may adopt methods of assessment for maintenance, repair, and operation of said district uniform as to all land in the district in the same manner and by the same procedures as prescribed in subsections 1 through 7 of this section. Provided, however, that only those lands drained by respective mains and laterals shall be assessed for maintenance,

repair, and operation of said mains and laterals, and provided further that this alternate method of assessment shall not be applied to making improvements in the drainage system.

9. Following the adoption of any alternative method of classification or assessment as provided in this section, the same shall continue in effect until such time as the method is changed pursuant to this section or to section 468.65.

10. *a.* All proceedings taken prior to July 1, 1968, purporting to establish or reestablish a drainage or levee district or districts, or to enlarge or change the boundaries of any drainage or levee district, and any assessments not heretofore declared invalid by any court, are hereby legalized, validated, and confirmed.

*b.* The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the establishment, reestablishment, enlargement, or change in boundaries or any assessments of drainage or levee districts.

[C71, 73, 75, 77, 79, 81, §455.197]

89 Acts, ch 126, §2

CS89, §468.184

2011 Acts, ch 25, §122

Subsections 1, 2, 5, 6, and 10 amended

#### **468.190 Farm mediation not applicable.**

A case, dispute, or other controversy arising under this chapter shall not be subject to any of the requirements of mediation provided in chapter 654A, 654B, or 654C.

2011 Acts, ch 94, §1

NEW section

## PART 2

### FEDERAL FLOOD CONTROL COOPERATION

#### **468.201 Plan of improvement.**

1. Whenever the government of the United States acting through its proper agencies or instrumentalities will undertake the original construction of improvements or the repair or alteration of existing improvements which will accomplish the purposes for which the district was established or aid in the accomplishment thereof and shall cause to be filed in the office of the auditor of the county in which said district is located a plan of such improvement or for the repair or alteration of existing improvements, the board shall have jurisdiction, power and authority, upon the notice, hearing and determination hereinafter provided, to adopt such plan of improvement or of repair or alteration of existing improvements and to provide necessary right-of-way therefor; and to pay such portion of all costs and damages incident to the adoption of such plan, the construction thereunder and the maintenance and operation of the works as will not be discharged by the federal government under legislation existing at the time of adoption; also to enter into such agreements with the United States government as may be necessary to meet federal requirements including the taking over, repair and maintenance of the works and to perform under such agreements.

2. If the cost to the district of the repair or alteration of existing improvements contemplated by this section does not exceed twenty-five percent of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions, the board may proceed under the provisions of section 468.126, without notice and hearing, and without appraisal as contemplated by section 468.210, but the remaining provisions of this section and sections 468.202 through 468.216 that are not in conflict with section 468.126 shall remain applicable.

3. If the federal program divides a project into separate phases, each phase shall be considered a separate program as described in section 468.126, subsection 4, and shall in no event be construed as an unauthorized division into separate programs to avoid the twenty-five percent limitation prescribed for making improvements under said section 468.126, subsection 4, without notice and hearing.

[C50, 54, 58, 62, 66, §455.201; C71, 73, 75, 77, 79, 81, §455.202]

89 Acts, ch 126, §2

CS89, §468.201

2011 Acts, ch 25, §123

Subsection 2, unnumbered paragraph 2 numbered as subsection 3

### PART 3

#### INTERACTION WITH STATE AND LOCAL GOVERNMENTS

##### **468.221 Written communication delivered to the state or a local government.**

1. This section applies whenever a board or county officer acting under this chapter is required to deliver a written communication to a state agency or local government. The written communication includes but is not limited to a notice, service of process, demand, statement, or a report.

2. *a.* If the written communication is to be delivered to a state agency, it may be delivered to the administrative head of the state agency or its governing body. The written communication may also be delivered to a person designated by the administrative head of the state agency or its governing body. The written communication may be delivered to the executive council if the administrative head of the state agency or its governing body cannot be determined.

*b.* If the written communication is to be delivered to a local government, it may be delivered to the governing body of the local government. The written communication may also be delivered to a person designated by the governing body. As used in this paragraph, “*local government*” includes a county, city, township, or any special purpose district or authority.

2011 Acts, ch 39, §1

NEW section

### SUBCHAPTER II

#### JURISDICTIONS

### PART 5

#### DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

##### **468.359 Costs.**

1. The cost of the establishment of such additional pumping plant or plants shall be paid in the same manner and upon the same basis as is provided for the cost of the original improvement.

2. The board of supervisors or the board of trustees, as the case may be, where the district has been established and the original improvement constructed, may proceed with the further improvement of the original project in the manner provided in section 468.126, provided, however, that the cost of such further improvement does not exceed twenty-five percent of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions.

3. For the purpose of this section the word “*improvement*” shall include the construction, reconstruction, enlargement and relocation of levees and acquisition of rights-of-way therefor.

[C24, 27, 31, 35, 39, §7655; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.5]

89 Acts, ch 126, §2

CS89, §468.359  
 2011 Acts, ch 25, §124  
 Subsection 2, unnumbered paragraph 2 numbered as subsection 3

SUBCHAPTER III  
 MANAGEMENT OF DRAINAGE OR LEVEE  
 DISTRICTS BY TRUSTEES

**468.528 Disbursement of funds.**

Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it is collected. The county treasurer shall disburse the moneys in the fund only upon any of the following:

1. The orders of the board of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer.

2. For drainage and levee districts with pumping stations, by orders of the board of trustees directing the treasurer to place all or any part of the moneys into a checking account established by the board in a bank or credit union as defined in section 12C.1.

a. The treasurer shall disburse the moneys only upon resolution duly adopted by the board. The board shall not expend moneys in the account for a purpose if the board could not order the county treasurer to expend moneys from the county’s separate fund for that same purpose.

b. The board shall file with the county auditor an annual financial statement that is accompanied by an unqualified opinion based upon an audit of the account performed by a certified public accountant licensed in this state. Notwithstanding paragraph “a”, the board shall pay the costs associated with performing the audit out of the district’s moneys.

[SS15, §1989-a52f; C24, 27, 31, 35, 39, §7702; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.29]

89 Acts, ch 126, §2  
 CS89, §468.528  
 2011 Acts, ch 94, §2  
 Section amended

**468.531 Compensation — statements required.**

The compensation of the trustees and the clerk of the board is hereby fixed at an amount not to exceed two hundred dollars per day each and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. The board of trustees of a district may by resolution establish for themselves and for the clerk of the district a lower rate of pay than is fixed by this section. They shall file with the auditor or auditors, if more than one county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred.

[SS15, §1989-a52f, -a74; C24, 27, 31, 35, 39, §7708; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.35]

89 Acts, ch 126, §2  
 CS89, §468.531  
 2011 Acts, ch 94, §3  
 Section amended

SUBCHAPTER IV  
FINANCING

PART 1  
DRAINAGE REFUNDING BONDS

**468.567 Report and hearing — appeal.**

1. At the direction of the governing board of such district, or board of supervisors, the county auditor of the county within which the land on which the indebtedness is being adjusted is situated, shall compile a tabulated report as to the lands within the said district, setting forth:

a. The name of the owner of each assessed tract as shown by the transfer books in the county auditor's office.

b. The amount of the unpaid old assessments against each of said tracts.

c. The amount of the new assessment required to pay the new bonds to be issued, together with the installments to be paid thereon annually of principal and interest, and the maximum period of time over which such assessments shall be paid.

2. After such report is tabulated and filed, a hearing upon the contemplated action of the governing body of such district, or board of supervisors, to make the proposed adjustment, composition, renewal and refunding in such adjusted amount of its outstanding indebtedness, together with the issuance of bonds and the levying of assessments therefor, shall be had in the manner and upon the same notice as is prescribed in sections 468.543 through 468.545 and appeal may be made therefrom as provided in this part.

[C35, §7714-g3; C39, §7714.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.28]

89 Acts, ch 126, §2

CS89, §468.567

2011 Acts, ch 25, §143

Code editor directive applied

PART 3  
FUNDING OF COUNTY  
DRAINAGE DISTRICTS

**468.586 Assessment of costs of drainage improvements.**

A county may assess to property within an urban drainage district the cost of a drainage improvement within the county and drainage facilities extending outside the county. A county is empowered to proceed and construct and to assess the cost of a drainage improvement within a district in the same manner as a city may proceed under chapter 384, division IV, and the provisions of chapter 384, division IV, apply to counties with respect to drainage improvements, the assessment of their costs and the issuance of bonds for the improvements. A county may contract for a drainage improvement within a district under this part pursuant to chapter 331, division III, part 3.

85 Acts, ch 144, §1

CS85, §331.486

89 Acts, ch 126, §2

CS89, §468.586

2011 Acts, ch 25, §59

Section amended

## CHAPTER 469

### ENERGY INDEPENDENCE INITIATIVES

Chapter repealed by 2011 Acts, ch 118, §49, 89

For provisions regarding transfer of funds under the control of the office of energy independence to the economic development authority, continuation of licenses, permits, or contracts by the economic development authority, continued administration of grants or loans awarded from the Iowa power fund, continued administration of federal grant funds by the economic development authority, and employment status of certain office of energy independence employees,  
see 2011 Acts, ch 118, §51, 89

## CHAPTER 470

### LIFE CYCLE COST ANALYSIS OF PUBLIC FACILITIES

For provisions regarding transfer of funds under the control of the office of energy independence to the economic development authority, continuation of licenses, permits, or contracts by the economic development authority, continued administration of grants or loans awarded from the Iowa power fund, continued administration of federal grant funds by the economic development authority, and employment status of certain office of energy independence employees,  
see 2011 Acts, ch 118, §51, 89

#### 470.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Authority*” means the economic development authority created in section 15.105.
2. “*Commissioner*” means the state building code commissioner.
3. “*Director*” means the director of the economic development authority.
4. “*Economic life*” means the projected or anticipated useful life of a facility as expressed by a term of years.
  5. “*Energy system*” includes but is not limited to the following equipment or measures:
    - a. Equipment used to heat or cool the facility.
    - b. Equipment used to heat water in the facility.
    - c. On-site equipment used to generate electricity for the major facility.
    - d. On-site equipment that uses the sun, wind, oil, natural gas, coal, or electricity as a power source.
    - e. Energy conservation measures in the facility design and construction that decrease the energy requirements of the facility.
  6. “*Facility*” means a building having twenty thousand square feet or more of usable floor space that is heated or cooled by a mechanical or electrical system or any building, system, or physical operation which consumes more than forty thousand British thermal units (BTUs) per square foot per year.
  7. “*Initial cost*” means the moneys required for the capital construction or renovation of a facility.
  8. “*Life cycle cost analysis*” means an analytical technique that considers certain costs of owning, using, and operating a facility over its economic life including but not limited to the following:
    - a. Initial costs.
    - b. System repair and replacement costs.
    - c. Maintenance costs.
    - d. Operating costs, including energy costs.
    - e. Salvage value.
  9. “*Public agency*” means a state agency, political subdivision of the state, school district, area education agency, or community college.

10. “Renovation” means a project where additions or alterations exceed fifty percent of the value of a facility and will affect an energy system.

[C81, §470.1]

91 Acts, ch 253, §17, 18; 2009 Acts, ch 108, §23, 41; 2011 Acts, ch 118, §42 – 44, 89

NEW subsection 1 and former subsection 1 renumbered as 2

Former subsection 2 amended and renumbered as 3

Former subsections 3 – 7 renumbered as 4 – 8

Former subsection 8 stricken

### 470.3 Elements of analysis.

1. A life cycle cost analysis shall include but is not limited to the following elements:

a. Specification of energy management objectives and health, safety, and functional constraints. The facility design shall comply with applicable state or local building code requirements.

b. Identification of the energy needs of the facility and energy system alternatives to meet those needs.

c. Cost of the energy system alternatives identified in paragraph “b” of this subsection.

d. Determination of amounts and timing of cash flow.

e. Calculation of life cycle cost using an economic model such as, but not limited to, rate of return, annual equivalent cost or present equivalent cost.

f. Evaluation of design and system alternatives using a method such as, but not limited to, design matrixes, ranking tables, or network analysis.

2. A public agency or a person preparing a life cycle cost analysis for a public agency shall consider the methods and analytical models provided by the authority and available through the commissioner, which are suited to the purpose for which the project is intended. Within sixty days of final selection of a design architect or engineer, a public agency, which is also a state agency under section 7D.34, shall notify the commissioner and the authority of the methodology to be used to perform the life cycle cost analysis, on forms provided by the authority.

[C81, §470.3]

88 Acts, ch 1179, §6; 91 Acts, ch 253, §19; 2009 Acts, ch 108, §24, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

### 470.7 Life cycle cost analysis — approval.

1. The public agency responsible for the new construction or renovation of a public facility shall submit a copy of the life cycle cost analysis for review by the commissioner who shall consult with the authority. If the public agency is also a state agency under section 7D.34, comments by the authority or the commissioner, including any recommendation for changes in the analysis, shall, within thirty days of receipt of the analysis, be forwarded in writing to the public agency. If either the authority or the commissioner disagrees with any aspects of the life cycle cost analysis, the public agency affected shall timely respond in writing to the commissioner and the authority. The response shall indicate whether the agency intends to implement the recommendations and, if the agency does not intend to implement them, the public agency shall present its reasons. The reasons may include but are not limited to a description of the purpose of the facility or renovation, preservation of historical architectural features, architectural and site considerations, and health and safety concerns.

2. Within thirty days of receipt of the response of the public agency affected, the authority, the commissioner, or both, shall notify in writing the public agency affected of the authority’s, the commissioner’s, or both’s agreement or disagreement with the response. In the event of a disagreement, the authority, the commissioner, or both, shall at the same time transmit the notification of disagreement with response and related papers to the executive council for resolution pursuant to section 7D.34. The life cycle cost analysis process, including submittal and approval, and implementation exemption requests pursuant to section 470.8, shall be completed prior to the letting of contracts for the construction or renovation of a facility.

88 Acts, ch 1179, §7; 89 Acts, ch 315, §28; 91 Acts, ch 253, §20; 2009 Acts, ch 108, §25, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

## CHAPTER 473

### ENERGY DEVELOPMENT AND CONSERVATION

This chapter not enacted as a part of this title;  
 transferred from chapter 93 in Code 1993  
 For provisions regarding transfer of funds under the control of  
 the office of energy independence to the economic development authority,  
 continuation of licenses, permits, or contracts by the economic  
 development authority, continued administration of grants  
 or loans awarded from the Iowa power fund,  
 continued administration of federal grant funds  
 by the economic development authority, and employment status of  
 certain office of energy independence employees,  
 see 2011 Acts, ch 118, §51, 89

#### 473.1 Definitions.

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

1. “*Alternative and renewable energy*” means the same as in section 469.31.\*
2. “*Authority*” means the economic development authority created in section 15.105.
3. “*Commission*” means the environmental protection commission of the department of natural resources.
4. “*Director*” means the director of the authority or a designee.
5. “*Energy*” or “*energy sources*” means gasoline, fuel oil, natural gas, propane, coal, special fuels, and electricity.
6. “*Renewable fuel*” means the same as in section 469.31.\*
7. “*Supplier*” means any person engaged in the business of selling, importing, storing, or generating energy sources, alternative and renewable energy, or renewable fuel in Iowa.

[C75, 77, 79, 81, §93.1]

86 Acts, ch 1245, §1817 – 1819

C93, §473.1

2008 Acts, ch 1126, §18, 19, 33; 2009 Acts, ch 108, §26, 41; 2011 Acts, ch 118, §45 – 47, 89

\* Chapter 469 repealed by 2011 Acts, ch 118, §49; corrective legislation is pending

NEW subsection 2 and former subsection 2 renumbered as 3

Former subsection 3 amended and renumbered as 4

Former subsection 4 renumbered as 5

Former subsection 5 stricken

#### 473.7 Duties of the authority.

The authority shall:

1. Supply and annually update the following information:
  - a. The historical use and distribution of energy in Iowa.
  - b. The growth rate of energy consumption in Iowa, including rates of growth for each energy source.
  - c. A projection of Iowa’s energy needs at a minimum through the year 2025.
  - d. The impact of meeting Iowa’s energy needs on the economy of the state, including the impact of energy efficiency and renewable energy on employment and economic development.
  - e. The impact of meeting Iowa’s energy needs on the environment of the state, including the impact of energy production and use on greenhouse gas emissions.
  - f. An evaluation of renewable energy sources, including the current and future technological potential for such sources.
2. The authority shall collect and analyze data to use in forecasting future energy demand and supply for the state. A supplier is required to provide information pertaining to the supply, storage, distribution, and sale of energy sources in this state when requested by the authority. The information shall be of a nature which directly relates to the supply, storage, distribution, and sale of energy sources, and shall not include any records, documents, books, or other data which relate to the financial position of the supplier. The authority, prior to requiring any supplier to furnish it with such information, shall make every reasonable effort to determine if such information is available from any other governmental source. If it finds such information is available, the authority shall not require submission of the information from a supplier. Notwithstanding the provisions of chapter 22, information and

reports obtained under this section shall be confidential except when used for statistical purposes without identifying a specific supplier and when release of the information will not give an advantage to competitors and serves a public purpose. The authority shall use this data to conduct energy forecasts.

3. Develop, recommend, and implement with appropriate agencies public and professional education and communication programs in energy efficiency, energy conservation, and conversion to alternative and renewable energy.

4. When necessary to carry out its duties under this chapter, enter into contracts with state agencies and other qualified contractors.

5. Receive and accept grants made available for programs relating to duties of the authority under this chapter.

6. Promulgate rules necessary to carry out the provisions of this chapter, subject to review in accordance with chapter 17A. Rules promulgated by the governor pursuant to a proclamation issued under the provisions of section 473.8 shall not be subject to review or a public hearing as required in chapter 17A; however, authority rules for implementation of the governor's proclamation are subject to the requirements of chapter 17A.

7. Assist in the implementation of public education and communications programs in energy development, use, and conservation, in cooperation with the department of education, the state university extension services, and other public or private agencies and organizations as deemed appropriate by the authority.

8. Develop a program to annually give public recognition to innovative methods of energy conservation, energy management, and alternative and renewable energy production.

9. Administer and coordinate federal funds for energy conservation, energy management, and alternative and renewable energy programs.

10. Administer and coordinate the state building energy management program including projects funded through private financing.

11. Provide information from monthly fuel surveys which establish a statistical average of motor fuel prices for various motor fuels provided throughout the state. Additionally, the authority shall provide statewide monthly fuel survey information which establishes a statistical average of motor fuel prices for various motor fuels provided in both metropolitan and rural areas of the state. The survey results shall be publicized in a monthly press release issued by the authority.

12. Conduct a study on activities related to energy production and use which contribute to global climate change, in conjunction with institutions under the control of the state board of regents. The study shall take the form of a climate change impacts review, to include the following:

a. Performance of an initial review of available climate change impacts studies relevant to this state.

b. Preparation of a summary of available data on recent changes in relevant climate conditions.

c. Identification of climate change impacts issues which require further research and an estimate of their cost.

d. Identification of important public policy issues relevant to climate change impacts.

[C75, 77, 79, 81, §93.7; 82 Acts, ch 1081, §1, 2, ch 1199, §92, 96]

86 Acts, ch 1245, §1820 – 1822; 88 Acts, ch 1179, §2; 88 Acts, ch 1281, §7; 89 Acts, ch 152, §1; 89 Acts, ch 297, §2; 90 Acts, ch 1252, §7 – 10

C93, §473.7

2007 Acts, ch 168, §15, 18; 2008 Acts, ch 1126, §22, 23, 33; 2009 Acts, ch 108, §27, 41; 2010 Acts, ch 1031, §260; 2011 Acts, ch 118, §50, 89

Code editor directive applied

### **473.8 Emergency powers.**

1. If the authority by resolution determines the health, safety, or welfare of the people of this state is threatened by an actual or impending acute shortage of usable energy, it shall transmit the resolution to the governor together with its recommendation on the declaration of an emergency by the governor and recommended actions, if any, to be undertaken. Within

thirty days of the date of the resolution, the governor may issue a proclamation of emergency which shall be filed with the secretary of state. The proclamation shall state the facts relied upon and the reasons for the proclamation.

2. *a.* Pursuant to the proclamation of an emergency or in response to a declaration of an energy emergency by the president of the United States under the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102, the governor by executive order may:

(1) Regulate the operating hours of energy consuming instrumentalities of state government, political subdivisions, private institutions and business facilities to the extent the regulation is not hazardous or detrimental to the health, safety, or welfare of the people of this state. However, the governor shall have no authority to suspend, amend or nullify any service being provided by a public utility pursuant to an order or rule of a federal agency which has jurisdiction over the public utility.

(2) Establish a system for the distribution and supply of energy. The system shall not include a coupon rationing program, unless the program is federally mandated.

(3) Curtail public and private transportation utilizing energy sources. Curtailment may include measures designed to promote the use of car pools and mass transit systems.

(4) Delegate any administrative authority vested in the governor to the authority or the director.

(5) Provide for the temporary transfer of directors, personnel, or functions of state departments and agencies, for the purpose of performing or facilitating emergency measures pursuant to subparagraphs (1) and (2).

(6) Accept the delegation of other mandatory measures as allowed by the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102.

*b.* If the general assembly is in session, it may revoke by concurrent resolution any proclamation of emergency issued by the governor. If the general assembly is not in session, the proclamation of emergency by the governor may be revoked by a majority vote of the standing membership of the legislative council. Such revocation shall be effective upon receipt of notice of the revocation by the secretary of state and any functions being performed pursuant to the governor's proclamation shall cease immediately.

3. A violation of an executive order of the governor issued pursuant to this section is a scheduled violation as provided in section 805.8C, subsection 1. If the violation is continuous and stationary in its nature and subsequent compliance can easily be ascertained, an officer may issue a memorandum of warning in lieu of a citation providing a reasonable amount of time not exceeding fourteen days to correct the violation and to comply with the requirements of the executive order.

[C75, 77, 79, 81, §93.8]

86 Acts, ch 1245, §1822

C93, §473.8

2001 Acts, ch 137, §5; 2009 Acts, ch 108, §28, 29, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

#### **473.10 Reserve required.**

1. If the authority or the governor finds that an impending or actual shortage or distribution imbalance of liquid fossil fuels may cause hardship or pose a threat to the health and economic well-being of the people of the state or a significant segment of the state's population, the authority or the governor may authorize the director to operate a liquid fossil fuel set-aside program as provided in subsection 2.

2. Upon authorization by the authority or the governor the director may require a prime supplier to reserve a specified fraction of the prime supplier's projected total monthly release of liquid fossil fuel in Iowa. The director may release any or all of the fuel required to be reserved by a prime supplier to end-users or to distributors for release through normal retail distribution channels to retail customers. However, the specified fraction required to be reserved shall not exceed three percent for propane, aviation fuel and residual oil, and five percent for motor gasoline, heating oil, and diesel oil.

3. The authority shall periodically review and may terminate the operation of a set-aside program authorized by the authority under subsection 1 when the authority finds that

the conditions that prompted the authorization no longer exist. The governor shall periodically review and may terminate the operation of a set-aside program authorized by the governor under subsection 1 when the governor finds that the conditions that prompted the authorization no longer exist.

4. The director shall adopt rules to implement this section.

[81 Acts, ch 32, §4]

C83, §93.10

86 Acts, ch 1245, §1822

C93, §473.10

2009 Acts, ch 108, §30, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

#### **473.13A Energy management improvements identified and implemented.**

The state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges shall identify and implement, through energy audits and engineering analyses, all energy management improvements identified for which financing is facilitated by the authority for the entity. The energy management improvement financings shall be supported through payments from energy savings.

89 Acts, ch 297, §3

CS89, §93.13A

90 Acts, ch 1252, §11; 91 Acts, ch 253, §6

C93, §473.13A

2009 Acts, ch 108, §31, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

#### **473.15 Annual report.**

The authority shall complete an annual report to assess the progress of state agencies in implementing energy management improvements, alternative and renewable energy systems, and life cycle cost analyses under chapter 470, and on the use of renewable fuels. The authority shall work with state agencies and with any entity, agency, or organization with which they are associated or involved in such implementation, to use available information to minimize the cost of preparing the report. The authority shall also provide an assessment of the economic and environmental impact of the progress made by state agencies related to energy management and alternative and renewable energy, along with recommendations on technological opportunities and policies necessary for continued improvement in these areas.

88 Acts, ch 1179, §5

C89, §93.15

C93, §473.15

2008 Acts, ch 1126, §24, 33; 2009 Acts, ch 108, §32, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

#### **473.19 Building energy management program.**

1. The building energy management program is established by the authority. The building energy management program consists of the following forms of assistance for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations:

a. Promoting program availability.

b. Developing or identifying guidelines and model energy techniques for the completion of energy analyses for state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations.

c. Providing technical assistance for conducting or evaluating energy analyses for state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations.

d. Providing or facilitating loans, leases, and other methods of alternative financing under the energy loan program for the state, state agencies, political subdivisions of the state,

school districts, area education agencies, community colleges, and nonprofit organizations to implement energy management improvements or energy analyses.

e. Providing assistance for obtaining insurance on the energy savings expected to be realized from the implementation of energy management improvements.

f. Facilitating self-liquidating financing for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations pursuant to section 473.20A.

g. Assisting the treasurer of state with financing agreements entered into by the treasurer of state on behalf of state agencies to finance energy management improvements pursuant to section 12.28.

2. For the purpose of this section, section 473.20, and section 473.20A, “*energy management improvement*” means construction, rehabilitation, acquisition, or modification of an installation in a facility or vehicle which is intended to reduce energy consumption, or energy costs, or both, or allow the use of alternative and renewable energy. “*Energy management improvement*” may include control and measurement devices. “*Nonprofit organization*” means an organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

3. The authority shall submit a report by January 1 annually to the governor and the general assembly detailing services provided and assistance rendered pursuant to the building energy management program and pursuant to sections 473.20 and 473.20A, and receipts and disbursements in relation to the building energy management fund created in section 473.19A.

4. Moneys awarded or allocated to the state, its citizens, or its political subdivisions as a result of the federal court decisions and United States department of energy settlements resulting from alleged violations of federal petroleum pricing regulations attributable to or contained within the Stripper Well fund shall be allocated to and remain under the control of the authority for utilization for energy program-related staff support purposes.

86 Acts, ch 1167, §2

C87, §93.19

87 Acts, ch 209, §1; 90 Acts, ch 1253, §120, 121; 91 Acts, ch 253, §7

C93, §473.19

2008 Acts, ch 1126, §25, 33; 2009 Acts, ch 108, §33, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

#### **473.19A Building energy management fund.**

1. The building energy management fund is created within the state treasury under the control of the authority. The fund shall be used for the operational expenses and administrative costs incurred by the authority in facilitating and administering the building energy management program established in section 473.19.

2. The building energy management fund shall consist of amounts deposited into the fund or allocated from the following sources:

a. Any moneys awarded or allocated to the state, its citizens, or its political subdivisions as a result of the federal court decisions and United States department of energy settlements resulting from alleged violations of federal petroleum pricing regulations attributable to or contained within the Exxon fund. Amounts remaining in the oil overcharge account established in section 455E.11, subsection 2, paragraph “e”, Code 2007, and the energy conservation trust established in section 473.11, Code 2007, as of June 30, 2008, shall be deposited into the building energy management fund pursuant to this paragraph, notwithstanding section 8.60, subsection 15, Code 2007.

b. (1) Moneys received in the form of fees imposed upon the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations for services performed or assistance rendered pursuant to the building energy management program. Fees imposed pursuant to this paragraph shall be established by the authority in an amount corresponding to the operational expenses or administrative costs incurred by the authority in performing services or providing assistance authorized pursuant to the building energy management program, as follows:

(a) For a building of up to twenty-five thousand square feet, two thousand five hundred dollars.

(b) For a building in excess of twenty-five thousand square feet, an additional eight cents per square foot.

(c) A building that houses more energy intensive functions may be subject to a higher fee than the fees specified in subparagraph divisions (a) and (b) as determined by the authority.

(2) Any fees imposed shall be retained by the authority and are appropriated to the authority for purposes of providing services or assistance under the program.

c. Moneys appropriated by the general assembly and any other moneys, including grants and gifts from government and nonprofit organizations, available to and obtained or accepted by the authority for placement in the fund.

d. Moneys contained in the intermodal revolving loan fund administered by the department of transportation for the fiscal year beginning July 1, 2019, and succeeding fiscal years.

e. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.

3. The building energy management fund shall be limited to a maximum of one million dollars. Amounts in excess of this maximum limitation shall be transferred to and deposited in the rebuild Iowa infrastructure fund created in section 8.57, subsection 6.

2008 Acts, ch 1126, §26, 33; 2009 Acts, ch 108, §34, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

#### **473.20 Energy loan program.**

1. An energy loan program is established and shall be administered by the authority.

2. The authority may facilitate the loan process for political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations for implementation of energy management improvements identified in an energy analysis. Loans shall be facilitated for all cost-effective energy management improvements. For political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations to receive loan assistance under the program, the authority shall require completion of an energy management plan including an energy analysis. The authority shall approve loans facilitated under this section.

3. a. Cities and counties shall repay the loans from moneys in their debt service funds. Area education agencies shall repay the loans from any moneys available to them.

b. School districts and community colleges may enter into financing arrangements with the authority or its duly authorized agents or representatives obligating the school district or community college to make payments on the loans beyond the current budget year of the school district or community college. Chapter 75 shall not be applicable. School districts shall repay the loans from moneys in either their general fund or debt service fund. Community colleges shall repay the loans from their general fund. Other entities receiving loans under this section shall repay the loans from any moneys available to them.

4. For the purpose of this section, "loans" means loans, leases, or alternative financing arrangements.

5. Political subdivisions of the state, school districts, area education agencies, and community colleges shall design and construct the most energy cost-effective facilities feasible and may use financing facilitated by the authority to cover the incremental costs above minimum building code energy efficiency standards of purchasing energy-efficient devices and materials unless other lower cost financing is available. As used in this section, "facility" means a structure that is heated or cooled by a mechanical or electrical system, or any system of physical operation that consumes energy to carry out a process.

6. The authority shall not require the state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges to implement a specific energy management improvement identified in an energy analysis if the entity which prepared the analysis demonstrates to the authority that the facility which is the subject of the energy management improvement is unlikely to be used or operated for the full period of the expected savings payback of all costs associated with implementing the

energy management improvement, including without limitation, any fees or charges of the authority, engineering firms, financial advisors, attorneys, and other third parties, and all financing costs including interest, if financed.

86 Acts, ch 1167, §3

C87, §93.20

87 Acts, ch 209, §2; 90 Acts, ch 1252, §12; 90 Acts, ch 1253, §120; 91 Acts, ch 253, §8

C93, §473.20

94 Acts, ch 1029, §30; 2001 Acts, ch 60, §1; 2008 Acts, ch 1126, §27 – 29, 33; 2009 Acts, ch 108, §35, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

#### **473.20A Self-liquidating financing.**

1. *a.* The authority may facilitate financing agreements that may be entered into with political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations to finance the costs of energy management improvements on a self-liquidating basis. The provisions of section 473.20 defining eligible energy management improvements apply to financings under this section.

*b.* The financing agreement may contain provisions, including interest, term, and obligations to make payments on the financing agreement beyond the current budget year, as may be acceptable to political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations.

*c.* The authority shall assist the treasurer of state with financing agreements entered into by the treasurer of state on behalf of state agencies pursuant to section 12.28 to finance energy management improvements being implemented by state agencies.

2. Political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations may enter into financing agreements and issue obligations necessary to carry out the provisions of the chapter. Chapter 75 shall not be applicable.

87 Acts, ch 209, §3

CS87, §93.20A

90 Acts, ch 1253, §120; 91 Acts, ch 253, §9

C93, §473.20A

2008 Acts, ch 1126, §30, 33; 2009 Acts, ch 108, §36, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

#### **473.41 Energy city designation program.**

1. The authority shall establish an energy city designation program, with the objective of encouraging cities to develop and implement innovative energy efficiency programs. To qualify for designation as an energy city, a city shall submit an application on forms prescribed by the authority by rule, indicating the following:

*a.* Submission of community-based plans for energy reduction projects, energy-efficient building construction and rehabilitation, and alternative or renewable energy production.

*b.* Efforts to secure local funding for community-based plans, and documentation of any state or federal grant or loan funding being pursued in connection therewith.

*c.* Involvement of local schools, civic organizations, chambers of commerce, and private groups in a community-based plan.

*d.* Existing or proposed ordinances encouraging energy efficiency and conservation, recycling efforts, and energy-efficient building code provisions and enforcement.

*e.* Organization of an energy day observance and proclamation with a commemorating event and awards ceremony for leading energy-efficient community businesses, groups, schools, or individuals.

2. The authority shall establish by rule criteria for awarding energy city designations. If more than one designation is awarded annually, the criteria shall include a requirement that the authority award the designations to cities of varying populations. Rules shall also be established identifying and publicizing state grant and loan programs relating to energy efficiency, and the development of a procedure whereby the authority shall coordinate with

other state agencies preferences given in the awarding of grants or making of loans to energy city designated applicants.

2007 Acts, ch 157, §1; 2009 Acts, ch 108, §37, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

## CHAPTER 475A

### CONSUMER ADVOCATE

#### **475A.3 Office — employees — expenses.**

1. *Office.* The office of consumer advocate shall be a separate division of the department of justice and located at the same location as the utilities division of the department of commerce. Administrative support services may be provided to the consumer advocate division by the department of commerce.

2. *Employees.* The consumer advocate may employ attorneys, legal assistants, secretaries, clerks, and other employees the consumer advocate finds necessary for the full and efficient discharge of the duties and responsibilities of the office. The consumer advocate may employ consultants as expert witnesses or technical advisors pursuant to contract as the consumer advocate finds necessary for the full and efficient discharge of the duties of the office. Employees of the consumer advocate division, other than the consumer advocate, are subject to merit employment, except as provided in section 8A.412.

3. *Salaries, expenses, and appropriation.* The salary of the consumer advocate shall be fixed by the attorney general within the salary range set by the general assembly. The salaries of employees of the consumer advocate shall be at rates of compensation consistent with current standards in industry. The reimbursement of expenses for the employees and the consumer advocate is as provided by law. The appropriation for the office of consumer advocate shall be a separate line item contained in the appropriation from the department of commerce revolving fund created in section 546.12.

83 Acts, ch 127, §10, 46; 86 Acts, ch 1244, §59; 86 Acts, ch 1245, §744; 89 Acts, ch 158, §1; 94 Acts, ch 1107, §79; 2003 Acts, ch 145, §267; 2009 Acts, ch 181, §44

2011 repeal of 2009 Acts, ch 181, §44, amendment to subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 476

### PUBLIC UTILITY REGULATION

#### **476.1D Regulation and deregulation of communications services.**

1. Except as provided in this section, the jurisdiction of the board as to the regulation of communications services is not applicable to a service or facility that is provided or is proposed to be provided by a telephone utility that is or becomes subject to effective competition, as determined by the board.

a. In determining whether a service or facility is or becomes subject to effective competition, the board shall consider, among other factors, whether a comparable service or facility is available from a supplier other than the telephone utility in the geographic market being considered by the board and whether market forces in that market are sufficient to assure just and reasonable rates without regulation.

b. When considering market forces in the market proposed to be deregulated, the board shall consider factors including but not limited to the presence or absence of all of the following:

- (1) Wireless communications services.

- (2) Cable telephony services.
- (3) Voice over internet protocol services.
- (4) Economic barriers to the entry of competitors or potential competitors in that market.

c. (1) In addition to other services or facilities previously deregulated, effective July 1, 2005, and at the election of each telephone utility subject to rate regulation, the jurisdiction of the board is not applicable to the retail rate regulation of business and retail local exchange services provided throughout the state except for single line flat-rated residential and business service rates provided by a telephone utility subject to rate regulation on January 1, 2005. For each such telephone utility, the initial single line flat-rated residential and business service rates shall be the corresponding rates charged by the utility as of January 31, 2005. The initial single line flat-rated residential monthly service rates may be increased by an amount not to exceed one dollar per twelve-month period beginning July 1, 2005, and ending June 30, 2008. The initial single line flat-rated business monthly service rates may be increased by an amount not to exceed two dollars per twelve-month period beginning July 1, 2005, and ending June 30, 2008. However, the single line flat-rated residential service rate shall not exceed nineteen dollars per month and the single line flat-rated business service rate shall not exceed thirty-eight dollars per month prior to July 1, 2008, not including charges for extended area service, regulatory charges, taxes, and other fees. Each telephone utility's extended area service rates shall not be greater than the corresponding rates charged by the telephone utility as of January 31, 2005. The board shall determine a telephone utility's extended area service rates for new extended area service established on or after July 1, 2005. If a telephone utility fails to impose the rate increase during any twelve-month period, the utility shall not impose the unused increase in any subsequent year. In addition to the rate increases permitted pursuant to this section, the telephone utility may adjust its single line flat-rated residential and business service rates by a percentage equal to the most recent annual percentage change in the gross domestic product price index as published by the federal government. The board may also authorize additional changes in the monthly rates for single line flat-rated residential and business services to reflect exogenous factors beyond the control of the telephone utility.

(2) A telephone utility that elects to increase single line flat-rated residential or business service rates pursuant to this paragraph "c" shall offer digital subscriber line broadband service in all of the telephone utility's exchanges in this state within eighteen calendar months of the first rate increase made pursuant to this paragraph "c" by the telephone utility. The board may extend this deadline by up to nine calendar months for good cause. The board may assess a civil penalty or require a refund of all incremental revenue resulting from the rate increase initiated pursuant to this paragraph "c" if the telephone utility fails to offer digital subscriber line broadband service within the time period required by this subparagraph.

(3) Effective July 1, 2008, the retail rate jurisdiction of the board shall not be applicable to single line flat-rated residential and business service rates unless the board during the first six calendar months of 2008 extends its retail rate jurisdiction over single line flat-rated residential and business service rates provided by a previously rate-regulated telephone utility. The board may extend its jurisdiction pursuant to this paragraph\* for not more than two years and may do so only after the board finds that such action is necessary for the public interest. The board shall provide the general assembly with a copy of any order to extend its jurisdiction and shall permit any telephone utility subject to the extension to increase single line flat-rated residential and business monthly service rates by an amount up to two dollars during each twelve-month period of the extension. If a telephone utility fails to impose such a rate increase during any twelve-month period, the utility may not impose the unused increase in any subsequent year.

2. Except as provided in subsection 1, paragraph "c", deregulation of a service or facility for a utility is effective only after a finding of effective competition by the board.

3. If the board finds that a service or facility is subject to effective competition, the board shall deregulate the service or facility within a reasonable time.

4. Upon deregulation, all investment, revenues, and expenses associated with the service or facility shall be removed from the telephone utility's regulated operations and shall not

be considered by the board in setting rates for the telephone utility unless they continue to affect the utility's regulated operations. If the board considers investment, revenues, and expenses associated with unregulated services or facilities in setting rates for the telephone utility, the board shall not use any profits or costs from such unregulated services or facilities to determine the rates for regulated services or facilities. This section does not preclude the board from considering the investment, revenues, and expenses associated with the sale of classified directory advertising by a telephone utility in determining rates for the telephone utility.

5. Notwithstanding the presence of effective competition, if the board determines a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation, the board shall deregulate rates and may continue service regulation.

6. The board may reimpose rate and service regulation on a deregulated service or facility if it determines the service or facility is no longer subject to effective competition.

7. The board may reimpose service regulation only on a deregulated service or facility if the board determines the service or facility is an essential communications service or facility and the public interest warrants service regulation, notwithstanding the presence of effective competition.

8. If the board reimposes regulation pursuant to subsection 6 or 7, the reimposition of regulation shall apply to all providers of the service or facility.

9. The board may investigate and obtain information from providers of deregulated services or facilities to determine whether the services or facilities are subject to effective competition or whether the service or facility is an essential communications service or facility and the public interest warrants service regulation. However, the board shall not, for purposes of this subsection, request or obtain information related to the provider's costs or earnings.

10. *a.* The board, at the request of a long distance telephone company, shall classify such company as a competitive long distance telephone company if more than half of the company's revenues from its Iowa intrastate telecommunications services and facilities are received from services and facilities that the board has determined to be subject to effective competition, or if more than half of the company's revenues from its Iowa intrastate telecommunications services and facilities are received from intralata interexchange services and facilities. For purposes of this subsection, "*intralata interexchange services*" means those interexchange services that originate and terminate within the same local access transport area.

*b.* The board shall promptly notify the director of revenue that a long distance telephone company has been classified as a competitive long distance telephone company. Upon such notification by the board, the director of revenue shall assess the property of such competitive long distance telephone company, which property is first assessed for taxation in this state on or after January 1, 1996, in the same manner as all other property assessed as commercial property by the local assessor under chapters 427, 427A, 427B, 428, and 441. As used in this section, "*long distance telephone company*" means an entity that provides telephone service and facilities between local exchanges, but does not include a cellular service provider or a local exchange utility holding a certificate issued under section 476.29, subsection 12.

91 Acts, ch 150, §2; 95 Acts, ch 199, §1; 96 Acts, ch 1219, § 73; 2003 Acts, ch 126, §1; 2003 Acts, ch 145, §286; 2005 Acts, ch 9, §1; 2006 Acts, ch 1010, §123; 2011 Acts, ch 25, §143

\*The word "subparagraph" probably intended; corrective legislation is pending  
Code editor directive applied

### **476.3 Complaints — investigation — refunds.**

1. A public utility shall furnish reasonably adequate service at rates and charges in accordance with tariffs filed with the board. When there is filed with the board by any person or body politic, or filed by the board upon its own motion, a written complaint requesting the board to determine the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by a public utility subject to this chapter in contravention of this chapter, the written complaint shall be forwarded by the board to the

public utility, which shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be specified by the board. Copies of the written complaint forwarded by the board to the public utility and copies of all correspondence from the public utility in response to the complaint shall be provided by the board in an expeditious manner to the consumer advocate. If the board determines the public utility's response is inadequate and there appears to be any reasonable ground for investigating the complaint, the board shall promptly initiate a formal proceeding. If the consumer advocate determines the public utility's response to the complaint is inadequate, the consumer advocate may file a petition with the board which shall promptly initiate a formal proceeding if the board determines that there is any reasonable ground for investigating the complaint. The complainant or the public utility also may petition the board to initiate a formal proceeding which petition shall be granted if the board determines that there is any reasonable ground for investigating the complaint. The formal proceeding may be initiated at any time by the board on its own motion. If a proceeding is initiated upon petition filed by the consumer advocate, complainant, or the public utility, or upon the board's own motion, the board shall set the case for hearing and give notice as it deems appropriate. When the board, after a hearing held after reasonable notice, finds a public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.

2. *a.* If, as a result of a review procedure conducted under section 476.31, a review conducted under section 476.32, a special audit, an investigation by division staff, or an investigation by the consumer advocate, a petition is filed with the board by the consumer advocate, alleging that a utility's rates are excessive, the disputed amount shall be specified in the petition. The public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of filing of the petition in excess of rates or charges finally determined by the board to be lawful. If upon hearing the board finds that the utility's rates are unlawful, the board shall order a refund, with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest, and if the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the expiration of that ten-month period and prior to the date the decision is rendered.

*b.* Notwithstanding the provisions of this subsection, the consumer advocate shall not file a petition under this subsection that alleges a local exchange carrier's rates are excessive while the local exchange carrier is participating in a price regulation plan approved by the board pursuant to section 476.97.

3. A determination of utility rates by the board pursuant to this section that is based upon a departure from previously established regulatory principles shall apply prospectively from the date of the decision.

[C66, 71, 73, 75, §490A.3; C77, 79, 81, §476.3; 81 Acts, ch 156, §5, 9]

83 Acts, ch 127, §17, 18; 89 Acts, ch 59, §1; 89 Acts, ch 97, §1; 95 Acts, ch 199, §2; 2011 Acts, ch 25, §143

Code editor directive applied

#### **476.6 Changes in rates, charges, schedules, and regulations — supply and cost review — water costs for fire protection.**

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule, or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 8 and 10.

2. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board.

Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

3. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

4. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. However, if an application presents no material issue of fact subject to dispute, and the board determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 10.

5. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 4, the public utility, within a reasonable time thereafter, shall file with the board a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 6, the board shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

6. *Finding by board.* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the board and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

7. *Limitation on filings.* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

8. *Automatic adjustments permitted.* This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the board.

9. *Rate levels for telephone utilities.* The board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

10. *Temporary authority.*

a. Upon the request of a public utility, the board shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules, or regulations by filing with the board a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. In determining that portion of the new or changed rates, charges, schedules, or regulations to be placed in effect prior to a final decision, the board shall apply previously established regulatory principles and shall, at a minimum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the board held reasonable and just in the most recent rate case involving the same utility or the same type of utility service, provided that if the most recent final decision of the board in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the board shall in addition consider financial market data that is filed or that is otherwise available to the board and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The board shall render a decision on a request for temporary authority within ninety days after the date of filing of the request. The decision shall be effective immediately. If the board has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the board on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the board any portion of the suspended rates, charges, schedules, or regulations not previously approved on a temporary basis by filing with the board a bond or other undertaking approved by the board.

b. A public utility may choose to place in effect temporary rates, charges, schedules, or regulations without board review ten days after the filing under this section. If the utility chooses to place such rates, charges, schedules, or regulations in effect without board review, the utility shall file with the board a bond or other corporate undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. At the conclusion of the proceeding if the board determines that the temporary rates, charges, schedules, or regulations placed in effect under this paragraph were not based on previously established regulatory principles, the board shall consider ordering refunds based upon the overpayments made by each individual customer class, rate zone, or customer group.

c. If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules, or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules, or regulations shall, for purposes of computing the time limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules, or

regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

d. The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

11. *Refunds passed on to customers.* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

12. *Natural gas supply and cost review.*

a. The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

b. Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The utilities shall file information as the board deems appropriate.

c. During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

13. *Electric energy supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The evaluation may review the reasonableness and prudence of actions taken by a rate-regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been incurred under reasonable and prudent policies and practices.

14. *Energy efficiency plans.* Electric and gas public utilities shall offer energy efficiency programs to their customers through energy efficiency plans. An energy efficiency plan as a whole shall be cost-effective. In determining the cost-effectiveness of an energy efficiency plan, the board shall apply the societal test, utility cost test, rate-payer impact test, and participant test. Energy efficiency programs for qualified low-income persons and for tree planting programs, educational programs, and assessments of consumers' needs for information to make effective choices regarding energy use and energy efficiency need not be cost-effective and shall not be considered in determining cost-effectiveness of plans as a whole. The energy efficiency programs in the plans may be provided by the utility or by a contractor or agent of the utility. Programs offered pursuant to this subsection by gas and electric utilities that are required to be rate-regulated shall require board approval.

15. *Water costs for fire protection in certain cities.*

a. Application. A city furnished water by a public utility subject to rate regulation

may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

b. Review. The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to paragraph "a", including, but not limited to, soliciting oral or written testimony from other interested parties.

c. Notice. Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 2, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

d. Conditions for approval. As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met:

(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water-related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers.

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph "a".

(4) That written notice has been provided pursuant to paragraph "c" and that the costs of the notice have been paid by the applicant.

e. Inclusion within rates or charges. If the board affirmatively determines that the conditions of paragraph "d" are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by the applicant's fire protection service.

f. Written order. The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application.

16. *Energy efficiency implementation, cost review, and cost recovery.*

a. Gas and electric utilities required to be rate-regulated under this chapter shall file energy efficiency plans with the board. An energy efficiency plan and budget shall include a range of programs, tailored to the needs of all customer classes, including residential, commercial, and industrial customers, for energy efficiency opportunities. The plans shall include programs for qualified low-income persons including a cooperative program with any community action agency within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low-income persons. Rate-regulated gas and electric utilities shall utilize Iowa agencies and Iowa contractors to the maximum extent cost-effective in their energy efficiency plans filed with the board.

b. A gas and electric utility required to be rate-regulated under this chapter shall assess potential energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings. The utility shall submit the assessment to the board. Upon receipt of the assessment, the board shall consult with the economic development authority to develop specific capacity and energy savings performance standards for each utility. The utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards. The board shall periodically report the energy efficiency results including energy savings of each utility to the general assembly.

c. (1) Gas and electric utilities that are not required to be rate-regulated under this chapter shall assess maximum potential energy and capacity savings available from actual

and projected customer usage through cost-effective energy efficiency measures and programs, taking into consideration the utility service area's historic energy load, projected demand, customer base, and other relevant factors. Each utility shall establish an energy efficiency goal based upon this assessment of potential and shall establish cost-effective energy efficiency programs designed to meet the energy efficiency goal. Separate goals may be established for various customer groupings.

(2) Energy efficiency programs shall include efficiency improvements to a utility infrastructure and system and activities conducted by a utility intended to enable or encourage customers to increase the amount of heat, light, cooling, motive power, or other forms of work performed per unit of energy used. In the case of a municipal utility, for purposes of this paragraph, other utilities and departments of the municipal utility shall be considered customers to the same extent that such utilities and departments would be considered customers if served by an electric or gas utility that is not a municipal utility. Energy efficiency programs include activities which lessen the amount of heating, cooling, or other forms of work which must be performed, including but not limited to energy studies or audits, general information, financial assistance, direct rebates to customers or vendors of energy-efficient products, research projects, direct installation by the utility of energy-efficient equipment, direct and indirect load control, time-of-use rates, tree planting programs, educational programs, and hot water insulation distribution programs.

(3) Each utility shall commence the process of determining its cost-effective energy efficiency goal on or before July 1, 2008, shall provide a progress report to the board on or before January 1, 2009, and complete the process and submit a final report to the board on or before January 1, 2010. The report shall include the utility's cost-effective energy efficiency goal, and for each measure utilized by the utility in meeting the goal, the measure's description, projected costs, and the analysis of its cost-effectiveness. Each utility or group of utilities shall evaluate cost-effectiveness using the cost-effectiveness tests in accordance with subsection 14 of this section. Individual utilities or groups of utilities may collaborate in conducting the studies required hereunder and may file a joint report or reports with the board. However, the board may require individual information from any utility, even if it participates in a joint report.

(4) On January 1 of each even-numbered year, commencing January 1, 2012, gas and electric utilities that are not required to be rate-regulated shall file a report with the board identifying their progress in meeting the energy efficiency goal and any updates or amendments to their energy efficiency plans and goals. Filings made pursuant to this paragraph "c" shall be deemed to meet the filing requirements of section 476.1A, subsection 1, paragraph "g", and section 476.1B, subsection 1, paragraph "l".

d. (1) The board shall evaluate the reports required to be filed pursuant to paragraph "b" by gas and electric utilities required to be rate-regulated, and shall submit a report summarizing the evaluation to the general assembly on or before January 1, 2009.

(2) The board shall evaluate the reports required to be filed pursuant to paragraph "c" by gas and electric utilities that are not required to be rate-regulated, and shall submit a report summarizing the evaluation to the general assembly on or before January 1, 2011.

(3) The reports submitted by the board to the general assembly pursuant to this paragraph "d" shall include the goals established by each of the utilities. The reports shall also include the projected costs of achieving the goals, potential rate impacts, and a description of the programs offered and proposed by each utility or group of utilities, and may take into account differences in system characteristics, including but not limited to sales to various customer classes, age of facilities of new large customers, and heating fuel type. The reports may contain recommendations concerning the achievability of certain intermediate and long-term energy efficiency goals based upon the results of the assessments submitted by the utilities.

e. The board shall conduct contested case proceedings for review of energy efficiency plans and budgets filed by gas and electric utilities required to be rate-regulated under this chapter. The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section 17A.19, subsection 5, in an application for judicial review of the board's decision concerning a utility's energy efficiency plan or budget, the reviewing court shall not order a stay. Whenever a request to modify an approved plan or budget is filed

subsequently by the office of consumer advocate or a gas or electric utility required to be rate-regulated under this chapter, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board-approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate.

f. Notice to customers of a contested case proceeding for review of energy efficiency plans and budgets shall be in a manner prescribed by the board.

g. A gas or electric utility required to be rate-regulated under this chapter may recover, through an automatic adjustment mechanism filed pursuant to subsection 8, over a period not to exceed the term of the plan, the costs of an energy efficiency plan approved by the board, including amounts for a plan approved prior to July 1, 1996, in a contested case proceeding conducted pursuant to paragraph "e". The board shall periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of the utility's implementation of an approved energy efficiency plan and budget. If a utility is not taking all reasonable actions to cost-effectively implement an approved energy efficiency plan, the board shall not allow the utility to recover from customers costs in excess of those costs that would be incurred under reasonable and prudent implementation and shall not allow the utility to recover future costs at a level other than what the board determines to be reasonable and prudent. If the result of a contested case proceeding is a judgment against a utility, that utility's future level of cost recovery shall be reduced by the amount by which the programs were found to be imprudently conducted. The utility shall not represent energy efficiency in customer billings as a separate cost or expense unless the board otherwise approves.

h. A rate-regulated utility required to submit an energy efficiency plan under this subsection shall, upon the request of a state agency or political subdivision to which it provides service, provide advice and assistance regarding measures which the state agency or political subdivision might take in achieving improved energy efficiency results. The cooperation shall include assistance in accessing financial assistance for energy efficiency measures.

17. *Filing of forecasts.* The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board shall evaluate the forecast. The forecast shall include but is not limited to a forecast of the requirements of its customers, its anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs.

18. *Energy efficiency program financing.* The board may require each rate-regulated gas or electric public utility to offer qualified customers the opportunity to enter into an agreement for the amount of moneys reasonably necessary to finance cost-effective energy efficiency improvements to the qualified customers' residential dwellings or businesses.

19. *Allocation of replacement tax costs.*

a. The costs of the replacement tax imposed pursuant to chapter 437A shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on January 1, 1999.

b. The cost of the replacement taxes imposed by chapter 437A shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent practicable.

c. Upon the restructuring of the electric industry in this state so that individual consumers are given the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

d. Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether the base rates or some other form of rate is most appropriate for recovery of the

costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

20. *Recovery of management costs.* A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

21. *Electric power generating facility emissions.*

a. It is the intent of the general assembly that the state, through a collaborative effort involving state agencies and affected generation owners, provide for compatible statewide environmental and electric energy policies with respect to regulated emissions from rate-regulated electric power generating facilities in the state that are fueled by coal. Each rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.

(1) The initial multiyear plan and budget shall be filed with the board by April 1, 2002. Updates to the plan and budget shall be filed at least every twenty-four months.

(2) Copies of the initial plan and budget, as well as any subsequent updates, shall be served on the department of natural resources.

(3) The initial multiyear plan and budget and any subsequent updates shall be considered in a contested case proceeding pursuant to chapter 17A. The department of natural resources and the consumer advocate shall participate as parties to the proceeding.

(4) The department of natural resources shall state whether the plan or update meets applicable state environmental requirements for regulated emissions. If the plan does not meet these requirements, the department shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements.

b. The board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state.

c. The board shall review the plan or update and the associated budget, and shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. In reaching its decision, the board shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

d. The board shall issue an order approving or rejecting a plan, update, or budget within one hundred eighty days after the public utility's filing is deemed complete; however, upon good cause shown, the board may extend the time for issuing the order as follows:

(1) The board may grant an extension of thirty days.

(2) The board may grant more than one extension, but each extension must rely upon a separate showing of good cause.

(3) A subsequent extension must not be granted any earlier than five days prior to the expiration of the original one-hundred-eighty-day period, or the current extension.

e. The reasonable costs incurred by a rate-regulated public utility in preparing and filing the plan, update, or budget and in participating in the proceedings before the board and the reasonable costs associated with implementing the plan, update, or budget shall be included in its regulated retail rates.

f. It is the intent of the general assembly that the board, in an environmental plan, update, or associated budget filed under this section by a rate-regulated public utility, may limit investments or expenditures that are proposed to be undertaken prior to the time that the environmental benefit to be produced by the investment or expenditure would be required by state or federal law.

22. a. It is the intent of the general assembly to require certain rate-regulated public utilities to undertake analyses of and preparations for the possible construction of nuclear generating facilities in this state that would be beneficial in a carbon-constrained environment.

b. A rate-regulated electric utility that was subject to a revenue sharing settlement agreement with regard to its electric base rates as of January 1, 2010, shall recover, through a rider and pursuant to a tariff filing made on or before December 31, 2013, the reasonable and prudent costs of its analyses of and preparations for the possible construction of facilities of the type referenced in paragraph “a”. Cost recovery shall be accomplished by instituting a revenue increase applied in the same percentage amount to each customer class and not designed to recover, on an annual basis, more than five-tenths percent of the electric utility’s calendar year 2009 revenues attributable to billed base rates in this state. At the conclusion of the cost recovery period, which shall extend no more than thirty-six months in total, the board shall conduct a contested case proceeding pursuant to chapter 17A to evaluate the reasonableness and prudence of the cost recovery. The utility shall file such information with the board as the board deems appropriate, including the filing of an annual report identifying and explaining expenditures identified in the rider as items for cost recovery, and any other information required by the board. If the board determines that the utility has imprudently incurred costs, or has incurred costs that are less than the amount recovered, the board shall order the utility to modify the rider to adjust the amount recoverable.

c. Costs that may be recovered through the rider described in paragraph “b” shall be consistent with the “United States Nuclear Regulatory Guide, Section 4.7, General Site Suitability Criteria for Nuclear Power Stations, Revision Two, April 1998,” including costs related to the study and use of sites for nuclear generation.

[C66, 71, 73, 75, §490A.6; C77, 79, 81, §476.6; 81 Acts, ch 156, §6, 9, ch 157, §1 – 3; 82 Acts, ch 1100, §23]

83 Acts, ch 127, §19 – 26, 51; 84 Acts, ch 1023, §1; 87 Acts, ch 21, §2; 89 Acts, ch 58, §1; 89 Acts, ch 148, §1; 89 Acts, ch 321, §29; 90 Acts, ch 1103, §1; 90 Acts, ch 1252, §23 – 27; 91 Acts, ch 253, §22; 93 Acts, ch 68, §1; 96 Acts, ch 1196, §8, 9; 98 Acts, ch 1013, §1; 98 Acts, ch 1148, §2, 9; 98 Acts, ch 1194, §37, 40; 2001 Acts, 1st Ex, ch 4, §10, 36; 2002 Acts, ch 1162, §70, 71; 2003 Acts, ch 126, §2, 3; 2003 Acts, ch 145, §286; 2004 Acts, ch 1006, §1; 2006 Acts, ch 1030, §51; 2007 Acts, ch 168, §16, 18; 2008 Acts, ch 1133, §4, 5, 9; 2009 Acts, ch 108, §38, 41; 2009 Acts, ch 133, §158; 2010 Acts, ch 1176, §1, 3; 2011 Acts, ch 118, §50, 89

Code editor directive applied

#### **476.10 Investigations — expense — appropriation.**

1. a. In order to carry out the duties imposed upon it by law, the board may, at its discretion, allocate and charge directly the expenses attributable to its duties to the person bringing a proceeding before the board or to persons participating in matters before the board. The board shall ascertain the certified expenses incurred and directly chargeable by the consumer advocate division of the department of justice in the performance of its duties. The board and the consumer advocate separately may decide not to charge expenses to persons who, without expanding the scope of the proceeding or matter, intervene in good faith in a board proceeding initiated by a person subject to the board’s jurisdiction, the consumer advocate, or the board on its own motion. For assessments in any proceedings or matters before the board, the board and the consumer advocate separately may consider the financial resources of the person, the impact of assessment on participation by intervenors, the nature of the proceeding or matter, and the contribution of a person’s participation to the public interest. The board may present a bill for expenses under this subsection to the person, either at the conclusion of a proceeding or matter, or from time to time during its progress. Presentation of a bill for expenses under this subsection constitutes notice of direct assessment and request for payment in accordance with this section.

b. The board shall ascertain the total of the division’s expenses incurred during each fiscal year in the performance of its duties under law. The board shall add to the total of the division’s expenses the certified expenses of the consumer advocate as provided under section 475A.6. The board shall deduct all amounts charged directly to any person from the

total expenses of the board and the consumer advocate. The board may assess the amount remaining after the deduction to all persons providing service over which the board has jurisdiction in proportion to the respective gross operating revenues of such persons from intrastate operations during the last calendar year over which the board has jurisdiction. For purposes of determining gross operating revenues under this section, the board shall not include gross receipts received by a cooperative corporation or association for wholesale transactions with members of the cooperative corporation or association, provided that the members are subject to assessment by the board based upon the members' gross operating revenues, or provided that such a member is an association whose members are subject to assessment by the board based upon the members' gross operating revenues. If any portion of the remainder can be identified with a specific type of utility service, the board shall assess those expenses only to the entities providing that type of service over which the board has jurisdiction. The board may make the remainder assessments under this paragraph on a quarterly basis, based upon estimates of the expenditures for the fiscal year for the utilities division and the consumer advocate. Not more than ninety days following the close of the fiscal year, the utilities division shall conform the amount of the prior fiscal year's assessments to the requirements of this paragraph. For gas and electric public utilities exempted from rate regulation pursuant to this chapter, the remainder assessments under this paragraph shall be computed at one-half the rate used in computing the assessment for other persons.

2. *a.* A person subject to a charge or assessment shall pay the division the amount charged or assessed against the person within thirty days from the time the division provides notice to the person of the amount due, unless the person files an objection in writing with the board setting out the grounds upon which the person claims that such charge or assessment is excessive, unreasonable, erroneous, unlawful, or invalid. Upon receipt of an objection, the board shall set the matter for hearing and issue its order in accordance with its findings in the proceeding.

*b.* The order shall be subject to review in the manner provided in this chapter. All amounts collected by the division pursuant to the provisions of this section shall be deposited with the treasurer of state and credited to the department of commerce revolving fund created in section 546.12. Such amounts shall be spent in accordance with the provisions of chapter 8.

3. Whenever the board shall deem it necessary in order to carry out the duties imposed upon it in connection with rate regulation under section 476.6, investigations under section 476.3, or review proceedings under section 476.31, the board may employ additional temporary or permanent staff, or may contract with persons who are not state employees for engineering, accounting, or other professional services, or both. The costs of these additional employees and contract services shall be paid by the public utility whose rates are being reviewed in the same manner as other expenses are paid under this section. Beginning on July 1, 1991, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this section. The board shall increase quarterly assessments specified in subsection 1, paragraph "b", by amounts necessary to enable the board to hire additional staff and contract for services under this section. The authority to hire additional temporary or permanent staff that is granted to the board by this section shall not be subject to limitation by any administrative or executive order or decision that restricts the number of state employees or the filling of employee vacancies, and shall not be subject to limitation by any law of this state that restricts the number of state employees or the filling of employee vacancies unless that law is made applicable to this section by express reference to this section. Before the board expends or encumbers an amount in excess of the funds budgeted for rate regulation and before the board increases quarterly assessments pursuant to this subsection, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly to the board for rate regulation and that the board does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management the board may expend and encumber funds for the excess expenses, and increase quarterly

assessments to raise the additional funds. The board and the office of consumer advocate may add additional personnel or contract for additional assistance to review and evaluate energy efficiency plans and the implementation of energy efficiency programs including, but not limited to, professionally trained engineers, accountants, attorneys, skilled examiners and inspectors, and secretaries and clerks. The board and the office of consumer advocate may also contract for additional assistance in the evaluation and implementation of issues relating to telecommunication competition. The board and the office of the consumer advocate may expend additional sums beyond those sums appropriated. However, the authority to add additional personnel or contract for additional assistance must first be approved by the department of management. The additional sums for energy efficiency shall be provided to the board and the office of the consumer advocate by the utilities subject to the energy efficiency requirements in this chapter. Telephone companies shall pay any additional sums needed for assistance with telecommunication competition issues. The assessments shall be in addition to and separate from the quarterly assessment.

4. a. Fees paid to the utilities division shall be deposited in the department of commerce revolving fund created in section 546.12. These funds shall be used for the payment, upon appropriation by the general assembly, of the expenses of the utilities division and the consumer advocate division of the department of justice.

b. The administrator and consumer advocate shall account for receipts and disbursements according to the separate duties imposed upon the utilities and consumer advocate divisions by the laws of this state and each separate duty shall be fiscally self-sustaining.

c. All fees and other moneys collected under this section and sections 478.4, 479.16, and 479A.9 shall be deposited into the department of commerce revolving fund created in section 546.12 and expenses required to be paid under this section shall be paid from funds appropriated for those purposes.

[C66, 71, 73, 75, §490A.10; C77, 79, 81, §476.10; 81 Acts, ch 156, §7, ch 158, §1]

83 Acts, ch 127, §28; 86 Acts, ch 1246, §613, 614; 89 Acts, ch 103, §1; 89 Acts, ch 296, §72; 89 Acts, ch 321, §30; 90 Acts, ch 1247, §11; 90 Acts, ch 1252, §29; 91 Acts, ch 260, §1236, 1237; 93 Acts, ch 131, §20, 21; 94 Acts, ch 1107, §80; 95 Acts, ch 199, §3; 2001 Acts, ch 9, §1, 3; 2009 Acts, ch 181, §45 – 47

2011 repeal of 2009 Acts, ch 181, §45 – 47, amendments to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

#### **476.18 Impermissible charges.**

1. Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of lobbying.

2. Legal costs and attorney fees incurred by a public utility subject to rate regulation in an appeal in state or federal court involving the validity of any action of the board shall not be included either directly or indirectly in the public utility's charges or rates to customers except to the extent that recovery of legal costs and attorney fees is allowed by the board. The board shall allow a public utility to recover reasonable legal costs and attorney fees incurred in the appeal. The board may consider the degree of success of the legal arguments of the public utility in determining the reasonable legal costs and attorney fees to be allowed.

3. a. Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of advertising other than advertising which is required by the board or by other state or federal regulation. However, this subsection does not apply to a utility's advertising which is deemed by the board to be necessary for the utility's customers and which is approved by the board.

b. Every ad which is published, broadcast, or otherwise displayed or disseminated to the public by a public utility which is to be charged to the customers of the public utility and which is not required by the board or by other state or federal regulation shall include a statement in the ad that the costs of the ad are being charged to the customers of the public utility. This paragraph does not apply to a utility's product or service that is or becomes subject to competition as determined by the board.

4. This section does not apply to a rural electric cooperative.

83 Acts, ch 127, §30; 84 Acts, ch 1225, §1; 2011 Acts, ch 25, §143

Code editor directive applied

**476.20 Disconnection limited — notice — moratorium — deposits.**

1. A utility shall not, except in cases of emergency, discontinue, reduce, or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless and until permission to do so is obtained from the board.

2. The board shall establish rules requiring a regulated public utility furnishing gas or electricity to include in the utility's notice of pending disconnection of service a written statement advising the customer that the customer may be eligible to participate in the low income home energy assistance program or weatherization assistance program administered by the division of community action agencies of the department of human rights. The written statement shall list the address and telephone number of the local agency which is administering the customer's low income home energy assistance program and the weatherization assistance program. The written statement shall also state that the customer is advised to contact the public utility to settle any of the customer's complaints with the public utility, but if a complaint is not settled to the customer's satisfaction, the customer may file the complaint with the board. The written statement shall include the address and phone number of the board. If the notice of pending disconnection of service applies to a residence, the written statement shall advise that the disconnection does not apply from November 1 through April 1 for a resident who is a "head of household", as defined by law, and who has been certified to the public utility by the local agency which is administering the low income home energy assistance program and weatherization assistance program as being eligible for either the low income home energy assistance program or weatherization assistance program, and that if such a resident resides within the serviced residence, the customer should promptly have the qualifying resident notify the local agency which is administering the low income home energy assistance program and weatherization assistance program. The board shall establish rules requiring that the written notice contain additional information as it deems necessary and appropriate.

3. *a.* The board shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to disconnection of service. This subsection applies both to regulated utilities and to municipally owned utilities and unincorporated villages which own their own distribution systems, and violations of this subsection subject the utilities to civil penalties under section 476.51.

*b.* A qualified applicant for the low income home energy assistance program or the weatherization assistance program who is also a "head of household", as defined in section 422.4, subsection 7, shall be promptly certified by the local agency administering the applicant's program to the applicant's public utility that the resident is a "head of household" as defined in section 422.4, subsection 7, and is qualified for the low income home energy assistance program or weatherization assistance program. Notwithstanding subsection 1, a public utility furnishing gas or electricity shall not disconnect service from November 1 through April 1 to a residence which has a resident that has been certified under this paragraph.

*c.* The rules established by the board shall provide that a public utility furnishing gas or electricity shall not disconnect service to a residence in which one of the heads of household is a service member deployed for military service, as defined in section 29A.1, subsection 3, prior to a date ninety days after the end of the service member's deployment, if the public utility is informed of the deployment.

4. A public utility which violates a provision of this section relating to the disconnection of service or which violates a rule of the board relating to disconnection of service is subject to civil penalties imposed by the board under section 476.51.

5. *a.* The board shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to deposits which may be required by the public utility for the initiation or reinstatement of service.

(1) The deposit for a residential or commercial customer for a place which has previously received service shall not be greater than the highest billing of service for one month for the place in the previous twelve-month period.

(2) The deposit for a residential or a commercial customer for a place which has not previously received service or for an industrial customer shall be the customer's projected

one month's usage for the place to be serviced as determined by the public utility according to rules established by the board.

b. This subsection does not prohibit a public utility from requiring payment of a customer's past due account with the utility prior to reinstatement of service.

c. The rules shall allow a person other than the customer to pay the customer's deposit. Upon termination of service to such a customer, the deposit plus accumulated interest less any unpaid utility bill of the customer, shall be reimbursed to the person who made the deposit.

[C66, 71, 73, 75, §490A.26; C77, 79, 81, §476.20]

83 Acts, ch 127, §31; 84 Acts, ch 1131, §1; 84 Acts, ch 1273, §1; 2010 Acts, ch 1170, §4; 2011 Acts, ch 25, §143; 2011 Acts, ch 47, §9

See Code editor's note on simple harmonization

Code editor directive applied

Subsection 3, paragraph c amended

#### **476.27 Public utility crossing — railroad rights-of-way.**

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

a. "Board" means the Iowa utilities board.

b. "Crossing" means the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right-of-way by a public utility.

c. "Direct expenses" includes, but is not limited to, any or all of the following:

(1) The cost of inspecting and monitoring the crossing site.

(2) Administrative and engineering costs for review of specifications; for entering a crossing on the railroad's books, maps, and property records; and other reasonable administrative and engineering costs incurred as a result of the crossing.

(3) Document and preparation fees associated with a crossing, and any engineering specifications related to the crossing.

(4) Damages assessed in connection with the rights granted to a public utility with respect to a crossing.

d. "Facility" means any cable, conduit, wire, pipe, casing pipe, supporting poles and guys, manhole, or other material and equipment, that is used by a public utility to furnish any of the following:

(1) Communications services.

(2) Electricity.

(3) Gas by piped system.

(4) Sanitary and storm sewer service.

(5) Water by piped system.

e. "Public utility" means a public utility as defined in section 476.1, except that, for purposes of this section, "public utility" also includes all mutual telephone companies, municipally owned facilities, unincorporated villages, waterworks, municipally owned waterworks, joint water utilities, rural water districts incorporated under chapter 357A or 504, cooperative water associations, franchise cable television operators, and persons furnishing electricity to five or fewer persons.

f. "Railroad" or "railroad corporation" means a railroad corporation as defined in section 321.1, which is the owner, operator, occupant, manager, or agent of a railroad right-of-way or the railroad corporation's successor in interest. "Railroad" and "railroad corporation" include an interurban railway.

g. "Railroad right-of-way" means one or more of the following:

(1) A right-of-way or other interest in real estate that is owned or operated by a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation.

(2) A right-of-way or other interest in real estate that is occupied or managed by or on behalf of a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation, including an abandoned railroad right-of-way that has not otherwise reverted pursuant to chapter 327G.

(3) Another interest in a former railroad right-of-way that has been acquired or is operated by a land management company or similar entity.

h. "Special circumstances" means either or both of the following:

(1) The existence of characteristics of a segment of railroad right-of-way or of a proposed utility facility that increase the direct expenses associated with a proposed crossing.

(2) A proposed crossing that involves a significant and imminent likelihood of danger to the public health or safety, or that is a serious threat to the safe operations of the railroad, or to the current use of the railroad right-of-way, necessitating additional terms and conditions associated with the crossing.

2. *Rulemaking and standard crossing fee.* The board, in consultation with the state department of transportation, shall adopt rules pursuant to chapter 17A prescribing the terms and conditions for a crossing. The rules shall provide that any crossing be consistent with the public convenience and necessity and reasonable service to the public. The rules, at a minimum, shall address the following:

a. The terms and conditions applicable to a crossing including, but not limited to, the following:

(1) Notification required prior to the commencement of any crossing activity.

(2) A requirement that the railroad and the public utility each maintain and repair the person's own property within the railroad right-of-way, and bear responsibility for each person's own acts and omissions; except that the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

(3) The amount and scope of insurance or self-insurance required to cover risks associated with a crossing.

(4) A procedure to address the payment of costs associated with the relocation of public utility facilities within the railroad right-of-way necessary to accommodate railroad operations.

(5) Terms and conditions for securing the payment of any damages by the public utility before it proceeds with a crossing.

(6) Immediate access to a crossing for repair and maintenance of existing facilities in case of emergency.

(7) Engineering standards for utility facilities crossing railroad rights-of-way.

(8) Provision for expedited crossing, absent a claim of special circumstances, after payment by the public utility of the standard crossing fee, if applicable, and submission of completed engineering specifications to the railroad.

(9) Other terms and conditions necessary to provide for the safe and reasonable use of a railroad right-of-way by a public utility, and consistent with rules adopted by the board, including any complaint procedures adopted by the board to enforce the rules.

b. Unless otherwise agreed by the parties and subject to subsection 4, a public utility that locates its facilities within the railroad right-of-way for a crossing, other than a crossing along the public roads of the state pursuant to chapter 477, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard crossing fee shall be in lieu of any license or any other fees or charges to reimburse the railroad for the direct expenses incurred by the railroad as a result of the crossing. The public utility shall also reimburse the railroad for any actual flagging expenses associated with a crossing in addition to the standard crossing fee.

3. *Powers not limited.*

a. Notwithstanding subsection 2, rules adopted by the board shall not prevent a railroad and a public utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to such crossing.

b. Notwithstanding paragraph "a", neither this subsection nor this section shall impair the authority of a public utility to secure crossing rights by easement pursuant to the exercise of the power of eminent domain.

4. *Special circumstances.*

a. A railroad or public utility that believes special circumstances exist for a particular crossing may petition the board for relief.

(1) If a petition for relief is filed, the board shall determine whether special circumstances exist that necessitate either a modification of the direct expenses to be paid, or the need for additional terms and conditions.

(2) The board may make any necessary findings of fact and determinations related to the existence of special circumstances, as well as any relief to be granted.

(3) A determination of the board, except for a determination on the issue of damages for the rights granted to a public utility with respect to a crossing, shall be considered final agency action subject to judicial review under chapter 17A.

(4) The board shall assess the costs associated with a petition for relief equitably against the parties.

b. A railroad or public utility that claims to be aggrieved by a determination of the board on the issue of damages for the rights granted to a public utility with respect to a crossing may seek judicial review as provided in subsection 5.

#### 5. Appeals.

a. A railroad or public utility that claims to be aggrieved by the board's determination of damages for rights granted to a public utility may appeal the board's determination to the district court in the same manner as provided in section 6B.18 and sections 6B.21 through 6B.23. In any appeal of the determination of damages, the public utility shall be considered the applicant, and the railroad shall be considered the condemnee. References in sections 6B.18 and 6B.21 to "*compensation commission*" mean the board as defined in this section, or appointees of the board.

b. An appeal of any determination of the board other than the issues of damages for rights granted to a public utility shall be pursuant to chapter 17A.

#### 6. Authority to cross — emergency relief.

a. Pending board resolution of a claim of special circumstances raised in a petition, a public utility may, upon securing the payment of any damages, and upon submission of completed engineering specifications to the railroad, proceed with a crossing in accordance with the rules adopted by the board, unless the board, upon application for emergency relief, determines that there is a reasonable likelihood that either of the following conditions exist:

(1) That the proposed crossing involves a significant and imminent likelihood of danger to the public health or safety.

(2) That the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

b. If the board determines that there is a reasonable likelihood that the proposed crossing meets either condition, then the board shall immediately intervene to prevent the crossing until a factual determination is made.

7. *Conflicting provisions.* Notwithstanding any provision of the Code to the contrary, this section shall apply in all crossings of railroad rights-of-way involving a public utility as defined in this section, and shall govern in the event of any conflict with any other provision of law.

2001 Acts, ch 138, §1, 2; 2002 Acts, ch 1119, §62; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2011 Acts, ch 25, §143

Code editor directive applied

### 476.42 Definitions.

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

1. a. "*Alternate energy production facility*" means any or all of the following:

(1) A solar, wind turbine, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or woodburning facility. For purposes of this definition only, "*waste management*" includes a facility using plasma gasification to produce synthetic gas, either as a stand-alone fuel or for blending with natural gas, the output of which is used to generate electricity or steam. For purposes of this definition only, "*plasma gasification*" means the thermal dissociation of carbonaceous material into fragments of compounds in an oxygen-starved environment.

(2) Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.

(3) Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

b. A facility which is a qualifying facility under 18 C.F.R. pt. 292, subpt. B is not precluded from being an alternate energy production facility under this division.

2. “*Electric utility*” means a public utility that furnishes electricity to the public for compensation.

3. “*Next generating plant*” means an electric utility’s assumed next coal-fired base load electric generating plant, whether planned or not, based on current technology and undiscounted current cost.

4. a. “*Small hydro facility*” means any or all of the following:

(1) A hydroelectric facility at a dam.

(2) Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.

(3) Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

b. A facility which is a qualifying facility under 18 C.F.R. pt. 292, subpt. B is not precluded from being a small hydro facility under this division.

83 Acts, ch 182, §3; 90 Acts, ch 1252, §31 – 33; 92 Acts, ch 1017, §1; 2010 Acts, ch 1061, §180; 2011 Acts, ch 25, §125; 2011 Acts, ch 77, §1

See Code editor’s note on simple harmonization  
Subsections 1 and 4 amended

#### **476.51 Civil penalty.**

1. A public utility which, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one hundred dollars nor more than two thousand five hundred dollars per violation.

2. A public utility which willfully, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one thousand dollars nor more than ten thousand dollars per violation. For the purposes of this section, “*willful*” means knowing and deliberate, with a specific intent to violate.

3. Each violation is a separate offense. In the case of a continuing violation, each day a violation continues, after the time specified for compliance in the written notice by the board, is a separate and distinct offense. Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the appropriateness of the penalty in relation to the size of the public utility, the gravity of the violation, and the good faith of the public utility in attempting to achieve compliance following notification of a violation, and any other relevant factors.

4. The written notice given by the board to a public utility under this section shall specify an appropriate time for compliance.

5. Civil penalties collected pursuant to this section from utilities providing water, electric, or gas service shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the division of community action agencies of the department of human rights. Civil penalties collected pursuant to this section from utilities providing telecommunications service shall be forwarded to the treasurer of state to be credited to the department of commerce revolving fund created in section 546.12 to be used only for consumer education programs administered by the board. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility’s costs when determining the utility’s revenue requirement, and shall not be included either directly or indirectly in the utility’s rates or charges to customers.

83 Acts, ch 127, §34; 88 Acts, ch 1134, §92; 91 Acts, ch 260, §1238; 92 Acts, ch 1084, §1; 94 Acts, ch 1107, §81; 2003 Acts, ch 126, §4; 2009 Acts, ch 181, §48

2011 repeal of 2009 Acts, ch 181, §48, amendment to subsection 5 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

**476.53A Renewable electric power generation.**

It is the intent of the general assembly to encourage the development of renewable electric power generation. It is also the intent of the general assembly to encourage the use of renewable power to meet local electric needs and the development of transmission capacity to export wind power generated in Iowa.

2011 Acts, ch 115, §1

NEW section

**476.55 Complaint of antitrust activities.**

1. An application for new or changed rates, charges, schedules, or regulations filed under this chapter, or an application for a certificate or an amendment to a certificate submitted under chapter 476A, by an electric transmission line utility or a gas pipeline utility or a subsidiary of either shall not be approved by the board if, upon complaint by an Iowa electric or gas utility, the board finds activities which create or maintain a situation inconsistent with antitrust laws and the policies which underlie them. The board may grant the rate or facility certification request once it determines that those activities which led to the antitrust complaint have been eliminated. However, this subsection does not apply to an application for new or changed rates, charges, schedules, or regulations after the expiration of the ten-month limitation and applicable extensions.

2. a. Notwithstanding section 476.1D, the board may receive a complaint from a local exchange carrier that another local exchange carrier has engaged in an activity that is inconsistent with antitrust laws and the policies which underlie them. For purposes of this subsection, “*local exchange carrier*” means the same as defined in section 476.96 and includes a city utility authorized pursuant to section 388.2 to provide local exchange services. If, after notice and opportunity for hearing, the board finds that a local exchange carrier has engaged in an activity that is inconsistent with antitrust laws and the policies which underlie them, the board may order any of the following:

(1) The local exchange carrier to adjust retail rates in an amount sufficient to correct the antitrust activity.

(2) The local exchange carrier to pay any costs incurred by the complainant for the pursuit of the complaint.

(3) The local exchange carrier to pay a civil penalty.

(4) Either the local exchange carrier or the complainant to pay the costs of the complaint proceeding before the board, and the other party’s reasonable attorney fees.

b. This subsection shall not be construed to modify, restrict, or limit the right of a person to bring a complaint under any other provision of this chapter.

83 Acts, ch 127, §38; 2005 Acts, ch 9, §2; 2011 Acts, ch 25, §143

Code editor directive applied

**476.63 Energy efficiency programs.**

The division shall consult with the economic development authority in the development and implementation of public utility energy efficiency programs.

89 Acts, ch 297, §13; 90 Acts, ch 1252, §39; 2009 Acts, ch 108, §39, 41; 2011 Acts, ch 118, §50, 89

Code editor directive applied

**476.87 Certification of competitive natural gas providers.**

1. The board shall certify all competitive natural gas providers and aggregators providing natural gas services in this state. In an application for certification, a competitive natural gas provider or aggregator must reasonably demonstrate managerial, technical, and financial capability sufficient to obtain and deliver the services such provider or aggregator proposes to offer. The board may establish reasonable conditions or restrictions on the certificate at the time of issuance. The board shall adopt rules to establish specific criteria for certification. The board shall make a determination on an application for certification within ninety days of its submission, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days.

2. The board may resolve disputes involving the provision of natural gas services by a competitive natural gas provider or aggregator.

3. The board shall allocate the costs and expenses reasonably attributable to certification and dispute resolution in this section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and the expenses of certification and dispute resolution shall be remitted to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

99 Acts, ch 20, §3, 6; 2009 Acts, ch 181, §49

2011 repeal of 2009 Acts, ch 181, §49, amendment to subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

#### **476.97 Price regulation.**

1. Notwithstanding contrary provisions of this chapter relating to rate regulation, the board may approve a plan for price regulation submitted by a rate-regulated local exchange carrier. The plan for price regulation is not effective until the approval by the board of tariffs implementing the unbundling of essential facilities pursuant to section 476.101, subsection 4, except for a local exchange carrier with less than seventy-five thousand access lines whose plan for price regulation will be effective concurrent with the approval of its plan. The board may approve a plan for price regulation prior to the adoption of rules related to the unbundling of essential facilities or concurrent with a rate proceeding under section 476.3, 476.6, or 476.7. During the term of the plan, the board shall regulate the prices of the local exchange carrier's basic and nonbasic communications services pursuant to the requirements of the price regulation plan approved by the board. The local exchange carrier shall not be subject to rate of return regulation during the term of the plan.

2. The board, after notice and opportunity for hearing, may approve, modify, or reject the plan. The board shall approve, modify, or reject the plan by no later than ninety days after the date the plan is filed. The local exchange carrier shall have ten days to accept or reject any board modifications to its plan. If the local exchange carrier rejects a modification to its plan, the board shall reject the plan without prejudice to the local exchange carrier to submit another plan.

3. A price regulation plan, at a minimum, shall include provisions, consistent with the provisions of this section and any rules adopted by the board, for the following:

a. (1) Establishing and changing prices, terms, and conditions for basic communications services. The initial plan for price regulation must include a proposal, which the board shall approve, for reducing the local exchange carrier's average intrastate access service rates to the local exchange carrier's average interstate access service rates in effect as of the last day of the calendar year immediately preceding the date of filing of the plan, as follows:

(a) A local exchange carrier with five hundred thousand or more access lines in this state shall reduce its average intrastate access service rates by at least one hundred percent of the difference between average intrastate access service rates and average interstate access service rates as of the date that the plan becomes effective.

(b) A local exchange carrier with fewer than five hundred thousand but seventy-five thousand or more access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates in increments of at least twenty-five percent, with the initial reduction to take effect on approval of the plan and equal annual reductions on each anniversary of the approval during the first three years that its plan is in effect.

(c) A local exchange carrier with fewer than seventy-five thousand access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates with equal annual reductions during a period beginning no more than two years and ending no more than five years from the plan's inception.

(2) The board, during the term of the plan for a local exchange carrier with five hundred thousand or more access lines in this state, may consider further reductions toward economic costs in the local exchange carrier's average intrastate access service rates. The board may

consider offsetting such reductions by an explicit subsidy replacement to the extent that such offsets are competitively neutral. In determining economic costs of access service the board shall consider all relevant costs of the service including shared and common costs of the local exchange carrier.

(3) This section shall not be construed to do either of the following:

(a) Prohibit an additional decrease in a carrier's average intrastate access service rate during the term of the plan.

(b) Permit any increase in a carrier's average intrastate access service rates during the term of the plan.

(4) (a) The plan shall also provide that the initial prices for basic communications services shall be three percent less than the rates approved and in effect at the time the local exchange carrier files its plan. A local exchange carrier which elects to reduce its rates by three percent shall not, at a later time, increase its rates for basic communications services as a result of the carrier's compliance with the board's rules relating to unbundling. In lieu of the three percent reduction, and prior to the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier may request and the board may establish a regulated revenue requirement in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995. After the determination of the local exchange carrier's regulated revenue requirement pursuant to the rate proceeding, the local exchange carrier shall not immediately implement rates designed to recover that regulated revenue requirement. Following the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier shall commence a tariff proceeding for the approval of tariffs implementing such unbundling. The board has six months to complete this tariff proceeding and determine the local exchange carrier's final unbundled rates. The local exchange carrier shall carry forward the regulated revenue requirement determined by the board pursuant to the rate proceeding and design rates that comply with the board's rules relating to unbundling that recover the regulated revenue requirement, and that implement the board's approved rate design established in the tariff proceeding.

(b) In lieu of taking the three percent reduction, a local exchange carrier that submits a plan for price regulation after the board adopts rules relating to unbundling may file a rate proceeding under section 476.3 or 476.6 and the board may approve rates designed to comply with those rules which allow the carrier to recover the established regulated revenue requirement and that implement the board's approved rate design established in the tariff proceeding.

(5) The plan shall provide for both increases and decreases in the prices for basic communications services reflecting annual changes in inflation. Initially, the board shall use the gross domestic product price index, as published by the federal government, for an inflation measure. The board by rule may adopt a more current measure of inflation. Any plan in effect as of July 1, 2003, that contains a productivity factor shall strike the productivity factor on a prospective basis.

(6) The plan may provide that price increases for basic communications services which are permitted under this section may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this section shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier.

b. Establishing and changing prices, terms, and conditions for nonbasic communications services.

c. Reporting new service offerings to the board.

d. Reflecting in rates any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier.

e. Providing notice to customers, the board, and the consumer advocate of changes in prices, terms, or conditions for basic and nonbasic communications services.

4. The board shall consider the extent to which a proposed plan complies with the requirements of subsection 3 and achieves the following:

- a. Just, nondiscriminatory, and reasonable rates.
- b. High quality, universally available communications services.
- c. Encouragement of investment in communications infrastructure, efficiency improvements, and technological innovation.
- d. The introduction of new communications products and services from a variety of sources.

e. Regulatory efficiency including reduction of regulatory costs and delays. A plan shall not provide for waiver of, release from, or delay in implementing the provisions of this section, section 476.101 or 476.102 or any rules adopted by the board pursuant to those sections.

5. Notwithstanding an approved plan for price regulation, the board shall continue to have regulatory authority over the following:

a. The level, extent, and timing of the unbundling of essential facilities offered by a local exchange carrier.

b. Ensuring against cross-subsidization between nonbasic communications services and basic communications services.

6. Any person, including the consumer advocate, a body politic, or the board on its own motion, may file a written complaint pursuant to section 476.3, subsection 1, regarding a local exchange carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan.

7. The consumer advocate may represent consumers before the board regarding any rule, order, or proceeding pertaining to price regulation. The consumer advocate may act as attorney for and represent consumers generally before any state or federal court concerning a board rule, order, or proceeding pertaining to price regulation.

8. In implementing price regulation, the board shall consider competitively neutral methods to assist lower-income Iowans to secure and retain telephone services.

9. The board shall determine the duration of any plan. The board shall review a local exchange carrier's operation under its plan, with notice and an opportunity for hearing, within four years of the initiation of the plan and prior to the termination of the plan. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to a local exchange carrier's plan as a result of the review, except that such modifications shall not require a reduction in the rates for any basic communications service.

10. The board, in determining whether to file a written complaint pursuant to subsection 6 or prior to reviewing a local exchange carrier's operation pursuant to subsection 9, may request that such carrier provide any information which the board deems necessary to make such determination or conduct such review. The carrier shall provide the requested information upon receipt of the request from the board.

11. a. Notwithstanding subsections 1 through 10, a local exchange carrier with fewer than five hundred thousand access lines in this state shall have the option to be regulated pursuant to subsections 1 through 10 or pursuant to this subsection. A local exchange carrier which elects to become price-regulated under this subsection shall also be subject to subsections 5 through 8 and subsection 10 in the same manner as a local exchange carrier which operates under an approved plan of price regulation submitted pursuant to subsection 1.

b. A local exchange carrier which elects to become price-regulated under this subsection shall give written notice to the board of such election not less than thirty days prior to the date such regulation is to commence.

c. Upon election of a local exchange carrier to become price-regulated under this subsection, the carrier shall reduce its rates for basic local telephone service an average of three percent. In lieu of the three percent reduction, the local exchange carrier may establish its rates for basic local telephone service in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995.

d. Initial prices for basic communications services, other than basic local telephone

service, shall be set at the rates in effect as of the first of July prior to the date such regulation is to commence.

e. (1) A price-regulated local exchange carrier shall not increase its rates for basic communications services for a period of twelve months after electing to become price-regulated. To the extent necessary, rates for basic services may be increased to carry out the purpose of any rules that may be adopted by the board relating to the terms and conditions of unbundled services and interconnection. A price-regulated local exchange carrier may increase its rates for basic communications services following the initial twelve-month period to the extent that the change in its aggregate revenue weighted prices does not exceed the most recent annual change in the gross domestic product price index, as published by the federal government. If application of that formula achieves a negative result, prices shall be reduced so that the cumulative price change for basic services, including prior price reductions in these services, achieves the negative result. The board by rule may adopt different measures of inflation if they are found to be more reflective of the individual price-regulated carriers.

(2) Price increases for basic communications services which are permitted under this subsection may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this subsection shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier. A rate change pursuant to this subsection may take effect thirty days after the notification of the board and consumers.

(3) A price-regulated local exchange carrier shall not increase its aggregate revenue weighted prices for nonbasic communications services more than six percent in any twelve-month period.

(4) A price-regulated local exchange carrier may reduce the price for any basic communications service, to an amount not less than the total service long-run incremental cost for such service on one day's notice filed with the board. For purposes of this subsection, "*total service long-run incremental costs*" means the difference between the company's total cost and the total cost of the company less the applicable service, feature, or function.

(5) A price-regulated local exchange carrier may offer new service alternatives for any basic communications services on thirty days prior notice to the board, provided that the preexisting basic communications service rate structure continues to be offered to customers. New telecommunications services shall be considered nonbasic communications services as defined in section 476.96, subsection 6.

(6) A price-regulated local exchange carrier must reduce the average intrastate access service rates to the carrier's average interstate access service rates. Such carrier shall reduce the average intrastate access service rates by at least twenty-five percent of the difference of such rates within ninety days of the election to be price-regulated and twenty-five percent each of the next three years.

f. A local exchange carrier shall notify customers of a rate change under this subsection at least thirty days prior to the effective date of the rate change.

g. A local exchange carrier which elects to become price-regulated under this subsection shall also be subject to the following:

(1) The local exchange carrier shall not be subject to rate-of-return regulation while operating under price regulation.

(2) All regulated services shall be provided pursuant to board-approved tariffs.

(3) All new regulated service offerings shall be reported to the board.

(4) Rates may be adjusted by the board to reflect any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier, including, but not limited to, the effects of local competition. The board shall have one hundred eighty days to consider rate changes proposed under this subparagraph, but for

good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days.

*h.* (1) The board may review a local exchange carrier's operation under this subsection, with notice and an opportunity for hearing, after four years of the carrier's election to be price-regulated. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to the price regulation requirements in this subsection as a result of the specific carrier review, with the following limitations:

(a) Such modifications shall not require a reduction in the rates for any basic communications service or a return to rate-base, rate-of-return regulation.

(b) Such proposals for modifications under this paragraph "h" are limited to no more than one every three years.

(2) The board shall approve, or approve subject to modification, a proposal for modification within one hundred eighty days of filing, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days. Reasonable modifications may include increases without offsetting decreases in any rate for basic and nonbasic communications service of the carrier. In reviewing the carrier's proposal, the board shall consider, but not be limited to, potential rate consolidations, the impact of competition or other external factors since election of price regulation, the impact of the proposal on the carrier's ability to attract capital, and the impact of the proposal on the ability of the carrier to deploy advanced telecommunications services.

*i.* This subsection shall not be construed to prohibit an additional decrease or to permit any increase in a local exchange carrier's average intrastate access service rates during the term of the local exchange carrier's operation under price regulation.

*j.* (1) Upon the request of a local exchange carrier, the board shall, when required by this subsection, grant the carrier temporary authority to place in effect seventy-five percent, or such lesser amount as the carrier may request, of the requested increases in rates, charges, schedules, or regulations by filing with the board a bond conditioned upon the refund in a manner to be prescribed by the board of any amounts collected from any customer class in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. The board shall approve a request for temporary authority within thirty days after the date of filing of the request. The decision shall be effective immediately.

(2) The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is one percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

*k.* The board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and consumer advocate deem necessary to review a local exchange carrier's operations, proposal for modifications, rate change proposal, or proposed changes in aggregate revenue weighted prices pursuant to this subsection. Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this subsection. The costs of the additional staff and services shall be assessed to the local exchange carrier pursuant to the procedures in sections 475A.6 and 476.10.

95 Acts, ch 199, §8; 98 Acts, ch 1151, §1 - 3; 2002 Acts, ch 1060, §1 - 5; 2002 Acts, ch 1175, §36; 2003 Acts, ch 126, §5, 6; 2005 Acts, ch 9, §3; 2011 Acts, ch 25, §143

Code editor directive applied

#### **476.101 Local exchange competition.**

1. A certificate of public convenience and necessity to provide local telephone service shall not be interpreted as conveying a monopoly, exclusive privilege, or franchise. A competitive local exchange service provider shall not be subject to the requirements of this

chapter, except that a competitive local exchange service provider shall obtain a certificate of public convenience and necessity pursuant to section 476.29, file tariffs, notify affected customers prior to any rate increase, file reports, information, and pay assessments pursuant to section 476.2, subsection 4, and sections 476.9, 476.10, 476.16, 476.102, and 477C.7, and shall be subject to the board's authority with respect to adequacy of service, interconnection, discontinuation of service, civil penalties, and complaints. If, after notice and opportunity for hearing, the board determines that a competitive local exchange service provider possesses market power in its local exchange market or markets, the board may apply such other provisions of this chapter to a competitive local exchange service provider as it deems appropriate.

2. The duty of a local exchange carrier includes the duty, in accordance with requirements prescribed by the board pursuant to subsection 3 and other laws, to provide equal access to, and interconnection with, its facilities so that its network is fully interoperable with the telecommunications services and information services of other providers, and to offer unbundled essential facilities.

3. *a.* A local exchange carrier shall provide reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier to which reasonable access is necessary to a competitive local exchange service provider in order for a competitive local exchange service provider to provide service and is feasible for the local exchange carrier.

*b.* Upon application of a local exchange carrier or a competitive local exchange service provider, the board shall determine any matters concerning reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier upon which agreement cannot be reached, including but not limited to, matters regarding valuation, space, and capacity restraints, and compensation for access.

4. *a.* Prior to September 1, 1995, the board shall initiate a rulemaking proceeding to adopt rules that satisfy the requirements enumerated in subparagraphs (1) through (4). The rulemaking proceeding shall be completed as promptly as possible. The board, upon petition or on its own motion, may conduct a separate evidentiary hearing on the same or related subjects. The evidence from a hearing may be considered by the board during the rulemaking proceeding, provided that the board announces its intention to do so prior to the oral presentation in the rulemaking proceeding. The rules shall do the following:

(1) Require a local exchange carrier to provide unbundled essential facilities of its network, and allow reasonable and nondiscriminatory equal access to, use of, and interconnection with, those unbundled essential facilities on reasonable, cost-based, and tariffed terms and conditions. The board's rules must require a local exchange carrier, including those operating under a plan of price regulation, to file tariffs implementing the unbundled essential facilities within ninety days of the board's final order adopting such rules, except for local exchange carriers with less than seventy-five thousand access lines which must file such tariffs within two years of July 1, 1995. Such access, use, and interconnection shall be on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates for the provision of local exchange, access, and toll services. This subsection shall not be construed to establish a presumption as to the level of interconnection charges, if any, to be determined by the board pursuant to subparagraph (2).

(2) Establish reciprocal cost-based compensation for termination of telecommunications services between local exchange carriers and competitive local exchange service providers.

(3) Require local exchange carriers to make interim number portability available on request of a competitive local exchange service provider, and to implement provider number portability as soon as the availability of necessary technology makes provider number portability economically and technically feasible, as determined by the board. The rules shall also devise a reasonable and nondiscriminatory mechanism for the recovery of all recurring and nonrecurring costs of interim and provider number portability.

(4) Develop the cost methodology appropriate for a competitive telecommunications environment.

*b.* The rules adopted in paragraph "a", subparagraphs (2) and (3), do not apply to local

exchange carriers with less than seventy-five thousand access lines until a competitive local exchange service provider has filed for a certificate to provide basic communications services in an exchange or exchanges of the local exchange carrier, or the board determines that competitive necessity requires the implementation of the rules in paragraph “a”, subparagraphs (2) and (3), by the local exchange carrier.

5. Local exchange carriers shall file tariffs or price lists in accordance with board rules with respect to the services, features, functions, and capabilities offered to comply with board rules on unbundling of essential facilities and interconnection. Local exchange carriers shall submit with the tariffs or price lists for basic communications services and toll services supporting information that is sufficient for the board to determine the relationship between the proposed charges and the costs of providing such services, features, functions, or capabilities, including the imputed cost of intrastate access service rates in toll service rates pursuant to existing board orders. The board shall review the tariffs or price lists to ensure that the charges are cost-based and that the terms and conditions contained in the tariffs or price lists unbundle any essential facilities in accordance with the board’s rules and any other applicable laws.

6. This section shall not be construed to prohibit the board from enforcing rules or orders entered in contested cases pending on July 1, 1995, to the extent that such rules and orders are consistent with the provisions of this section.

7. Except as provided under section 476.29, subsection 2, and this section, the board shall not impose or allow a local exchange carrier to impose restrictions on the resale of local exchange services, functions, or capabilities. The board may prohibit residential service from being resold as a different class of service.

8. Any person may file a written complaint with the board requesting the board to determine compliance by a local exchange carrier with the provisions of sections 476.96 through 476.100, 476.102, and this section, or any board rules implementing those sections. Upon the filing of such complaint, the board may promptly initiate a formal complaint proceeding and give notice of the proceeding and the opportunity for hearing. The formal complaint proceeding may be initiated at any time by the board on its own motion. The board shall render a decision in the proceeding within ninety days after the date the written complaint was filed.

9. A telecommunications carrier, as defined in the federal Telecommunications Act of 1996, shall not do any of the following:

- a. Use customer information in a manner which is not in compliance with 47 U.S.C. § 222.
- b. Disparage the services offered by another telecommunications carrier through false or misleading statements.
- c. Take any action that disadvantages a customer who has chosen to receive services from another telecommunications carrier.

10. In a proceeding associated with the granting of a certificate under section 476.29, approving maps and tariffs for competitive local exchange providers provided for in this section, or in resolving a complaint filed pursuant to subsection 8 and proceedings under 47 U.S.C. § 251 – 254, the board shall allocate the costs and expenses of the proceedings to persons identified as parties in the proceeding who are engaged in or who seek to engage in providing telecommunications services or other persons identified as participants in the proceeding. The funds received for the costs and the expenses shall be remitted to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

95 Acts, ch 199, §12; 98 Acts, ch 1151, §5; 99 Acts, ch 20, §4, 6; 2009 Acts, ch 181, §50

2011 repeal of 2009 Acts, ch 181, §50, amendment to subsection 10 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

#### **476.103 Unauthorized change in service — civil penalty.**

1. Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.

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

a. “*Change in service*” means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. “*Consumer*” means a person other than a service provider who uses a telecommunications service.

c. “*Executing service provider*” means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider.

d. “*Service provider*” means a person providing a telecommunications service.

e. “*Submitting service provider*” means a service provider who requests another service provider to execute a change in service.

f. “*Telecommunications service*” means a local exchange or long distance telephone service other than commercial mobile radio service.

3. The board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service. The rules, at a minimum, shall provide for all of the following:

a. (1) A submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service.

(2) Verification appropriate under the circumstances for all other changes in service.

(3) The verification may be in written, oral, or electronic form and may be performed by a qualified third party.

(4) The reasonable time period during which the verification is to be retained, as determined by the board.

b. A customer shall be notified of any change in service.

c. Appropriate compensation for a customer affected by an unauthorized change in service.

d. Board determination of potential liability, including assessment of damages, for unauthorized changes in service among the customer, previous service provider, executing service provider, and submitting service provider.

e. A provision encouraging service providers to resolve customer complaints without involvement of the board.

f. The prompt reversal of unauthorized changes in service.

g. Procedures for a customer, service provider, or the consumer advocate to submit to the board complaints of unauthorized changes in service.

4. a. In addition to any applicable civil penalty set out in section 476.51, a service provider who violates a provision of this section, a rule adopted pursuant to this section, or an order lawfully issued by the board pursuant to this section, is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

b. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. A civil penalty collected pursuant to this subsection shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the department of commerce revolving fund created in section 546.12 and to be used only for consumer education programs administered by the board.

d. A penalty paid by a rate-of-return regulated utility pursuant to this section shall be excluded from the utility’s costs when determining the utility’s revenue requirement, and shall not be included either directly or indirectly in the utility’s rates or charges to its customers.

e. The board shall not commence an administrative proceeding to impose a civil penalty

under this section for acts subject to a civil enforcement action pending in court under section 714D.7.

5. If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to this section, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph “a” or “b” to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

6. The board has primary jurisdiction over a complaint pursuant to this section initiated by a service provider.

7. Subsection 6 does not preclude proceedings before the federal communications commission to enforce applicable federal law. However, a service provider or a consumer, for the same alleged acts, shall not pursue a complaint both before the federal communications commission and pursuant to this section.

8. The board shall adopt competitively neutral rules establishing procedures for the solicitation, imposition, and lifting of preferred carrier freezes. A valid preferred carrier freeze prevents a change in service unless the subscriber gives the service provider from whom the freeze was requested the subscriber’s express consent.

99 Acts, ch 16, §1; 2009 Acts, ch 181, §51

2011 repeal of 2009 Acts, ch 181, §51, amendment to subsection 4, paragraph c, stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 476A

### ELECTRIC POWER GENERATION AND TRANSMISSION

#### SUBCHAPTER I

#### ELECTRIC POWER GENERATING FACILITIES

##### **476A.14 Penalties.**

1. Any person who commences to construct a facility as provided in this subchapter without having first obtained a certificate, or who constructs, operates, or maintains any facility other than in compliance with a certificate issued by the board or a certificate amended pursuant to this subchapter, or who causes any of these acts to occur, shall be liable for a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12.

2. The district court shall have exclusive jurisdiction to grant restraining orders and temporary or permanent injunctive relief as may be necessary to obtain compliance with this subchapter.

3. Persons convicted of violating any provision of this subchapter shall be guilty of a simple misdemeanor.

[C77, 79, 81, §476A.14]

2001 Acts, 1st Ex, ch 4, §35, 36; 2009 Acts, ch 181, §52

2011 repeal of 2009 Acts, ch 181, §52, amendment to subsection 1 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 476B

### WIND ENERGY PRODUCTION TAX CREDIT

#### **476B.5 Determination of eligibility.**

1. An owner may apply to the board for a written determination regarding whether a facility is a qualified facility by submitting to the board a written application containing all of the following:

- a. Information regarding the ownership of the facility including the percentage of equity interest held by each owner.
- b. The nameplate generating capacity of the facility.
- c. Information regarding the facility's initial placement in service.
- d. Information regarding the type of facility.
- e. Except when electricity is used for on-site consumption, a copy of an executed power purchase agreement or other agreement to purchase electricity upon completion of the project. An executed interconnection agreement or transmission service agreement shall be accepted by the board under this paragraph if the owner of the facility has agreed to sell electricity from the facility directly or indirectly to a wholesale power pool market.
- f. Any other information the board may require.

2. The board shall review the application and supporting information and shall make a preliminary determination regarding whether the facility is a qualified facility. The board shall notify the applicant of the approval or denial of the application within thirty days of receipt of the application and information required. If the board fails to notify the applicant of the approval or denial within thirty days, the application shall be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within thirty days from the date of the denial pursuant to the provisions of chapter 17A. In the absence of a timely appeal, the preliminary determination shall be final. If the application is incomplete, the board may grant an extension of time for the provision of additional information.

3. A facility that is not operational within eighteen months after issuance of an approval for the facility by the board shall cease to be a qualified facility. However, a facility that is approved as qualified under this section but is not operational within eighteen months due to the unavailability of necessary equipment shall be granted an additional twelve months to become operational. A facility that is granted and thereafter loses approval may reapply to the board for a new determination.

4. The maximum amount of nameplate generating capacity of all qualified facilities the board may find eligible under this chapter shall not exceed fifty megawatts of nameplate generating capacity.

5. An owner shall not be an owner of more than two qualified facilities.

2004 Acts, ch 1175, §413, 418; 2005 Acts, ch 179, §166; 2006 Acts, ch 1135, §2, 3, 12; 2008 Acts, ch 1128, §8, 15; 2009 Acts, ch 80, §3; 2011 Acts, ch 115, §2, 13

2008 amendment to subsection 1, paragraph e, takes effect May 1, 2008, and applies retroactively to tax years beginning on or after January 1, 2008; 2008 Acts, ch 1128, §15

Subsection 4 amended

## CHAPTER 476C

### RENEWABLE ENERGY TAX CREDIT

#### **476C.1 Definitions.**

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

1. "*Anaerobic digester system*" means a system of components that processes plant or animal materials based on the absence of oxygen and produces methane or other biogas used to generate electricity, hydrogen fuel, or heat for a commercial purpose.

2. “*Biogas recovery facility*” means an anaerobic digester system that is located in this state.

3. “*Biomass conversion facility*” means a facility in this state that converts plant-derived organic matter including, but not limited to, agricultural food and feed crops, crop wastes and residues, wood wastes and residues, or aquatic plants to generate electricity, hydrogen fuel, or heat for a commercial purpose.

4. “*Board*” means the utilities board within the utilities division of the department of commerce.

5. “*Department*” means the department of revenue.

6. “*Eligible renewable energy facility*” means a wind energy conversion facility, a biogas recovery facility, a biomass conversion facility, a methane gas recovery facility, a solar energy conversion facility, or a refuse conversion facility that meets all of the following requirements:

a. Is located in this state.

b. Is at least fifty-one percent owned by one or more of any combination of the following:

(1) A resident of this state.

(2) Any of the following as defined in section 9H.1:

(a) An authorized farm corporation.

(b) An authorized limited liability company.

(c) An authorized trust.

(d) A family farm corporation.

(e) A family farm limited liability company.

(f) A family trust.

(g) A revocable trust.

(h) A testamentary trust.

(3) A small business as defined in section 15.102.

(4) An electric cooperative association organized pursuant to chapter 499 that sells electricity to end users located in this state.

(5) An electric cooperative association that has one or more members organized pursuant to chapter 499.

(6) A cooperative corporation organized pursuant to chapter 497 or a limited liability company organized pursuant to chapter 489 whose shares and membership are held by an entity that is not prohibited from owning agricultural land under chapter 9H.

(7) A school district located in this state.

c. Has at least one owner that meets the requirements of paragraph “b” for each two and one-half megawatts of nameplate generating capacity or the energy production capacity equivalent for hydrogen fuel or heat for a commercial purpose of the otherwise eligible renewable energy facility.

d. Was initially placed into service on or after July 1, 2005, and before January 1, 2015.

e. For applications filed on or after July 1, 2011, is a facility of not less than three-fourths megawatts of nameplate generating capacity or the energy production capacity equivalent if all or a portion of the renewable energy produced is for on-site consumption by the producer.

f. For applications filed on or after July 1, 2011, except for wind energy conversion facilities, is a facility of no greater than sixty megawatts of nameplate generating capacity or the energy production capacity equivalent.

7. “*Energy production capacity equivalent*” means the amount of energy in a standard cubic foot of hydrogen gas or the number of British thermal units that are equal to the energy in a kilowatt-hour of electricity. For the purposes of this chapter, one kilowatt-hour shall be deemed equivalent to three thousand three hundred thirty-three British thermal units of heat or ten and forty-five one hundredths of standard cubic feet of hydrogen gas.

8. “*Heat for a commercial purpose*” means the heat in British thermal unit equivalents from refuse-derived fuel, methane, or other biogas produced in this state either for commercial use by a producer for on-site consumption or sold to a purchaser of renewable energy for use for a commercial purpose in this state or for use by an institution in this state.

9. “*Hydrogen fuel*” means hydrogen produced in this state from a renewable source that is used in a fuel cell or hydrogen-powered internal combustion engine.

10. “*Methane gas recovery facility*” means a facility in this state which is used in

connection with a sanitary landfill or which uses wastes that would otherwise be deposited in a sanitary landfill, that collects methane gas or other gases and converts the gas into energy to generate electricity, hydrogen fuel, or heat for a commercial purpose.

11. “*Producer of renewable energy*” means a person who owns an eligible renewable energy facility.

12. “*Purchaser of renewable energy*” means a person who buys electric energy, hydrogen fuel, methane gas or other biogas used to generate electricity, or heat for a commercial purpose from an eligible renewable energy facility.

13. “*Refuse conversion facility*” means a facility in this state that converts solid waste into fuel that can be burned to generate heat for a commercial purpose in this state.

14. “*Solar energy conversion facility*” means a solar energy facility in this state that collects and converts incident solar radiation into energy to generate electricity.

15. “*Wind energy conversion facility*” means a wind energy conversion system in this state that collects and converts wind into energy to generate electricity.

2005 Acts, ch 160, §7, 14; 2006 Acts, ch 1135, §5 – 8, 12; 2008 Acts, ch 1162, §136, 154, 155; 2011 Acts, ch 115, §3 – 5; 2011 Acts, ch 118, §33, 89

Subsection 6, paragraph d amended  
Subsection 6, NEW paragraphs e and f  
Subsection 8 amended

#### **476C.2 Tax credit amount — limitations.**

1. A producer or purchaser of renewable energy may receive renewable energy tax credits under this chapter in an amount equal to one and one-half cents per kilowatt-hour of electricity, or four dollars and fifty cents per million British thermal units of heat for a commercial purpose, or four dollars and fifty cents per million British thermal units of methane gas or other biogas used to generate electricity, or one dollar and forty-four cents per one thousand standard cubic feet of hydrogen fuel generated by and purchased from an eligible renewable energy facility or used for on-site consumption by the producer.

2. The renewable energy tax credit shall not be allowed for any kilowatt-hour of electricity, British thermal unit of heat for a commercial purpose, British thermal unit of methane gas or other biogas used to generate electricity, or standard cubic foot of hydrogen fuel that is purchased from an eligible renewable energy facility by a related person. For purposes of this subsection, persons shall be treated as related to each other if either person owns an eighty percent or more equity interest in the other person.

2005 Acts, ch 160, §8, 14; 2011 Acts, ch 115, §6

Subsection 1 amended

#### **476C.3 Determination of eligibility.**

1. A producer or purchaser of renewable energy may apply to the board for a written determination regarding whether a facility is an eligible renewable energy facility by submitting to the board a written application containing all of the following:

a. Information regarding the ownership of the facility including the percentage of equity interest held by each owner.

b. The nameplate generating capacity of the facility or energy production capacity equivalent.

c. Information regarding the facility’s initial placement in service.

d. Information regarding the type of facility and what type of renewable energy the facility will produce.

e. Except when the renewable energy is produced for on-site consumption by the producer, a copy of the power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose which shall designate either the producer or purchaser of renewable energy as eligible to apply for the renewable energy tax credit.

f. Any other information the board may require.

2. The board shall review the application and supporting information and shall make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board shall notify the applicant of the approval or denial of the application

within thirty days of receipt of the application and information required. If the board fails to notify the applicant of the approval or denial within thirty days, the application shall be deemed denied unless the application is placed on a waiting list as described in subsection 5. An applicant who receives a determination denying an application may file an appeal with the board within thirty days from the date of the denial pursuant to the provisions of chapter 17A. In the absence of a timely appeal, the preliminary determination shall be final. If the application is incomplete, the board may grant an extension of time for the provision of additional information.

3. a. A facility that is not operational within thirty months after issuance of an approval for the facility by the board shall cease to be an eligible renewable energy facility. However, a wind energy conversion facility that is approved as eligible under this section but is not operational within eighteen months due to the unavailability of necessary equipment shall be granted an additional twenty-four months to become operational.

b. A facility which notifies the board prior to the expiration of the time periods specified in paragraph "a" that the facility intends to become operational and wishes to preserve its eligibility shall be granted a twelve-month extension. An extension may be renewed for succeeding twelve-month periods if the board is notified prior to the expiration of the extension of the continued intention to become operational during the succeeding period of extension.

c. If the owner of a facility discontinues efforts to achieve operational status, the owner shall notify the board. Upon receipt of such notification, the board shall no longer consider the facility as an eligible renewable energy facility under this chapter.

d. A facility that is granted and thereafter loses approval may reapply to the board for a new determination.

4. a. The maximum amount of nameplate generating capacity of all wind energy conversion facilities the board may find eligible under this chapter shall not exceed three hundred sixty-three megawatts of nameplate generating capacity.

b. The maximum amount of energy production capacity equivalent of all other facilities the board may find eligible under this chapter shall not exceed a combined output of fifty-three megawatts of nameplate generating capacity and one hundred sixty-seven billion British thermal units of heat for a commercial purpose. Of the maximum amount of energy production capacity equivalent of all other facilities found eligible under this chapter, no more than ten megawatts of nameplate generating capacity or energy production capacity equivalent shall be allocated to any one facility. Of the maximum amount of energy production capacity equivalent of all other facilities found eligible under this chapter, fifty-five billion British thermal units of heat for a commercial purpose shall be reserved for an eligible facility that is a refuse conversion facility for processed, engineered fuel from a multicounty solid waste management planning area. The maximum amount of energy production capacity the board may find eligible for a single refuse conversion facility is fifty-five billion British thermal units of heat for a commercial purpose. Of the maximum amount of energy production capacity equivalent of all other facilities found eligible under this chapter, an amount equivalent to ten megawatts of nameplate generating capacity shall be reserved for eligible renewable energy facilities incorporated within or associated with an ethanol cogeneration plant engaged in the sale of ethanol to states to meet a low carbon fuel standard.

5. The board shall maintain a waiting list of facilities that may have been found eligible under this section but for the maximum capacity restrictions of subsection 4. The priority of the waiting list shall be maintained in the order the applications were received by the board. The board shall remove from the waiting list any facility that has subsequently been found ineligible under this chapter. If additional capacity becomes available within the capacity restrictions of subsection 4, the board shall grant approval to facilities according to the priority of the waiting list before granting approval to new applications. An owner of a facility on the waiting list shall provide the board each year by August 31 with a sworn statement of verification stating that the information contained in the application for eligibility remains true and correct or stating that the information has changed and providing the new information.

6. An owner meeting the requirements of section 476C.1, subsection 6, paragraph “b”, shall not be an owner of more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than fifty-one percent in an eligible renewable energy facility shall not have an equity interest greater than ten percent in any other eligible renewable energy facility.

2005 Acts, ch 160, §9, 14; 2006 Acts, ch 1135, §9, 12, 13; 2006 Acts, ch 1171, §8, 9; 2009 Acts, ch 80, §5, 6; 2011 Acts, ch 115, §7 – 9; 2011 Acts, ch 118, §34, 89

Subsection 1, paragraph e amended  
Subsections 3 and 4 amended

#### **476C.4 Tax credit certificate procedure.**

1. A producer or purchaser of renewable energy may apply to the board for the renewable energy tax credit by submitting to the board all of the following:

- a. A completed application in a form prescribed by the board.
- b. A copy of the determination granting approval of the facility as an eligible renewable energy facility by the board.
- c. A copy of a signed power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose from an eligible renewable energy facility which shall designate either the producer or purchaser of renewable energy as eligible to apply for the renewable energy tax credit.
- d. Sufficient documentation that the electricity, heat for a commercial purpose, methane gas or other biogas, or hydrogen fuel has been generated by the eligible renewable energy facility and sold to the purchaser of renewable energy.
- e. To the extent the produced electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose is used for on-site consumption, the requirements of paragraphs “c” and “d” shall not be applicable. For such renewable energy production, the owner must submit a certification under penalty of perjury that the claimed amount of electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose was produced by the eligible facility and consumed by the owner.
- f. Any other information the board deems necessary.

2. The board shall notify the department of the amount of kilowatt-hours, British thermal units of heat for a commercial purpose, British thermal units of methane gas or other biogas used to generate electricity, or standard cubic feet of hydrogen fuel generated and purchased from an eligible renewable energy facility or generated and used by the producer for on-site consumption. The department shall calculate the amount of the tax credit for which the applicant is eligible and shall issue the tax credit certificate for that amount or notify the applicant in writing of its refusal to do so. An applicant whose application is denied may file an appeal with the department within sixty days from the date of the denial pursuant to the provisions of chapter 17A.

3. Each tax credit certificate shall contain the person’s name, address, and tax identification number, the amount of tax credits, the first taxable year the certificate may be used, the type of tax to which the tax credits shall be applied, and any other information required by the department. The tax credit certificate shall only list one type of tax to which the amount of the tax credit may be applied. Once issued by the department, the tax credit certificate shall not be terminated or rescinded.

4. A tax credit certificate may be filed pursuant to any of the following, to the extent applicable:

a. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificate shall be issued directly to equity holders or beneficiaries of the applicant in proportion to their pro rata share of the income of such entity. The applicant shall, in the application made under this section, identify its equity holders or beneficiaries, and the percentage of such entity’s income that is allocable to each equity holder or beneficiary.

b. (1) If the tax credit applicant under this section is eligible to receive renewable

electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, and the tax credit applicant is a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificate may be issued to a partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company in the amounts designated by the eligible partnership, S corporation, or limited liability company. In absence of such designation, the credits under this section shall flow through to the partners, shareholders, or members in accordance with their pro rata share of the income of the entity.

(2) The applicant shall, in the application made under this section, identify the holders or beneficiaries that are to receive the tax credit certificates and the percentage of the tax credit that is allocable to each holder or beneficiary.

c. (1) If an applicant under this section is eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, and the tax credit applicant is a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificates and all future rights to the tax credit in this section may be distributed to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity.

(2) The applicant shall, in the application made under this section, designate the percentage of the tax credit allocable to the liquidating equity holder or beneficiary that is to receive the current and future tax credit certificates under this section.

d. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for the taxes imposed under chapter 422, division V, or under chapter 423, 432, or 437A, the tax credit certificate shall be issued directly to the partnership, limited liability company, S corporation, estate, trust, or other reporting entity.

5. The department shall not issue a tax credit certificate if the facility approved by the board as an eligible renewable energy facility is not operational within eighteen months after the approval is issued, subject to the extension provisions of section 476C.3, subsection 3.

6. The department shall not issue a tax credit certificate to any person who has received a tax credit pursuant to chapter 476B.

7. Once a tax credit certificate is issued pursuant to this section, the tax credit may only be claimed against the type of tax reflected on the certificate.

2005 Acts, ch 160, §10, 14; 2006 Acts, ch 1135, §10, 12; 2011 Acts, ch 25, §143; 2011 Acts, ch 115, §10, 11

Code editor directive applied  
Subsections 1, 2, and 5 amended

#### **476C.5 Certificate issuance period.**

A producer or purchaser of renewable energy may receive renewable energy tax credit certificates for a ten-year period for each eligible renewable energy facility under this chapter. The ten-year period for issuance of the tax credit certificates begins with the date the purchaser of renewable energy first purchases electricity, hydrogen fuel, methane gas or other biogas used to generate electricity, or heat for commercial purposes from the eligible renewable energy facility for which a tax credit is issued under this chapter, or the date the producer of the renewable energy first uses the energy produced by the eligible renewable energy facility for on-site consumption. Renewable energy tax credit certificates shall not be issued for renewable energy purchased or produced for on-site consumption after December 31, 2024.

2005 Acts, ch 160, §11, 14; 2006 Acts, ch 1135, §11, 12; 2011 Acts, ch 115, §12  
Section amended

#### **476C.6 Transferability and use of tax credit certificates — registration.**

1. a. Renewable energy tax credit certificates issued under this chapter may be

transferred to any person. A tax credit certificate shall only be transferred once. However, for purposes of this transfer provision, a decision between a producer and purchaser of renewable energy regarding who claims the tax credit issued pursuant to this chapter shall not be considered a transfer and must be set forth in the application for the tax credit pursuant to section 476C.4. Within thirty days of transfer, the transferee must submit the transferred tax credit certificate to the department along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each new certificate is to carry and any other information required by the department. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required under section 476C.4, subsection 3, and must have the same effective taxable year and the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule shall not be transferable. A tax credit shall not be claimed by a transferee under this chapter until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The replacement tax credit certificate may reflect a different type of tax than the type of tax noted on the original tax credit certificate.

b. The transferee may use the amount of the tax credit transferred against taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. The transferee may claim a refund under chapter 423 or 437A for any tax year within the time period set forth in section 423.47 or 437A.14 for which the original transferor could have claimed the refund. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

2. To claim a renewable energy tax credit under this chapter, a taxpayer must attach one or more tax credit certificates to the taxpayer's tax return, or if used against taxes imposed under chapter 423, the taxpayer shall comply with section 423.4, subsection 4, or if used against taxes imposed under chapter 437A, the taxpayer shall comply with section 437A.17B. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2006. The tax credit certificate or certificates attached to the taxpayer's tax return shall be issued in the taxpayer's name, expire on or after the last day of the taxable year for which the taxpayer is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the taxpayer's tax return. Any tax credit in excess of the taxpayer's tax liability for the taxable year may be credited to the taxpayer's tax liability for the following seven tax years or until the credit is depleted, whichever is earlier. If the tax credit is applied against the taxes imposed under chapter 423 or 437A, any credit in excess of the taxpayer's tax liability is carried over and can be filed with the refund claim for the following seven tax years or until depleted, whichever is earlier. However, the certificate shall not be used to reduce tax liability for a tax period ending after the expiration date of the certificate.

3. The department shall develop a system for the registration of the renewable energy tax credit certificates issued or transferred under this chapter and a system that permits verification that any tax credit claimed on a tax return is valid and that transfers of the tax credit certificates are made in accordance with the requirements of this chapter. The tax credit certificates issued under this chapter shall not be classified as a security pursuant to chapter 502.

2005 Acts, ch 160, §12, 14; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 478

### ELECTRIC TRANSMISSION LINES

#### **478.3 Petition — requirements.**

1. All petitions shall set forth:
  - a. The name of the individual, company, or corporation asking for the franchise.
  - b. The principal office or place of business.
  - c. The starting points, routes, and termini of the proposed lines, accompanied with a map or plat showing such details.
  - d. A general description of the public or private lands, highways, and streams over, across, or along which any proposed line will pass.
  - e. General specifications as to materials and manner of construction.
  - f. The maximum voltage to be carried over each line.
  - g. Whether or not the exercise of the right of eminent domain will be used and, if so, a specific reference to the lands described in paragraph “d” which are sought to be subject thereto.
  - h. An allegation that the proposed construction is necessary to serve a public use.
2.
  - a. Petitions for transmission lines capable of operating at sixty-nine kilovolts or more and extending a distance of not less than one mile across privately owned real estate shall also set forth an allegation that the proposed construction represents a reasonable relationship to an overall plan of transmitting electricity in the public interest and substantiation of such allegations, including but not limited to, a showing of the following:
    - (1) The relationship of the proposed project to present and future economic development of the area.
    - (2) The relationship of the proposed project to comprehensive electric utility planning.
    - (3) The relationship of the proposed project to the needs of the public presently served and future projections based on population trends.
    - (4) The relationship of the proposed project to the existing electric utility system and parallel existing utility routes.
    - (5) The relationship of the proposed project to any other power system planned for the future.
    - (6) The possible use of alternative routes and methods of supply.
    - (7) The relationship of the proposed project to the present and future land use and zoning ordinances.
    - (8) The inconvenience or undue injury which may result to property owners as a result of the proposed project.

b. The utilities board may waive the proof required for such allegations which are not applicable to a particular proposed project.

c. The petition shall contain an affidavit stating that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

3. For the purpose of this section, the term “*public*” shall not be interpreted to be limited to consumers located in this state.

[S13, §2120-n; C24, 27, 31, 35, 39, §8311; C46, 50, 54, 58, 62, 66, 71, 73, 75, §489.3; C77, 79, 81, §478.3]

94 Acts, ch 1136, §3; 2001 Acts, 1st Ex, ch 4, §34, 36; 2002 Acts, ch 1048, §3, 5; 2011 Acts, ch 25, §143

Code editor directive applied

#### **478.4 Franchise — hearing.**

The utilities board shall consider the petition and any objections filed to it in the manner provided. It shall examine the proposed route or cause any engineer selected by it to do so. If a hearing is held on the petition it may hear testimony as may aid it in determining the propriety of granting the franchise. It may grant the franchise in whole or in part upon the terms, conditions, and restrictions, and with the modifications as to location and route as may seem to it just and proper. Before granting the franchise, the utilities board shall make

a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. A franchise shall not become effective until the petitioners shall pay, or file an agreement to pay, all costs and expenses of the franchise proceeding, whether or not objections are filed, including costs of inspections or examinations of the route, hearing, salaries, publishing of notice, and any other expenses reasonably attributable to it. The funds received for the costs and the expenses of the franchise proceeding shall be remitted to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

[S13, §2120-n; C24, 27, 31, 35, 39, §8312, 8313; C46, 50, 54, 58, 62, §489.4, 489.5; C66, 71, 73, 75, §489.4; C77, 79, 81, §478.4]

87 Acts, ch 234, §431; 94 Acts, ch 1107, §82; 2009 Acts, ch 181, §53

2011 repeal of 2009 Acts, ch 181, §53, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

## CHAPTER 479

### PIPELINES AND UNDERGROUND GAS STORAGE

#### 479.16 Receipt of funds.

All moneys received under this chapter shall be remitted monthly to the treasurer of state and credited to the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

[C31, §8338-d14; C35, §8338-f29, -f30; C39, §8338.37, 8338.38; C46, 50, 54, 58, 62, 66, 71, §490.16, 490.17; C73, 75, §490.17; C77, 79, 81, §479.16]

87 Acts, ch 234, §432; 94 Acts, ch 1107, §83; 2009 Acts, ch 181, §54

2011 repeal of 2009 Acts, ch 181, §54, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

#### 479.46 Determination of installation damages.

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or a pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from the installation of the pipeline.

2. a. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

b. The application shall contain the following:

(1) The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

(2) A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

(3) The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. a. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating the following:

(1) That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.

(2) The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

(3) The date, time, and place when the commissioners will view the premises and proceed

to appraise the damages and that the pipeline company or the landowner may appear before the commissioners.

b. If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "damages" means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures but does not include compensation for a property interest, and "landowner" includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

[81 Acts, ch 159, §2, 8]

95 Acts, ch 192, §17; 2000 Acts, ch 1179, §26, 30; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 479A

### INTERSTATE NATURAL GAS PIPELINES

#### **479A.9 Deposit of funds.**

Moneys received under this chapter shall be credited to the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

88 Acts, ch 1074, §9; 94 Acts, ch 1107, §84; 99 Acts, ch 85, §10, 11; 2009 Acts, ch 181, §55

2011 repeal of 2009 Acts, ch 181, §55, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

**CHAPTER 479B**  
**HAZARDOUS LIQUID PIPELINES**  
**AND STORAGE FACILITIES**

**479B.12 Use of funds.**

All moneys received under this chapter, other than civil penalties collected pursuant to section 479B.21, shall be remitted monthly to the treasurer of state and credited to the department of commerce revolving fund created in section 546.12.

95 Acts, ch 192, §39; 2009 Acts, ch 181, §56

2011 repeal of 2009 Acts, ch 181, §56, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

**479B.30 Determination of construction damages.**

1. The county board of supervisors shall determine when construction of a pipeline or underground storage facility has been completed in that county for the purposes of this section. Not less than ninety days after the completion of construction and if an agreement cannot be made as to damages, a landowner whose land was affected by the construction of the pipeline or underground storage facility or the pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from construction of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district for the county for the appointment of a compensation commission as provided in section 6B.4. The application shall contain all of the following information:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. a. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating all of the following:

(1) That a compensation commission has been appointed to determine the damages caused by the construction of the pipeline or underground storage facility.

(2) The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

(3) The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or landowner may appear before the commissioners.

b. If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the construction of the pipeline or underground storage facility and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages.

At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "damages" means compensation for damages to the land, crops, and other personal property caused by the construction of a pipeline and its attendant structures or underground storage facility but does not include compensation for a property interest, and "landowner" includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

95 Acts, ch 192, §57, 62; 2000 Acts, ch 1179, §28, 30; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 481A

### WILDLIFE CONSERVATION

This chapter not enacted as a part of this title;  
transferred from chapter 109 in Code 1993

#### **481A.19 Reciprocity of states.**

1. *a.* Any person licensed by the authority of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota to take fish, game, mussels, or fur-bearing animals from or in the waters forming the boundary between such state and Iowa, may take such fish, game, mussels, or fur-bearing animals from that portion of said waters lying within the territorial jurisdiction of this state, without having procured a license from the director of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota, respectively, extend a similar privilege to persons so licensed under the laws of Iowa.

*b.* Any person licensed by the authority of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota to take fish, game, mussels, or fur-bearing animals from or in lands under the jurisdiction of any of those states may take such fish, game, mussels, or fur-bearing animals from or in lands under the jurisdiction of the commission when such land is adjacent to that respective state but is separated from other land in Iowa by a body of water, without having procured a license from the director of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota, respectively, extend a similar privilege to persons so licensed under the laws of Iowa.

2. Any privileges conferred by this section shall be subject to a reciprocal agreement as negotiated by the commission and the authority of a state provided in subsection 1 which confers upon a licensee of this state reciprocal rights, privileges, and immunities as provided

in section 483A.31. Such agreements may include determination of which state's seasons and limits shall apply for specific geographical areas.

[C24, 27, 31, 35, 39, §1762; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.19]

86 Acts, ch 1245, §1855

C93, §481A.19

2008 Acts, ch 1161, §16; 2009 Acts, ch 144, §15, 16; 2011 Acts, ch 34, §108

Subsection 1, paragraph a amended

#### **481A.38 Prohibited acts — restrictions on the taking of wildlife — special licenses.**

It is unlawful for a person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected nongame animals, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish or any part thereof, except upon the terms, conditions, limitations, and restrictions set forth herein, and administrative rules necessary to carry out the purposes set out in section 481A.39, or as provided by the Code.

1. a. The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking wild mammals, birds subject to section 481A.48, fish, reptiles, and amphibians, if the investigation reveals that the action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by means found advisable to salvage imperiled fish populations.

b. The commission shall adopt a rule permitting a crossbow to be used only by individuals with disabilities who are physically incapable of using a bow and arrow under the conditions in which a bow and arrow is permitted. The commission shall prepare an application to be used by an individual requesting the status. The application shall require the individual's physician to sign a statement declaring that the individual is not physically able to use a bow and arrow.

2. If the commission finds that the number of hunters licensed or the type of license issued to take deer or wild turkey should be limited or further regulated, the commission shall adopt procedures, by rule, for issuing the licenses. This subsection does not apply to the hunting of wild turkey on a hunting preserve licensed under chapter 484B.

3. The department and the commission shall exercise regulatory authority regarding seasons, bag limits, possession limits, locality, the method of taking, or the taking of fish and wildlife within the boundaries of the Sac and Fox tribe settlement in Tama county only to the extent provided in a written agreement between the tribal council of the Sac and Fox tribe of the Mississippi in Iowa and the department. The written agreement shall not be construed to supersede or impair the regulatory authority exercised by the commission pursuant to the federal Migratory Bird Treaty Act, the federal Migratory Bird Stamp Hunting Act, the federal Endangered Species Act, or other federal law, and shall not be construed to supersede or impair the regulatory authority exercised by the Sac and Fox tribe of the Mississippi in Iowa pursuant to any federal act, statute, or law. The department and the commission shall not unreasonably fail to enter into an agreement and shall pursue such an agreement in an expedient manner. This subsection shall become effective upon signing of the written agreement by the director of the department and the chairperson of the Sac and Fox tribe of the Mississippi in Iowa.

[R60, §4381; C73, §4048; C97, §2551, 2555; S13, §2562-c, 2563-j, -k, -m, -n; SS15, §2540, 2551, 2555, 2562-b, -c, 2563-a1, -a2, -u; C24, 27, 31, §1718, 1719, 1755, 1767, 1774; C35, §1718-c1; C39, §1794.001; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.38; 82 Acts, ch 1037, §1]

84 Acts, ch 1213, §1; 84 Acts, ch 1260, §1; 88 Acts, ch 1216, §12; 89 Acts, ch 87, §1; 90 Acts, ch 1109, §1; 92 Acts, ch 1160, §18

C93, §481A.38

96 Acts, ch 1129, §97; 99 Acts, ch 39, §1; 2001 Acts, ch 134, §1, 2; 2007 Acts, ch 189, §1, 2; 2011 Acts, ch 25, §143

For applicable scheduled fines, see §805.8B, subsection 3, paragraphs f and g  
Code editor directive applied

#### 481A.48 Restrictions on game birds and animals.

1. A person, except as otherwise provided by law, shall not willfully disturb, pursue, shoot, kill, take or attempt to take, or have in possession any of the following game birds or animals except within the open season established by the commission: gray or fox squirrel, bobwhite quail, cottontail or jackrabbit, duck, snipe, pheasant, goose, woodcock, partridge, mourning dove, coot, rail, ruffed grouse, wild turkey, pigeon, or deer. The seasons, bag limits, possession limits, and locality shall be established by the department or commission under the authority of sections 456A.24, 481A.38, and 481A.39.

2. The commission may adopt rules for the taking and possession of migratory birds which are subject to the federal "Migratory Bird Treaty Act" and "Migratory Bird Stamp Hunting Act" during the time and in the manner permitted under those federal Acts. The commission shall not adopt a rule for the taking or possession of a migratory bird for which an open season is not authorized by another paragraph of this section.

3. The commission may by rule permit the taking and possession of designated raptors and crows during the time and in the manner permitted under the federal "Migratory Bird Treaty Act".

4. The commission shall establish methods by which pigeons may be taken which may include, but are not limited to, the use of trapping, chemical repellants, or toxic perches.

5. The commission shall establish one or more pistol or revolver seasons for hunting deer as separate firearm seasons or to coincide with one or more other firearm deer hunting seasons. Any pistol or revolver firing a magnum three hundred fifty-seven thousandths of one inch caliber or larger, centerfire, straight wall ammunition propelling an expanding-type bullet is legal for hunting deer during the pistol or revolver seasons. The commission shall adopt rules to allow black powder pistols or revolvers for hunting deer. The rules shall not allow pistols or revolvers with shoulder stock or long-barrel modifications. The barrel length of a pistol or revolver used for deer hunting shall be at least four inches. The rules may limit types of ammunition. A person who is sixteen years of age or less shall not hunt deer with a pistol or revolver. A person possessing a prohibited pistol or revolver while hunting deer commits a scheduled violation under section 805.8B, subsection 3, paragraph "h", subparagraph (5).

[R60, §4381; C73, §4048; C97, §2551, 2552; S13, §2563-q; SS15, §2551, 2552, 2563-u; C24, §1767, 1768, 1776; C27, 31, §1767, 1767-a1, 1768, 1776; C39, §1794.011; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.48]

86 Acts, ch 1133, §2, 3

C93, §481A.48

97 Acts, ch 141, §1; 2001 Acts, ch 137, §5; 2011 Acts, ch 3, §1

For applicable scheduled fines, see §805.8B, subsection 3, paragraph h  
Subsection 1 amended

#### 481A.56 Training dogs.

1. a. A person having a valid hunting license may train a bird dog on any game birds and a person having a valid fur harvester license may train a coonhound, foxhound, or trailing dog on any fur-bearing animals at any time of the year including during the closed season on such birds or animals. However, the animals when pursued to a tree or den shall not be further chased or removed in any manner from the tree or den. A person having a hunting license may train a dog on coyote or groundhog.

b. Only a pistol, revolver, or other gun shooting blank cartridges shall be used while training dogs during closed season except as provided in subsection 2 of this section.

2. Any pen-raised game bird may be used and may be shot in the training of bird dogs. Before any bird is released or used in the training of dogs, the bird shall have attached a band procured from the commission. The commission may charge a fee for such bands but the fee shall not exceed ten cents for each band.

3. A call back pen or live trap may be used for the purpose of retrieving banded birds when released in the wild for training purposes. Any bird not so banded when taken in a call back pen or trap shall be immediately returned unbanded to the wild. All call back pens or live traps when in use shall have attached a metal tag plainly labeled with the owner's name

and address. Conservation officers shall have authority to confiscate such traps when found in use and not properly labeled.

4. The commission shall have the power to adopt rules prohibiting the training of any hunting dog on any game bird, game animal, or fur-bearing animal in the wild at any time when it has been determined that such training might have an adverse effect on the populations of these species.

[C39, §1794.019; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.56]

85 Acts, ch 10, §1; 86 Acts, ch 1245, §1854; 88 Acts, ch 1216, §17

C93, §481A.56

2011 Acts, ch 25, §143

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c  
Code editor directive applied

#### **481A.62 Records — reports — inspection.**

1. A holder of a game breeder's license shall keep the records and make the reports required by this section on forms provided by the department. The records shall be open for inspection at any reasonable time by the department or its authorized agents.

2. At the time of every sale or conveyance of an animal, animal parts, or products, the licensee shall complete a game breeder's sales receipt on forms provided by the department. The forms shall require the following information:

- a. The name, address, county, and license number assigned to the breeder.
- b. The name and address of the purchaser.
- c. The number, species, sex, and age of the animals or birds conveyed.

3. a. Licensees shall maintain business records for all species in an annual report record book. The records shall include the following information:

(1) For each animal acquired other than by birth on the licensee's game farm, the sex and species, the date of acquisition, the number acquired, and the name and address of the source from which acquired.

(2) For each animal born on the licensee's game farm, the sex, species, date of birth, and number of any band, tag, or tattoo subsequently attached to the animal.

(3) For each animal sold or disposed of other than by death the same information required by the game breeder's sales receipt.

(4) For each animal which dies, disappears, or is destroyed on the licensee's game farm, the sex, species, date of death, and the number of any band, tag, or tattoo attached to the animal.

b. The licensee's copies of the required sales receipts shall be kept with the record book and are considered a part of it.

c. Records required by this section shall be entered in the annual report record book within forty-eight hours of the event.

4. Each licensee shall file an annual report with the commission on or before January 31. The report shall detail the game breeder's operations during the preceding license year. The original report shall be forwarded to the department and a copy shall be retained in the breeder's file for a period of three years from the date of expiration of the breeder's last license issued. Failure to keep or submit the required records and report are grounds for a refusal to renew a license for the succeeding year.

5. An on-site inspection of facilities shall be conducted by an officer of the commission prior to the initial issuance of a game breeder's license. The facilities may be reinspected by an officer of the commission at any reasonable time.

6. Any officer of the commission may enter any place where any game bird, game animal, or fur-bearing animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease.

7. For the purpose of this section, infectious and contagious disease includes rabies, hoof-and-mouth disease, leptospirosis, blackhead, or any other communicable disease so designated by the commission.

8. The commission may regulate or prohibit the importation into the state and exportation

from the state of any species of game bird, game animal, or fur-bearing animal, domesticated or not, which in its opinion, for any reason, is determined to be detrimental to the health of animals within or without the state.

9. The commission may quarantine or destroy any game bird, game animal, or fur-bearing animal which is found to be infected with any contagious or infectious disease.

10. A licensed game breeder or other person having control of any game bird, game animal, or fur-bearing animal shall not knowingly offer for sale, sell, or barter such birds or animals which have an infectious or contagious disease, or allow those birds or animals to run at large or come in contact with any other game birds, game animals, or fur-bearing animals.

[C39, §1794.024; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.62]

88 Acts, ch 1216, §21

C93, §481A.62

2011 Acts, ch 25, §143

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c  
Code editor directive applied

## CHAPTER 481C

### WILD ANIMAL DEPREDATION PROCEDURES

#### **481C.2A Deer depredation management program — licenses and permits.**

1. Deer depredation licenses shall be available for issuance as follows:

a. Deer depredation licenses shall be available for issuance to resident hunters.

b. Depredation licenses issued pursuant to this subsection shall be valid to harvest antlerless deer only. Depredation licenses that are issued to a landowner and family members as defined in section 483A.24 shall be in addition to the number of free licenses that are available for issuance to such persons under section 483A.24. A landowner or a family member may obtain one free depredation license for each deer hunting season that is established by the commission. Deer may be harvested with a rifle pursuant to a depredation license in any area and in any season where the commission authorizes the use of rifles.

c. Licenses issued pursuant to this subsection may be issued at any time to a resident hunter who has permission to hunt on the land for which the license is valid pursuant to this subsection.

d. A producer who enters into a depredation agreement with the department of natural resources shall be issued a set of authorization numbers. Each authorization number authorizes a resident hunter to obtain a depredation license that is valid only for taking antlerless deer on the land designated in the producer's depredation plan. A producer may transfer an authorization number issued to that producer to a resident hunter who has permission to hunt on the land for which the authorization number is valid. An authorization number shall be valid to obtain a depredation license in any season. The provisions of this paragraph shall be implemented by August 15, 2008. A transferee who receives an authorization number pursuant to this paragraph "d" shall be otherwise qualified to hunt deer in this state, have a hunting license, pay the wildlife habitat fee, and pay the one dollar fee for the purpose of the deer herd population management program.

2. Deer shooting permits shall be available for issuance as follows:

a. Deer shooting permits shall be available for issuance to landowners who incur crop, horticultural product, tree, or nursery damage as provided in section 481C.2 and shall be available for issuance for use on areas where public safety may be an issue.

b. Deer shooting permits issued pursuant to this subsection shall be valid and may be used outside of established deer hunting seasons.

3. Notwithstanding section 481C.2, subsection 3, a producer shall not be required to erect or maintain fencing as a requisite for receiving a deer depredation permit or for participation in a deer depredation plan pursuant to this section.

4. A person who harvests a deer with a deer depredation license or a deer shooting permit issued pursuant to this section shall utilize the deer harvest reporting system set forth in section 483A.8A and shall not be subject to different disposal or reporting requirements than are applicable to the harvest of deer pursuant to other deer hunting licenses except that any antlers on a deer taken pursuant to a shooting permit shall be delivered to the local conservation officer for disposal.

5. The department shall administer and enforce the administrative rules concerning deer depredation, including issuance of deer depredation licenses and deer shooting permits, that are established by the commission.

6. The department shall make educational materials that explain the deer depredation management program available to the general public, and available specifically to farmers and farm and commodity organizations, in both electronic and brochure formats.

7. The department shall conduct outreach programs for farmers and farm and commodity organizations that explain the deer depredation management program. The department shall develop, by rule, a master hunter program and maintain a list of master hunters who are available to assist producers in the deer depredation management program by increasing the harvest of antlerless deer on the producer's property.

2008 Acts, ch 1037, §3, 6; 2011 Acts, ch 34, §109

Subsection 6 amended

## CHAPTER 482

### COMMERCIAL FISHING

This chapter not enacted as a part of this title;  
transferred from chapter 109B in Code 1993  
See §481A.134 and 481A.135 for point system and additional  
penalties

#### **482.9 Unlawful methods.**

It is unlawful:

1. To use commercial gear which is not in accordance with this chapter or the rules of the commission.

2. To use commercial gear within nine hundred feet from a navigation dam on the boundary waters.

3. To use commercial gear within three hundred feet from the mouth of a tributary stream emptying into the boundary waters.

4. For a person to lift or to fish licensed commercial gear of another person, except when under the direct supervision of the licensee as provided in section 482.7.

5. To employ chemicals, electricity, or explosives into the water for taking fish, turtles, or freshwater mussels except as authorized by the director.

6. To have in one's possession game fish or other fish, turtles, or mussels deemed illegal by other provisions of law while engaged in commercial activities. A fish caught in commercial fishing that is not lawful to possess shall be handled with wet hands and immediately released under water with as little injury as possible.

7. To block or inhibit navigation through channels with commercial gear unless a minimum of three feet of water depth is maintained over float lines of any entanglement gear or leads to trap nets. Gear shall not block over one-half the width of a navigable channel if there is less than three feet of water over the gear.

86 Acts, ch 1141, §9

C87, §109B.9

C93, §482.9

2009 Acts, ch 144, §27; 2011 Acts, ch 34, §110

For applicable scheduled fines, see §805.8B, subsection 3, paragraph 4  
Subsection 4 amended

**482.10 Commercial fish licenses.**

1. All persons who commercially take, attempt to take, possess, transport, sell, barter, trade, or buy commercial fish or their parts shall possess an appropriate, valid commercial fishing license. This subsection does not apply to an individual who buys commercial fish or their parts from a commercial fisher for personal consumption.

a. A commercial fisher license is required to operate commercial gear and to take, attempt to take, possess, process, transport, or sell any commercial fish, commercial turtles, or turtle eggs.

b. A commercial fish helper license is required to assist a commercial fisher or commercial roe harvester in operating commercial gear and in taking, attempting to take, possessing, or transporting commercial fish, roe species, roe, commercial turtles, or turtle eggs. A commercial fish helper is not permitted to buy, sell, barter, or trade commercial fish, roe species, roe, commercial turtles, or turtle eggs. A commercial fish helper license is not required for a person under sixteen years of age to assist a commercial fisher as provided in this paragraph "b".

c. A commercial roe harvester license is required to harvest, possess, transport, or sell roe or roe species or their parts. A commercial roe harvester is not permitted to buy, barter, or trade roe or roe species unless in possession of a valid roe buyer license. A commercial roe harvester shall sell roe or roe species only to a commercial roe buyer licensed in this state.

d. A commercial roe buyer license is required to buy, barter, or trade roe or roe species for resale.

2. All intrastate and interstate shipments of commercial fish, turtles, turtle eggs, or roe or roe species, must be accompanied by a receipt which shows the name and address of the seller, date of sale, and the species, numbers, and pounds of the fish, roe species, roe, turtles, or turtle eggs being sold.

86 Acts, ch 1141, §10

C87, §109B.10

C93, §482.10

2009 Acts, ch 144, §28; 2011 Acts, ch 34, §111

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d  
Subsection 2 amended

**CHAPTER 483A****FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS**

This chapter not enacted as a part of this title;  
transferred from chapter 110 in Code 1993  
See §481A.134 and 481A.135 for point system and additional  
penalties

**483A.1A Definitions.**

As used in this chapter unless the context otherwise requires:

1. "Boundary waters" means the waters of the Mississippi, Missouri, and Big Sioux rivers.
2. "Commission" means the natural resource commission.
3. "Department" means the department of natural resources created under section 455A.2.
4. "Director" means the director of the department.
5. "License" means a privilege granted by the commission to fish, hunt, fur harvest, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or part of a wild animal, bird, game, or fish, including any privilege related to a license granted by issuance of a stamp or a payment of a fee.
6. "License agent" means an individual, business, or governmental agency authorized to sell a license.
7. "License document" means an authorization, certificate, or permit issued by the department or a license agent that lists and confers one or more license privileges.
8. "Nonresident" means a person who is not a resident as defined in subsection 10.

9. “Principal and primary residence or domicile” means the one and only place where a person has a true, fixed, and permanent home, and to where, whenever the person is briefly and temporarily absent, the person intends to return. Relevant factors in determining a person’s principal and primary residence or domicile include but are not limited to proof of place of employment, mailing address, utility records, land ownership records, vehicle registration, and address listed on the person’s state and federal income tax returns. A person shall submit documentation to establish the person’s principal and primary residence or domicile to the department or its designee upon request. The department or its designee shall keep confidential any document received pursuant to such a request if the document is required to be kept confidential by state or federal law.

10. “Resident” means a natural person who meets any of the following criteria during each year in which the person claims status as a resident:

a. Has physically resided in this state as the person’s principal and primary residence or domicile for a period of not less than ninety consecutive days immediately before applying for or purchasing a resident license, tag, or permit under this chapter and has been issued an Iowa driver’s license or an Iowa nonoperator’s identification card. A person is not considered a resident under this paragraph if the person is residing in the state only for a special or temporary purpose including but not limited to engaging in hunting, fishing, or trapping.

b. Is a full-time student at either of the following:

(1) An accredited educational institution located in this state and resides in this state while attending the educational institution.

(2) An accredited educational institution located outside of this state, if the person is under the age of twenty-five and has at least one parent or legal guardian who maintains a principal and primary residence or domicile in this state.

c. Is a student who qualifies as a resident pursuant to paragraph “b” only for the purpose of purchasing any resident license specified in section 483A.1.

d. Is a nonresident under eighteen years of age whose parent is a resident of this state.

e. Is a member of the armed forces of the United States who is serving on active duty, claims residency in this state, and has filed a state individual income tax return as a resident pursuant to chapter 422, division II, for the preceding tax year, or is stationed in this state.

86 Acts, ch 1245, §1858

C87, §110.1A

C93, §483A.1A

95 Acts, ch 76, §1; 2000 Acts, ch 1116, §3 – 5; 2000 Acts, ch 1175, §1, 2; 2001 Acts, ch 134, §3; 2003 Acts, ch 37, §1; 2009 Acts, ch 144, §34, 35; 2011 Acts, ch 34, §112

Subsection 10, paragraph c amended

#### **483A.8 Deer hunting license and tag.**

1. A resident hunting deer who is required to have a hunting license must have a resident hunting license in addition to the deer hunting license and must pay the wildlife habitat fee. In addition, a resident who purchases a deer hunting license shall pay a one dollar fee that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

2. The deer hunting license shall be accompanied by a tag designed to be used only once. When a deer is taken, the deer shall be tagged and the tag shall be dated. The tag shall be attached to the carcass of a deer taken within fifteen minutes of the time the deer carcass is located after being taken, or before the carcass is moved to be transported by any means from the place where the deer was taken, whichever occurs first. For each antlered deer taken, the tag shall be affixed to the deer’s antlers.

3. a. A nonresident hunting deer is required to have a nonresident hunting license and a nonresident deer hunting license and must pay the wildlife habitat fee. In addition, a nonresident who purchases a deer hunting license shall pay a one dollar fee that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

b. A nonresident who purchases an antlered or any sex deer hunting license pursuant to section 483A.1, subsection 2, paragraph “e”, is required to purchase an antlerless deer only deer hunting license at the same time, pursuant to section 483A.1, subsection 2, paragraph “g”.

c. The commission shall annually limit to six thousand the number of nonresidents allowed to have antlered or any sex deer hunting licenses. Of the six thousand nonresident antlered or any sex deer hunting licenses issued, not more than thirty-five percent of the licenses shall be bow season licenses. After the six thousand antlered or any sex nonresident deer hunting licenses have been issued, all additional licenses shall be issued for antlerless deer only. The commission shall annually determine the number of nonresident antlerless deer only deer hunting licenses that will be available for issuance.

d. The commission shall allocate all nonresident deer hunting licenses issued among the zones based on the populations of deer. However, a nonresident applicant may request one or more hunting zones, in order of preference, in which the applicant wishes to hunt. If the request cannot be fulfilled, the applicable fees shall be returned to the applicant. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

e. The commission shall assign one preference point to a nonresident whose application for a nonresident antlered or any sex deer hunting license is denied due to limitations on the number of nonresident antlered or any sex deer hunting licenses available for issuance that year. An additional preference point shall be assigned to that person each subsequent year the person’s license application is denied for that reason. A nonresident may purchase additional preference points pursuant to section 483A.1, subsection 2, paragraph “f”. The first nonresident antlered or any sex deer hunting license drawing each year shall be made from the pool of applicants with the most preference points and continue to pools of applicants with successively fewer preference points until all available nonresident antlered or any sex deer hunting licenses have been issued. If a nonresident applicant receives an antlered or any sex deer hunting license, all of the applicant’s assigned preference points at that time shall be removed.

4. The commission may provide, by rule, for the issuance of an additional antlerless deer hunting license to a person who has been issued an antlerless deer hunting license. The rules shall specify the number of additional antlerless deer hunting licenses which may be issued, and the season and zone in which the license is valid. The fee for an additional antlerless deer hunting license shall be ten dollars for residents.

5. A nonresident owning land in this state may apply for a nonresident antlered or any sex deer hunting license, and the provisions of subsection 3 shall apply. However, if a nonresident owning land in this state is unsuccessful in obtaining one of the nonresident antlered or any sex deer hunting licenses, the landowner shall be given preference for one of the antlerless deer only nonresident deer hunting licenses available pursuant to subsection 3. A nonresident owning land in this state shall pay the fee for a nonresident antlerless only deer hunting license and the license shall be valid to hunt on the nonresident’s land only. If one or more parcels of land have multiple nonresident owners, only one of the nonresident owners is eligible for a nonresident antlerless only deer hunting license. If a nonresident jointly owns land in this state with a resident, the nonresident shall not be given preference for a nonresident antlerless only deer hunting license. The department may require proof of land ownership from a nonresident landowner applying for a nonresident antlerless only deer hunting license.

6. The commission shall provide by rule for the annual issuance to a nonresident of a nonresident antlerless deer hunting license that is valid for use only during the period beginning on December 24 and ending at sunset on January 2 of the following year and costs seventy-five dollars. A nonresident hunting deer with a license issued under this subsection shall be otherwise qualified to hunt deer in this state and shall have a nonresident hunting license, pay the wildlife habitat fee, and pay the one dollar fee for the purpose of deer herd population management as provided in subsection 3. Pursuant to this subsection, the commission shall make available for issuance only the remaining nonresident antlerless

deer hunting licenses allocated under subsection 3 that have not yet been issued for the current year's nonresident antlerless deer hunting seasons.

7. A person who is issued a youth deer hunting license and does not take a deer during the youth deer hunting season may use the deer hunting license and unused tag during any other firearm season that is established by the commission to take a deer of either sex.

[C79, 81, §110.8]

86 Acts, ch 1240, §4; 89 Acts, ch 237, §3; 90 Acts, ch 1003, §2

C93, §483A.8

94 Acts, ch 1111, §2; 98 Acts, ch 1199, §10, 27; 98 Acts, ch 1203, §5 – 7; 98 Acts, ch 1223, §28 – 30; 2001 Acts, ch 134, §5; 2001 Acts, ch 148, §6, 7, 9; 2002 Acts, ch 1119, §64; 2003 Acts, ch 85, §1; 2005 Acts, ch 139, §4; 2005 Acts, ch 179, §132; 2007 Acts, ch 129, §1; 2008 Acts, ch 1158, §1; 2009 Acts, ch 144, §38; 2009 Acts, ch 179, §216, 217; 2011 Acts, ch 103, §1

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

When license not required; special licenses; see §483A.24

Subsection 2 amended

#### **483A.12 Fees.**

1. The license agent shall be responsible for all fees for the issuance of hunting, fishing, and fur harvester licenses and combination packages of licenses sold by the license agent. All unused license blanks shall be surrendered to the department upon the department's demand.

2. A license agent shall retain a writing fee of fifty cents from the sale of each license or combination package of licenses except that the writing fee for a free deer or wild turkey hunting license as authorized under section 483A.24, subsection 2, shall be one dollar. If a county recorder is a license agent, the writing fees retained by the county recorder shall be deposited in the general fund of the county.

[C31, §1724-c1; C35, §1794-e5; C39, §1794.086; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.5; C79, 81, §110.12]

83 Acts, ch 123, §56, 209; 84 Acts, ch 1260, §7

C93, §483A.12

98 Acts, ch 1199, §14, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §8; 2009 Acts, ch 144, §42; 2011 Acts, ch 34, §113

Section amended

#### **483A.24 When license not required — special licenses.**

1. Owners or tenants of land, and their juvenile children, may hunt, fish or trap upon such lands and may shoot by lawful means ground squirrels, gophers, or woodchucks upon adjacent roads without securing a license so to do; except, special licenses to hunt deer and wild turkey shall be required of owners and tenants but they shall not be required to have a special wild turkey hunting license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

2. a. As used in this subsection:

(1) "Family member" means a resident of Iowa who is the spouse or child of the owner or tenant and who resides with the owner or tenant.

(2) "Farm unit" means all parcels of land which are certified by the commission pursuant to rule as meeting all of the following requirements:

(a) Are in tracts of two or more contiguous acres.

(b) Are operated as a unit for agricultural purposes.

(c) Are under the lawful control of the owner or the tenant.

(3) (a) "Owner" means an owner of a farm unit who is a resident of Iowa and who is one of the following:

(i) Is the sole operator of the farm unit.

(ii) Makes all of the farm operation decisions but contracts for custom farming or hires labor for all or part of the work on the farm unit.

(iii) Participates annually in farm operation decisions or cropping practices on specific fields of the farm unit that are rented to a tenant.

(iv) Raises specialty crops on the farm unit including, but not limited to, orchards,

nurseries, or tree farms that do not always produce annual income but require annual operating decisions about maintenance or improvement.

(v) Has all or part of the farm unit enrolled in a long-term agricultural land retirement program of the federal government.

(b) An “owner” does not mean a person who owns a farm unit and who employs a farm manager or third party to operate the farm unit, or a person who owns a farm unit and who rents the entire farm unit to a tenant who is responsible for all farm operations. However, this paragraph\* does not apply to an owner who is a parent of the tenant and who resides in this state.

(4) “Tenant” means a person who is a resident of Iowa and who rents and actively farms a farm unit owned by another person. A member of the owner’s family may be a tenant. A person who works on the farm for a wage and is not a family member does not qualify as a tenant.

b. Upon written application on forms furnished by the department, the department shall issue annually without fee one wild turkey license to the owner of a farm unit or to a member of the owner’s family, but not to both, and to the tenant or to a member of the tenant’s family, but not to both. The wild turkey hunting license issued shall be valid only on the farm unit for which an applicant qualifies pursuant to this subsection and shall be equivalent to the least restrictive license issued under section 481A.38. The owner or the tenant need not reside on the farm unit to qualify for a free license to hunt on that farm unit.

c. Upon written application on forms furnished by the department, the department shall issue annually without fee two deer hunting licenses, one antlered or any sex deer hunting license and one antlerless deer only deer hunting license, to the owner of a farm unit or a member of the owner’s family, but only a total of two licenses for both, and to the tenant of a farm unit or a member of the tenant’s family, but only a total of two licenses for both. The deer hunting licenses issued shall be valid only for use on the farm unit for which the applicant applies pursuant to this paragraph. The owner or the tenant need not reside on the farm unit to qualify for the free deer hunting licenses to hunt on that farm unit. The free deer hunting licenses issued pursuant to this paragraph shall be valid and may be used during any shotgun deer season. The licenses may be used to harvest deer in two different seasons. In addition, a person who receives a free deer hunting license pursuant to this paragraph shall pay a one dollar fee for each license that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

d. In addition to the free deer hunting licenses received pursuant to paragraph “c”, an owner of a farm unit or a member of the owner’s family and the tenant or a member of the tenant’s family may purchase a deer hunting license for any option offered to paying deer hunting licensees. An owner of a farm unit or a member of the owner’s family and the tenant or a member of the tenant’s family may also purchase two additional antlerless deer hunting licenses which are valid only on the farm unit for a fee of ten dollars each.

e. If the commission establishes a deer hunting season to occur in the first quarter of a calendar year that is separate from a deer hunting season that continues from the last quarter of the preceding calendar year, each owner and each tenant of a farm unit located within a zone where a deer hunting season is established, upon application, shall be issued a free deer hunting license for each of the two calendar quarters. Each license is valid only for hunting on the farm unit of the owner and tenant.

f. (1) A deer hunting license or wild turkey hunting license issued pursuant to this subsection shall be attested by the signature of the person to whom the license is issued and shall contain a statement in substantially the following form:

By signing this license I certify that I qualify as an owner or tenant under Iowa Code section 483A.24.

(2) A person who makes a false attestation under this paragraph “f” is guilty of a simple

misdeemeanor. In addition, the person's hunting license shall be revoked and the person shall not be issued a hunting license for a period of one year.

3. The director shall provide up to seventy-five nonresident deer hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the economic development authority, or their designees. The licenses provided pursuant to this subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.8. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident deer hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to deer hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

4. The director shall provide up to twenty-five nonresident wild turkey hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the economic development authority, or their designees. The licenses provided pursuant to this subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.7. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident wild turkey hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to wild turkey hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

5. A resident or nonresident of the state under sixteen years of age is not required to have a license to fish in the waters of the state. However, residents and nonresidents under sixteen years of age must pay the trout fishing fee to possess trout or they must fish for trout with a licensed adult who has paid the trout fishing fee and limit their combined catch to the daily limit established by the commission.

6. A license shall not be required of minor pupils of the state school for the blind, state school for the deaf, or of minor residents of other state institutions under the control of an administrator of a division of the department of human services. In addition, a person who is on active duty with the armed forces of the United States, on authorized leave from a duty station located outside of this state, and a resident of the state of Iowa shall not be required to have a license to hunt or fish in this state. The military person shall carry the person's leave papers and a copy of the person's current earnings statement showing a deduction for Iowa income taxes while hunting or fishing. In lieu of carrying the person's earnings statement, the military person may also claim residency if the person is registered to vote in this state. If a deer or wild turkey is taken, the military person shall immediately contact a state conservation officer to obtain an appropriate tag to transport the animal. A license shall not be required of residents of county care facilities or any person who is receiving supplementary assistance under chapter 249.

7. A resident of the state under sixteen years of age is not required to have a hunting license to hunt game if accompanied by the minor's parent or guardian or in company with any other competent adult with the consent of the minor's parent or guardian, if the person accompanying the minor possesses a valid hunting license; however, there must be one licensed adult accompanying each person under sixteen years of age. The minor must have a deer hunting license to hunt deer and a wild turkey hunting license to hunt wild turkey.

8. A person having a dog entered in a licensed field trial is not required to have a hunting license or fur harvester license to participate in the event or to exercise the person's dog on the area on which the field trial is to be held during the twenty-four-hour period immediately preceding the trial.

9. The commission shall issue without charge a special fishing license to residents of Iowa sixteen years or more of age who the commission finds have severe mental or physical disabilities. The commission is hereby authorized to prepare an application to be used by the person requesting the special license, which would require that the person's attending physician sign the form declaring that the person has a severe mental or physical disability and is eligible for exempt status.

10. The commission shall issue a special turkey hunting license or any sex deer hunting license to a nonresident twenty-one years of age or younger who the commission finds has a severe physical disability or has been diagnosed with a terminal illness. The licenses shall be issued as follows:

a. The commission may prepare an application to be used by the person requesting the special license, which requires that the person's attending physician sign the form declaring that the person has a severe physical disability or has been diagnosed with a terminal illness and is eligible for the special license.

b. The licenses provided pursuant to this subsection shall be in addition to the number of nonresident turkey hunting licenses authorized pursuant to section 483A.7 and nonresident deer hunting licenses authorized pursuant to section 483A.8.

c. The turkey hunting licenses are valid in all zones open to turkey hunting and shall be available for issuance and use during any turkey hunting season. The deer hunting licenses are valid in all zones open to deer hunting and shall be available for issuance and use during any deer hunting season.

d. A nonresident who receives a special license pursuant to this subsection shall purchase a hunting license and the applicable nonresident turkey or deer hunting license, and pay the wildlife habitat fee, but is not required to complete the hunter safety and ethics education course if the person is accompanied and aided by a person who is at least eighteen years of age. The accompanying person must be qualified to hunt and have a hunting license. During the hunt, the accompanying adult must be within arm's reach of the nonresident licensee.

e. The commission shall adopt rules under chapter 17A for the administration of this subsection.

11. No person shall be required to have a special wild turkey license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

12. A lessee of a camping space at a campground may fish on a private lake or pond on the premises of the campground without a license if the lease confers an exclusive right to fish in common with the rights of the owner and other lessees.

13. The department may issue a permit, subject to conditions established by the department, which authorizes patients of a substance abuse facility, residents of health care facilities licensed under chapter 135C, tenants of elder group homes licensed under chapter 231B, tenants of assisted living program facilities licensed under chapter 231C, participants who attend adult day services programs licensed under chapter 231D, participants in services funded under a federal home and community-based services waiver implemented under the medical assistance program as defined in chapter 249A, and persons cared for in juvenile shelter care homes as provided for in chapter 232 to fish without a license as a supervised group. A person supervising a group pursuant to this subsection may fish with the group pursuant to the permit and is not required to obtain a fishing license.

14. Upon payment of the fee of five dollars for a lifetime fishing license or lifetime hunting and fishing combined license, the department shall issue a lifetime fishing license or lifetime hunting and fishing combined license to a resident of Iowa who has served in the armed forces of the United States on active federal service and who was disabled or was a prisoner of war during that veteran's military service. The department shall prepare an application to be used by a person requesting a lifetime fishing license or lifetime hunting and fishing combined license under this subsection. The department of veterans affairs shall assist the department in verifying the status or claims of applicants under this subsection. As used in this subsection, "disabled" means entitled to a service connected rating under 38 U.S.C. ch. 11.

15. The department shall issue without charge a special annual fishing or combined hunting and fishing license to residents of this state who have permanent disabilities and

whose income falls below the federal poverty guidelines as published by the United States department of health and human services or residents of this state who are sixty-five years of age or older and whose income falls below the federal poverty guidelines as published by the United States department of health and human services. The commission shall provide for, by rule, an application to be used by an applicant requesting a special license. The commission shall require proof of age, income, and proof of permanent disability.

16. The department may issue a permit, subject to conditions established by the department, which authorizes a student sixteen years of age or older attending an Iowa public or accredited nonpublic school who is participating in the Iowa department of natural resources fish Iowa! basic spincasting module to fish without a license as part of a supervised school outing.

[S13, §2563-a3; C24, 27, 31, §1720, 1723; C35, §1794-e15; C39, §1794.098; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.17; C79, 81, §110.24; 82 Acts, ch 1260, §16]

83 Acts, ch 96, §59, 159; 84 Acts, ch 1260, §10; 85 Acts, ch 10, §3; 85 Acts, ch 67, §15; 86 Acts, ch 1240, §5 – 7; 86 Acts, ch 1245, §1877; 88 Acts, ch 1216, §42; 89 Acts, ch 74, §1; 89 Acts, ch 87, §2, 3; 90 Acts, ch 1178, §1, 2; 91 Acts, ch 237, §4, 5; 92 Acts, ch 1140, §12

C93, §483A.24

94 Acts, ch 1018, §1; 94 Acts, ch 1023, §58; 96 Acts, ch 1129, §100; 96 Acts, ch 1172, §1; 97 Acts, ch 180, §6; 98 Acts, ch 1199, §19, 20, 27; 98 Acts, ch 1223, §30; 99 Acts, ch 180, §20; 2000 Acts, ch 1175, §3; 2001 Acts, ch 134, §15; 2001 Acts, ch 148, §8, 9; 2005 Acts, ch 115, §35, 40; 2005 Acts, ch 139, §6 – 10; 2005 Acts, ch 172, §24; 2006 Acts, ch 1010, §125; 2006 Acts, ch 1026, §1; 2006 Acts, ch 1043, §1; 2006 Acts, ch 1108, §1; 2007 Acts, ch 66, §1; 2008 Acts, ch 1032, §65; 2008 Acts, ch 1036, §1; 2008 Acts, ch 1161, §18; 2010 Acts, ch 1061, §63, 64; 2011 Acts, ch 25, §143; 2011 Acts, ch 118, §85, 89

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

\* The term "subparagraph division" probably intended; corrective legislation is pending  
Code editor directives applied

#### **483A.24A License refunds — military service.**

Notwithstanding any provision of this chapter to the contrary, a service member deployed for military service, as defined in section 29A.1, subsection 3, shall receive a refund of that portion of any license fee paid by the service member representing the service member's period of military service.

2010 Acts, ch 1170, §5; 2011 Acts, ch 47, §10; 2011 Acts, ch 131, §67, 158

Section amended

#### **483A.31 Reciprocal privileges authorized.**

1. Reciprocal fishing, hunting, or trapping privileges are contingent upon a grant of similar privileges by another state to residents of this state.

2. The commission may negotiate fishing, hunting, or trapping reciprocity agreements with other states.

3. When another state confers upon fishing, hunting, or trapping licensees of this state reciprocal rights, privileges, and immunities, a fishing, hunting, or trapping license issued by that state entitles the licensee to all rights, privileges, and immunities in the public waters or public lands of this state enjoyed by the holders of equivalent licenses issued by this state, subject to duties, responsibilities, and liabilities imposed on licensees of this state by the laws of this state.

90 Acts, ch 1178, §3

C91, §110.31

C93, §483A.31

2008 Acts, ch 1161, §17; 2011 Acts, ch 34, §114

Subsection 3 amended

## CHAPTER 489

### REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

Before January 1, 2011, this chapter governs limited liability companies formed on or after January 1, 2009, and companies electing to be subject to this chapter; on and after January 1, 2011, this chapter governs all limited liability companies; see §489.1304

#### ARTICLE 11

#### PROFESSIONAL LIMITED LIABILITY COMPANIES

##### **489.1101 Definitions.**

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

1. “*Employee*” or “*agent*” does not include a clerk, stenographer, secretary, bookkeeper, technician, or other person who is not usually and ordinarily considered by custom and practice to be practicing a profession nor any other person who performs all that person’s duties for the professional limited liability company under the direct supervision and control of one or more managers, employees, or agents of the professional limited liability company who are duly licensed in this state to practice a profession which the limited liability company is authorized to practice in this state. This article does not require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state.

2. “*Foreign professional limited liability company*” means a limited liability company organized under laws other than the laws of this state for a purpose for which a professional limited liability company may be organized under this article.

3. “*Licensed*” includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

4. “*Profession*” means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, practice as a physician assistant, psychology, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathic medicine and surgery, accounting practitioner, podiatry, real estate brokerage, speech pathology, audiology, veterinary medicine, pharmacy, nursing, or marital and family therapy, provided that the marital and family therapist is licensed under chapters 147 and 154D.

5. “*Professional limited liability company*” means a limited liability company subject to this article, except a foreign professional limited liability company.

6. “*Regulating board*” means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. *a.* “*Voluntary transfer*” includes a sale, voluntary assignment, gift, pledge, or encumbrance; a voluntary change of legal or equitable ownership or beneficial interest; or a voluntary change of persons having voting rights with respect to any transferable interest, except as proxies.

*b.* “*Voluntary transfer*” does not include a transfer of an individual’s interest in a limited liability company or other property to a guardian or conservator appointed for that individual or the individual’s property.

2008 Acts, ch 1088, §141; 2008 Acts, ch 1162, §87, 155; 2011 Acts, ch 1, §1, 5, 6

2011 amendment to subsection 4 takes effect March 17, 2011, and applies retroactively to January 1, 2011; 2011 Acts, ch 1, §5, 6  
Subsection 4 amended

##### **489.1102 Purposes and powers.**

1. A professional limited liability company shall be organized only for the purpose of engaging in the practice of one specific profession, or two or more specific professions

which could lawfully be practiced in combination by a licensed individual or a partnership of licensed individuals, and for the additional purpose of doing all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. The certificate of organization of a professional limited liability company shall state in substance that the purposes for which the professional limited liability company is organized are to engage in the general practice of a specified profession or professions, or one or more specified branches or divisions thereof, and to do all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions.

2. *a.* For purposes of this section, medicine and surgery, osteopathic medicine and surgery, and practice as a physician assistant shall be deemed to be professions which could lawfully be practiced in combination by licensed individuals or a partnership of licensed individuals.

*b.* Nothing in this section shall be construed to expand the scope of practice of a physician assistant or modify the requirement in section 148C.4 that a physician assistant perform medical services under the supervision of a licensed physician.

2008 Acts, ch 1162, §88, 155; 2011 Acts, ch 1, §2, 5, 6

2011 amendment to this section takes effect March 17, 2011, and applies retroactively to January 1, 2011; 2011 Acts, ch 1, §5, 6  
Section amended

#### **489.1103 Name.**

The name of a professional limited liability company, the name of a foreign professional limited liability company or its name as modified for use in this state, and any fictitious name or trade name adopted by a professional limited liability company or foreign professional limited liability company shall contain the words “professional limited liability company”, “professional limited company”, or the abbreviation “P. L. L. C.”, “PLLC”, “P. L. C.”, or “PLC”, and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the professional limited liability company is authorized to practice. Each regulating board may by rule adopt additional requirements as to the corporate names and fictitious or trade names of professional limited liability companies and foreign professional limited liability companies which are authorized to practice a profession which is within the jurisdiction of the regulating board.

2008 Acts, ch 1162, §89, 155; 2011 Acts, ch 56, §3, 5, 6

2011 amendment takes effect April 13, 2011, and applies retroactively to January 1, 2009; 2011 Acts, ch 56, §5, 6  
Section amended

#### **489.1105 Practice by professional limited liability company.**

1. Notwithstanding any other statute or rule of law, a professional limited liability company may practice a profession, but may do so in this state only through a member, manager, employee, or agent, who is licensed to practice the same profession in this state. In its practice of a profession, a professional limited liability company shall not do any act which could not lawfully be done by an individual licensed to practice the profession which the professional limited liability company is authorized to practice.

2. *a.* This section shall not prohibit persons practicing medicine and surgery, persons practicing osteopathic medicine and surgery, or persons practicing as physician assistants from practicing their respective professions in lawful combination pursuant to section 489.1102.

*b.* Nothing in this section shall be construed to expand the scope of practice of a physician assistant or modify the requirement in section 148C.4 that a physician assistant perform medical services under the supervision of a licensed physician.

2008 Acts, ch 1162, §91, 155; 2011 Acts, ch 1, §3, 5, 6

2011 amendment to this section takes effect March 17, 2011, and applies retroactively to January 1, 2011; 2011 Acts, ch 1, §5, 6  
Section amended

#### **489.1114 Management.**

All managers of a professional limited liability company shall at all times be individuals who are licensed to practice a profession in this state or a lawful combination of professions

pursuant to section 489.1102, which the limited liability company is authorized to practice. A person who is not licensed shall have no authority or duties in the management or control of the professional limited liability company. If a manager ceases to have this qualification, the manager shall immediately and automatically cease to hold such management position.

2008 Acts, ch 1162, §100, 155; 2011 Acts, ch 1, §4, 5, 6

2011 amendment to this section takes effect March 17, 2011, and applies retroactively to January 1, 2011; 2011 Acts, ch 1, §5, 6  
Section amended

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

#### **489.1304 Application to existing relationships.**

1. Before January 1, 2011, this chapter governs all of the following:
  - a. A limited liability company formed on or after January 1, 2009.
  - b. Except as otherwise provided in subsection 3, a limited liability company formed before January 1, 2009, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.
2. Except as otherwise provided in subsection 3, on and after January 1, 2011, this chapter governs all limited liability companies.
3. For the purposes of applying this chapter to a limited liability company formed before January 1, 2009, all of the following apply:
  - a. The limited liability company's articles of organization are deemed to be the company's certificate of organization.
  - b. For the purposes of applying section 489.102, subsection 12, and subject to section 489.112, subsection 4, language in the limited liability company's articles of organization designating the limited liability company's management structure operates as if that language were in the operating agreement.
  - c. If a professional limited liability company's name complied with section 490A.1503 as that section existed on December 30, 2010, that company's name shall also be deemed to comply with the name requirements of section 489.1103, Code 2011.

2008 Acts, ch 1162, §115, 155; 2011 Acts, ch 56, §4, 6

Subsection 3, NEW paragraph c

## CHAPTER 490

### BUSINESS CORPORATIONS

Chapter effective December 31, 1989; 89 Acts, ch 288, §196

Transition; application to existing corporations;

§490.1701 - 490.1703

Reorganization option for cooperative associations, §499.43B

### DIVISION I

### GENERAL PROVISIONS

### PART B

#### **490.122 Filing, service, and copying fees.**

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

DOCUMENT	FEE
a. Articles of incorporation .....	\$ 50
b. Application for use of indistinguishable name .....	\$ 10
c. Application for reserved name .....	\$ 10
d. Notice of transfer of reserved name .....	\$ 10
e. Application for registered name per month or part thereof .....	\$ 2
f. Application for renewal of registered name .....	\$ 20
g. Corporation's statement of change of registered agent or registered office or both .....	No fee
h. Agent's statement of change of registered office for each affected corporation .....	No fee
i. Agent's statement of resignation .....	No fee
j. Amendment of articles of incorporation .....	\$ 50
k. Restatement of articles of incorporation with amendment of articles .....	\$ 50
l. Articles of merger, share exchange, or conversion .....	\$ 50
m. Articles of dissolution .....	\$ 5
n. Articles of revocation of dissolution .....	\$ 5
o. Certificate of administrative dissolution .....	No fee
p. Application for reinstatement following administrative dissolution .....	\$ 5
q. Certificate of reinstatement .....	No fee
r. Certificate of judicial dissolution .....	No fee
s. Application for certificate of authority .....	\$100
t. Application for amended certificate of authority .....	\$100
u. Application for certificate of withdrawal .....	\$ 10
v. Certificate of revocation of authority to transact business .....	No fee
w. Articles of correction .....	\$ 5
x. Application for certificate of existence or authorization .....	\$ 5
y. Any other document required or permitted to be filed by this chapter .....	\$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- a. \$1.00 a page for copying.
- b. \$5.00 for the certificate.

89 Acts, ch 288, §5; 90 Acts, ch 1205, §17; 97 Acts, ch 171, §6; 2008 Acts, ch 1162, §116, 155

Filing fee for biennial report; §490.1622

Authority to refund fees; 2011 Acts, ch 127, §27, 85, 89

Section not amended; footnote revised

## PART D

**490.140 Definitions.**

In this chapter, unless the context requires otherwise:

1. “*Articles of incorporation*” include amended and restated articles of incorporation and articles of merger.
2. “*Authorized shares*” means the shares of all classes a domestic or foreign corporation is authorized to issue.
3. “*Conspicuous*” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.
4. “*Cooperative association*” means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.
5. “*Corporation*” or “*domestic corporation*” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.
6. “*Deliver*” or “*delivery*” means any method of delivery used in conventional commercial practice, including delivery in person, by mail, commercial delivery, and electronic transmission.
7. “*Distribution*” means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.
8. “*Effective date of notice*” is defined in section 490.141.
9. “*Electronic transmission*” or “*electronically transmitted*” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.
10. “*Employee*” includes an officer but not a director. A director may accept duties that make the director also an employee.
11. “*Entity*” includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.
12. The phrase “*facts objectively ascertainable*” outside of a filed document or plan is defined in section 490.120, subsection 12.
13. “*Foreign corporation*” means a corporation for profit incorporated under a law other than the law of this state.
14. “*Governmental subdivision*” includes authority, city, county, district, township, and other political subdivision.
15. “*Includes*” denotes a partial definition.
16. “*Individual*” includes the estate of an incompetent, a ward, or a deceased individual.
17. “*Means*” denotes an exhaustive definition.
18. “*Notice*” is defined in section 490.141.
19. “*Person*” means a person as defined in section 4.1.
20. “*Principal office*” means the office, in or out of this state, so designated in the biennial report, where the principal executive offices of a domestic or foreign corporation are located.
21. “*Proceeding*” includes civil suit and criminal, administrative, and investigatory action.
- 21A. “*Public corporation*” means a corporation that has a class of voting stock that is listed on a national securities exchange or held of record by more than two thousand shareholders.
22. “*Record date*” means the date established under division VI or VII on which a corporation determines the identity of its shareholders for purposes of this chapter.
23. “*Secretary*” means the corporate officer to whom the board of directors has delegated responsibility under section 490.840, subsection 3, for custody of the minutes of the meetings

of the board of directors and of the shareholders and for authenticating records of the corporation.

24. “Share” means the unit into which the proprietary interests in a corporation are divided.

25. “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

26. “Sign” or “signature” includes any manual, facsimile, conformed, or electronic signature.

27. “State”, when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions, of the United States.

28. “Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

29. “United States” includes a district, authority, bureau, commission, department, and any other agency of the United States.

30. “Voting group” means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

31. “Voting power” means the current power to vote in the election of directors.

89 Acts, ch 288, §15; 91 Acts, ch 211, §3; 97 Acts, ch 171, §9; 2001 Acts, ch 142, §1; 2002 Acts, ch 1154, §7, 8, 125; 2007 Acts, ch 140, §2; 2011 Acts, ch 2, §1, 10

For future repeal of subsection 21A effective December 31, 2014; see 2011 Acts, ch 2, §9

NEW subsection 21A

## DIVISION VII

### MEETINGS — NOTICE — VOTING

#### PART A

##### **490.702 Special meeting.**

1. Except as provided in subsection 5, a corporation shall hold a special meeting of shareholders upon the occurrence of either of the following:

a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the shareholders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

2. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

3. Special shareholders’ meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation’s principal office.

4. Only business with the purpose or purposes described in the meeting notice required by section 490.705, subsection 3, may be conducted at a special shareholders’ meeting.

5. Notwithstanding subsections 1 through 4, a public corporation is required to hold a special meeting only upon the occurrence of either of the following:

a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the holders of at least fifty percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

89 Acts, ch 288, §54; 97 Acts, ch 117, §1, 2; 2002 Acts, ch 1154, §14, 125; 2011 Acts, ch 2, §2, 10

2011 amendment to subsection 5, unnumbered paragraph 1, repealed effective December 31, 2014; see 2011 Acts, ch 2, §9  
Subsection 5, unnumbered paragraph 1 amended

## DIVISION VIII

### DIRECTORS AND OFFICERS

#### PART A

##### **490.803 Number and election of directors.**

1. A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

2. a. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

b. Notwithstanding paragraph "a", the number of directors of a public corporation subject to section 490.806A, subsection 1, shall be increased or decreased only by the affirmative vote of a majority of its board of directors.

3. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 490.806 or 490.806A.

89 Acts, ch 288, §74; 91 Acts, ch 211, §5; 2002 Acts, ch 1154, §32, 125; 2011 Acts, ch 2, §3, 10

2011 amendments to subsections 2 and 3 repealed effective December 31, 2014; see 2011 Acts, ch 2, §9  
Subsections 2 and 3 amended

##### **490.805 Terms of directors generally.**

1. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

2. The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 490.806 or 490.806A.

3. A decrease in the number of directors does not shorten an incumbent director's term.

4. The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected, except as provided in section 490.806A.

5. Despite the expiration of a director's term, the director continues to serve until a successor for that director is elected and qualifies or until there is a decrease in the number of directors.

89 Acts, ch 288, §76; 2011 Acts, ch 2, §4, 10

2011 amendments to subsections 2 and 4 repealed effective December 31, 2014; see 2011 Acts, ch 2, §9  
Subsections 2 and 4 amended

##### **490.806 Staggered terms for directors.**

Except as otherwise provided in section 490.806A, a corporation's articles of incorporation may provide for staggering the terms of its directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group,

if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

89 Acts, ch 288, §77; 2011 Acts, ch 2, §5, 10

2011 amendment to section repealed effective December 31, 2014; see 2011 Acts, ch 2, §9  
Section amended

**490.806A Public corporations — staggered terms.**

1. Except as provided in subsection 2, and notwithstanding anything to the contrary in the articles of incorporation or bylaws of a public corporation, the terms of directors of a public corporation shall be staggered by dividing the number of directors into three groups, as nearly equal in number as possible. The first group shall be referred to as “class I directors”, the second group shall be referred to as “class II directors”, and the third group shall be referred to as “class III directors”.

a. On or before the date on which a public corporation first convenes an annual shareholders' meeting following the time the public corporation becomes subject to this subsection, the board of directors of the public corporation shall by majority vote designate from among its members directors to serve as class I directors, class II directors, and class III directors.

b. The terms of directors serving in office on the date that the public corporation becomes subject to this subsection shall be as follows:

(1) Class I directors shall continue in office until the first annual shareholders' meeting following the date that the public corporation becomes subject to this subsection, and until their successors are elected. The shareholders' meeting shall be conducted not less than eleven months following the last annual shareholders' meeting conducted before the public corporation became subject to this subsection.

(2) Class II directors shall continue in office until one year following the first annual shareholders' meeting described in subparagraph (1), and until their successors are elected.

(3) Class III directors shall continue in office until two years following the first annual shareholders' meeting described in subparagraph (1), and until their successors are elected.

c. At each annual shareholders' meeting of a public corporation subject to this subsection, the successors to the class of directors whose term expires at that meeting shall be elected to hold office for a term of three years following such meeting and until their successors are elected.

d. The board of directors of a public corporation subject to this subsection shall adopt an amendment to its articles of incorporation as provided in section 490.1005A.

e. Notwithstanding this subsection, the articles of incorporation of a public corporation may confer upon the holders of preferred shares the right to elect one or more directors pursuant to section 490.804, who shall serve for such term, and have such voting powers, as shall be stated in the articles of incorporation.

2. Every public corporation shall be subject to subsection 1, unless it is exempt pursuant to this subsection.

a. (1) In order for a public corporation in existence on March 23, 2011, to be exempt from subsection 1, its board of directors must adopt a resolution or take action under section 490.821 expressly making an election to be exempt from the provisions of subsection 1. Such resolution or action must be adopted or taken within forty days after March 23, 2011.

(2) Upon adopting the resolution or taking board action under section 490.821, the public corporation is no longer subject to subsection 1, effective immediately unless otherwise provided for in the resolution or by the board action.

b. If on March 23, 2011, the articles of incorporation of the public corporation already provide for staggering the terms of its directors under section 490.806, the public corporation shall be exempt from the provisions of subsection 1. In such event, no further corporate action is required, and the public corporation is not required to amend or modify any provision of its articles of incorporation or bylaws in order to be exempt from subsection 1.

c. A corporation that becomes a public corporation on or after March 23, 2011, is exempt from the provisions of subsection 1.

2011 Acts, ch 2, §6, 10

Section repealed effective December 31, 2014; however, staggered terms under subsection 1 to continue until articles of incorporation further amended; see 2011 Acts, ch 2, §9

NEW section

#### **490.810 Vacancy on board.**

1. Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled in any of the following manners:

a. The shareholders may fill the vacancy.

b. The board of directors may fill the vacancy.

c. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

1A. For a public corporation subject to section 490.806A, subsection 1, a vacancy on the board of directors, including but not limited to a vacancy resulting from an increase in the number of directors, shall be filled solely by the affirmative vote of a majority of the remaining directors, even though less than a quorum of the board.

2. If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

3. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 490.807, subsection 2 or otherwise, may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs.

89 Acts, ch 288, §81; 2011 Acts, ch 2, §7, 10

Subsection 1A repealed effective December 31, 2014; see 2011 Acts, ch 2, §9

NEW subsection 1A

## DIVISION X

### AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

#### PART A

#### **490.1005A Public corporation — amendment by board of directors.**

1. The board of directors of a public corporation subject to section 490.806A, subsection 1, shall adopt an amendment to its articles of incorporation which includes all of the following:

a. A statement that the public corporation is subject to section 490.806A, subsection 1.

b. Any necessary changes to the articles of incorporation required to implement the requirements of section 490.806A, subsection 1, including by staggering the terms of the board of directors as described in that subsection.

2. Any amendment to the articles of incorporation as provided in subsection 1 of this section shall be made without shareholder approval.

2011 Acts, ch 2, §8, 10

Section repealed effective December 31, 2014; however, staggered terms to continue until articles of incorporation further amended; see 2011 Acts, ch 2, §9

NEW section

DIVISION XV  
FOREIGN CORPORATIONS

PART A

**490.1510 Service on foreign corporation.**

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report if the foreign corporation meets any of the following conditions:

a. Has no registered agent or its registered agent cannot with reasonable diligence be served.

b. Has withdrawn from transacting business in this state under section 490.1520.

c. Has had its certificate of authority revoked under section 490.1531.

3. a. A foreign corporation that does not have a current certificate of authority to transact business in this state under section 490.1503 may be served, with respect to an in rem action, in the manner provided in subsections 2 and 4, addressed to the secretary of the foreign corporation at its principal office as found either in the records of the jurisdiction of incorporation or in public records filed by it with an agency of the United States or any state having regulatory authority over the foreign corporation's business and affairs.

b. For purposes of paragraph "a", "in rem action" means an action, statutory notice, or demand involving the title to real estate or tangible personal property sited in Iowa; the partition or the foreclosure of a lien or mortgage against real estate; or the determination of the priorities of liens or claims against such real estate or personal property.

4. Service is perfected under subsection 2 or 3 at the earliest of:

a. The date the foreign corporation receives the mail.

b. The date shown on the return receipt, if signed on behalf of the foreign corporation.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

5. A foreign corporation may also be served in any other manner permitted by law.

89 Acts, ch 288, §170; 97 Acts, ch 171, §16; 2011 Acts, ch 56, §1, 2

NEW subsection 3 and former subsections 3 and 4 renumbered as 4 and 5

Subsection 4, unnumbered paragraph 1 amended

CHAPTER 496B

ECONOMIC DEVELOPMENT CORPORATIONS

**496B.2 Definitions.**

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

1. "Authority" means the economic development authority created in section 15.105, or any entity which succeeds to the functions of the authority.

2. "Board of directors" means members of the board of directors of a development corporation constituted under section 496B.13 in office from time to time.

3. "Development corporation" means any corporation organized pursuant to this chapter and for the purpose of developing businesses, industries, and enterprises in the state of Iowa by the loaning of money thereto and investing money therein, and otherwise organizing for the purposes in section 496B.5.

4. "Financial institution" means any bank, trust company, savings and loan association,

insurance company or related corporation, partnership, foundation or other institution licensed to do business in the state of Iowa and engaged primarily in lending or investing funds.

5. “*Loan limit*” means, for any member, the maximum amount permitted to be outstanding at any one time on loans made by any such member to a development corporation, as determined herein.

6. “*Member*” means any financial institution which shall undertake to lend money to a development corporation upon its call and in accordance with the provision of section 496B.9.

[C66, 71, 73, 75, 77, 79, 81, §496B.2]

2011 Acts, ch 118, §82, 83, 89

NEW subsection 1 and former subsection 1 renumbered as 2

Former subsection 2 stricken

### **496B.3 Authorized corporations.**

There is hereby authorized to be incorporated under the Iowa business corporation Act, chapter 490, development corporations which meet and comply with the requirements of this chapter. Such corporations shall be subject to and have the powers and privileges conferred by the provisions of this chapter and those provisions of the Iowa business corporation Act, chapter 490, which are not inconsistent with and to the extent not restricted or limited by the provisions of this chapter. No corporation shall be deemed incorporated pursuant to and under the provisions of this chapter unless the same is approved by the authority and unless its articles of incorporation provide that it is incorporated pursuant to this chapter. To assure a broad base from which development corporations may obtain loans from members, the authority at its discretion may limit the number of development corporations organized and existing pursuant to this chapter to one or more such corporations.

[C66, 71, 73, 75, 77, 79, 81, §496B.3]

2001 Acts, ch 24, §63; 2011 Acts, ch 118, §85, 89

Code editor directive applied

### **496B.6 Powers.**

Any development corporation shall, subject to the restrictions and limits herein contained, have the following powers:

1. To make contracts and incur liabilities for any of the purposes of the development corporation; provided that no development corporation shall incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association, or trust, or in any other manner.

2. To borrow money either from its members or pursuant to lending arrangements entered into under the authority granted in subsection 7 of this section, or both from its members and pursuant to said lending arrangements, and to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and when necessary to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing shareholder or member approval; provided, that no loan to a development corporation shall be secured in any manner unless all outstanding loans to such corporation, and for which loan or loans no subordination agreement has been entered into between the respective loan maker and the development corporation, shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

3. To make loans to any person, firm, corporation, joint stock company, association, or trust and to establish and regulate the terms and conditions with respect to any such loans, and the charges for interest and service connected therewith.

4. To acquire the goodwill, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, association, or trust; to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants and business establishments.

5. To cooperate with and avail itself of the facilities of the authority and to cooperate with and assist and otherwise encourage organizations in the various communities of the state of Iowa in the promotion, assistance, and development of business prosperity and economic welfare of such communities or of this state or any part thereof.

6. To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter and such other powers not in conflict herewith granted under the Iowa business corporation Act, chapter 490.

7. To enter into lending arrangements with state and federal agencies or instrumentalities whereby the development corporation may participate in lending operations or secure guarantees or qualify under applicable laws to further state or federal lending programs by becoming a participant therein.

[C66, 71, 73, 75, 77, 79, 81, §496B.6]

2001 Acts, ch 24, §64; 2011 Acts, ch 118, §85, 89

Code editor directive applied

#### **496B.12 Articles amended.**

The articles of incorporation of any development corporation may be amended by the votes of the shareholders and the members thereof voting separately by classes. Any amendment shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled and two-thirds of the votes to which the members shall be entitled. No amendment, however, shall be made which: (1) is inconsistent with this chapter; (2) authorizes any additional class or classes of shares of capital stock; (3) eliminates or curtails the authority of the authority with respect to the corporation. Without the consent of each of the members affected, no amendment shall be made which: (1) increases the obligation of a member to make loans to the corporation; (2) makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation; (3) affects a member's right to withdraw from membership, as provided herein, or (4) affects a member's voting rights in the corporation. Within thirty days after any meeting at which amendment of any such articles has been adopted, articles of amendment signed and sworn to by the president, secretary, and majority of the directors, setting forth such amendment and the due adoption thereof, shall be submitted to the director of the authority who shall examine them, and if the director finds that they conform to the requirements of this chapter, shall so certify and endorse the director's approval thereof. Thereupon, the articles of amendment shall be filed in the office of the secretary of state in the manner set forth and as provided in the Iowa business corporation Act, chapter 490, and no such amendment shall take effect until such articles of amendment shall have been approved and filed as aforesaid. Within sixty days after the effective date of any legislative amendment affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation, the approval of such legislative amendments shall be voted on by the shareholders and the members of the development corporation at a meeting duly called for that purpose. If such legislative amendment is not approved by the affirmative vote of two-thirds of the votes to which such shareholders shall be entitled and two-thirds of the votes to which such members shall be entitled, any such member voting against the approval of such legislative amendment shall have the right to withdraw from membership as provided in this chapter. Within thirty days after any meeting at which a legislative amendment affecting the articles of incorporation of a development corporation has been voted on, a certificate filed and sworn to by the secretary or other recording officer of such corporation setting forth the action taken at such meeting with respect to such amendment shall be submitted to the director of the authority and upon receipt of such approval shall be filed in the office of the secretary of state.

[C66, 71, 73, 75, 77, 79, 81, §496B.12]

2001 Acts, ch 24, §62; 2011 Acts, ch 118, §85, 89

Code editor directive applied

**496B.17 Certificate to do business.**

Upon the approval of the authority as required in this chapter and the issuance of a certificate as provided in the Iowa business corporation Act, chapter 490, a development corporation shall then be authorized to commence business and to issue stock thereof to the extent authorized in its articles of incorporation.

[C66, 71, 73, 75, 77, 79, 81, §496B.17]

2001 Acts, ch 24, §64; 2011 Acts, ch 118, §85, 89

Code editor directive applied

## CHAPTER 499

### COOPERATIVE ASSOCIATIONS

Applicable to associations formed from and after July 4, 1935; §499.1  
 Applicable to associations electing to be under this chapter pursuant to  
 §499.43A, 499.43B

Option to come under chapter 501; §501.601  
 Option to come under chapter 501A; §501A.1104

**499.2 Definitions.**

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

1. “*Agricultural associations*” are those formed to produce, grade, blend, preserve, process, store, warehouse, market, sell, or handle an agricultural product, or a by-product of an agricultural product; to produce ethanol; to purchase, produce, sell, or supply machinery, petroleum products, equipment, fertilizer, supplies, business services, or educational service to or for those engaged as bona fide producers of agricultural products; to finance any such activities; or to engage in any cooperative activity connected with or for any number of these purposes.
2. “*Agricultural products*” include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any other farm products.
3. “*Alternative voting method*” means a method of voting other than a written ballot, including voting by electronic, telephonic, internet, or other means that reasonably allows members the opportunity to vote.
4. “*Association*” means a corporation formed under this chapter.
5. A “*cooperative association*” is one which deals with or functions for its members at least to the extent required by section 499.3; and which distributes its net earnings among its members in proportion to their dealings with it, except for limited dividends or other items permitted in this chapter; and in which each voting member has one vote and no more.
6. “*Local deferred patronage dividends*” of an association means that portion of each member’s deferred patronage dividends described in section 499.30 which the board of directors of the association has determined arise from earnings of the association other than earnings which have been allocated to the association but which have not been paid in cash to the association by other cooperative organizations of which the association is a member. However, if the board of directors fails to make a determination with respect to a deceased member’s deferred patronage dividends prior to the member’s death, then “local deferred patronage dividends” means that portion of the member’s deferred patronage dividends which is proportional to the deferred patronage dividends described in section 499.30 less the amount of undistributed net earnings which have been allocated to the association by other cooperative organizations of which the association is a member, compared to all deferred patronage dividends of the association.
7. “*Local deferred patronage preferred stock*” of an association means preferred stock, if any, of an association which has been issued in exchange for local deferred patronage dividends. If preferred stock has been issued in exchange for deferred patronage dividends prior to the time the board of directors of the association has determined the portion of each member’s deferred patronage dividend which represents local deferred patronage dividends, then the board of directors may reasonably determine what portion of the preferred stock was

issued in exchange for local deferred patronage dividends and the portion which was issued for other deferred patronage dividends.

8. “*Member*” refers not only to members of nonstock associations but also to common stockholders of stock associations, unless the context of a particular provision otherwise indicates.

[C35, §8512-g2; C39, §8512.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.2]

86 Acts, ch 1196, §1; 88 Acts, ch 1026, §1; 92 Acts, ch 1099, §9; 2011 Acts, ch 23, §1; 2011 Acts, ch 34, §115

See Code editor’s note on simple harmonization  
Section amended

#### **499.24 Preferred stock.**

Preferred stock shall bear cumulative or noncumulative dividends as fixed by the articles. It shall have no vote. It shall be issued and be transferable without regard to eligibility or membership, and be redeemable on terms specified in the articles and as provided for in this chapter. The directors shall determine the time and amount of its issue.

[C35, §8512-g24; C39, §8512.24; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.24]

2011 Acts, ch 27, §1

Section amended

#### **499.29 Manner of voting.**

A vote shall not be cast by proxy. The vote of a member-association shall be cast only by its representative duly authorized in writing. A member may cast that member’s vote in advance of the meeting by mail ballot or, if the association’s articles or bylaws permit, by an alternative voting method upon any proposition of which the member has been previously notified in writing.

[C35, §8512-g29; C39, §8512.29; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.29]

96 Acts, ch 1115, §1; 2011 Acts, ch 23, §2

Section amended

#### **499.41 Amendments.**

1. Notwithstanding the provisions of the articles of incorporation of any association pertaining to amendment thereto now in effect, any association may amend its articles of incorporation by a vote of sixty-six and two-thirds percent of the members present, or voting by mailed ballot or alternative voting method, and having voting privileges, at any annual meeting or any special meeting called for that purpose, provided that at least ten days before said annual meeting or special meeting a copy of the proposed amendment or summary thereof be sent to all members having voting rights; or said articles of incorporation may be amended in accordance with the amendment requirements contained in the articles or bylaws of said association that are adopted subsequent to July 4, 1963, or are in effect on or after July 4, 1964, provided said amendment requirements in the articles or bylaws are not less than established in this section.

2. Amendments shall be executed and filed as provided in section 499.44.

[C35, §8512-g41; C39, §8512.41; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.41]

90 Acts, ch 1164, §3; 2011 Acts, ch 23, §3

Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2  
Subsection 1 amended

#### **499.47B Sale or other disposition of assets other than in regular course of business.**

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the goodwill, of a cooperative association organized under this chapter, if not made in the usual and regular course of its business, may be made upon the terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other cooperative association organized under this chapter, as may be authorized in the following manner:

1. The board of directors shall adopt a resolution recommending the sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of the membership, which may either be an annual or a special meeting. The board of directors

may condition its recommendation and submission of the sale, lease, exchange, or other disposition to the members for approval under this section on any basis.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale, lease, exchange, or other disposition of substantially all of the property and assets of the cooperative association.

3. At the meeting, the membership may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the cooperative association. Such authorization for the sale, lease, exchange, or other disposition shall be approved by the members as follows:

a. Except as provided in paragraph “b”, the sale, lease, exchange, or other disposition must be approved by a two-thirds vote of the members in which a majority of all voting members participate.

b. (1) If the cooperative association’s articles of incorporation require approval by more than two-thirds of its members in which a majority of all voting members participate, the sale, lease, exchange, or other disposition must be approved by the greater number as provided in the articles of incorporation.

(2) If the board of directors adopts additional conditions for the approval of the sale, lease, exchange, or other disposition as provided in subsection 1, the additional conditions must be satisfied in order for the sale, lease, exchange, or other disposition to be approved.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the members.

87 Acts, ch 88, §2; 2008 Acts, ch 1141, §4; 2011 Acts, ch 23, §4, 5

Subsection 3, paragraph a amended

Subsection 3, paragraph b, subparagraph (1) amended

#### **499.64 Vote of members.**

1. The board of directors of a cooperative association, upon recommending a plan of merger or consolidation be approved by the members, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. The board of directors may condition its recommendation and submission of a plan of merger or consolidation to the members for approval under this section on any basis. Written notice shall be given not less than twenty days prior to the meeting, either personally or by mail to each voting member and shareholder of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

2. At the meeting, a vote of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved as follows:

a. Except as provided in paragraph “b”, the proposed plan of merger or consolidation must be approved by a two-thirds vote of the members in which a majority of all voting members participate.

b. (1) If the cooperative association’s articles of incorporation require approval by more than two-thirds of its members in which a majority of all voting members participate, the proposed plan of merger or consolidation must be approved by the greater number as provided in the articles of incorporation.

(2) If the board of directors adopts additional conditions for the approval of the plan

of merger or consolidation as provided in subsection 1, the additional conditions must be satisfied in order for the plan of merger or consolidation to be approved.

[C71, 73, 75, 77, 79, 81, §499.64]

97 Acts, ch 17, §8; 2008 Acts, ch 1141, §6; 2011 Acts, ch 23, §6

Subsection 2 amended

Subsection 3 stricken

## CHAPTER 499B

### HORIZONTAL PROPERTY (CONDOMINIUMS)

#### **499B.17 Lien against owner of unit.**

All sums assessed by the council of co-owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only tax liens on the apartment in favor of any assessing unit and special district and all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the council of co-owners or the representatives thereof, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In the event of any such foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The council of co-owners or the representatives thereof, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

[C66, 71, 73, 75, 77, 79, 81, §499B.17]

2011 Acts, ch 25, §60

Section amended

## CHAPTER 501

### CLOSED COOPERATIVES

Statement of purpose; 96 Acts, ch 1010, §1  
Option to come under chapter 501A; §501A.1104

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### **501.101 Definitions.**

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

1. “*Alternative voting method*” means a method of voting other than a written ballot, including voting by electronic, telephonic, internet, or other means that reasonably allows members the opportunity to vote.
2. “*Articles*” means the cooperative’s articles of association.
3. “*Authorized person*” means a person who is one of the following:
  - a. A farming entity.
  - b. A person who owns at least one hundred fifty acres of agricultural land and receives as rent a share of the crops or the animals raised on the land if that person is a natural person or

a general partnership as organized under chapter 486, Code 1999, or chapter 486A in which all partners are natural persons.

c. An employee of the cooperative who performs at least one thousand hours of service for the cooperative in each calendar year.

4. “*Board*” means the cooperative’s board of directors.

5. “*Cooperative*” means a cooperative association organized under this chapter or converted to this chapter pursuant to section 501.601.

6. “*Farming*” means the same as defined in section 9H.1.

7. “*Farming entity*” means any one of the following:

a. A natural person or a fiduciary for a natural person who regularly participates in physical labor or operations management in a farming operation and files schedule F as part of the person’s annual form 1040 or form 1041 filing with the United States internal revenue service.

b. A family farm corporation, family farm limited liability company, family farm limited partnership, or family trust, as defined in section 9H.1.

c. A general partnership as organized under chapter 486, Code 1999, or chapter 486A in which all the partners are natural persons actively engaged in farming as provided in section 9H.1.

8. “*Interest*” means a voting interest or other interest in a cooperative as described in the cooperative’s articles of association.

9. “*Interest holder*” means a person who owns an interest in a cooperative, whether or not that interest has voting rights.

10. “*Member*” means a person who owns a voting interest in a cooperative.

11. “*Membership*” means the interest established by a member owning a voting interest.

12. “*Voting interest*” means an interest in a cooperative that has voting rights.

96 Acts, ch 1010, §3; 98 Acts, ch 1152, §1 – 6, 69; 99 Acts, ch 96, §40, 41; 2011 Acts, ch 23, §7; 2011 Acts, ch 131, §68, 158

NEW subsection 1 and former subsections 1 – 11 renumbered as 2 – 12

## SUBCHAPTER II

### ARTICLES AND BYLAWS

#### **501.203 Amended and restated documents of organization.**

1. A cooperative may amend its articles at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles.

2. A cooperative may restate its articles at any time. A restatement of the articles must contain the information required by section 501.202, subsection 2, and may set forth any other provision consistent with law.

3. If the board recommends the amendment or restatement to the members, the amendment or restatement must be adopted by the members by a vote of two-thirds of the votes cast.

4. If the board does not recommend the amendment or restatement to the members, then the amendment or restatement must be adopted by the members by a vote of two-thirds of the votes cast in which a majority of all votes are cast.

96 Acts, ch 1010, §13; 2011 Acts, ch 23, §8

Subsection 4 amended

#### **501.204 Bylaws.**

The board may adopt or amend the cooperative’s bylaws by a vote of three-fourths of the board. The members may adopt or amend the cooperative’s bylaws by a vote of three-fourths of the votes cast in which a majority of all votes are cast. A bylaw provision adopted by the members shall not be amended or repealed by the directors.

96 Acts, ch 1010, §14; 2011 Acts, ch 23, §9

Section amended

SUBCHAPTER III  
MEMBERS

**501.303 Conduct of meetings.**

1. Only those issues included in the notice of a member meeting may be considered at that meeting.

2. A member may vote at a member meeting in person or by mail ballot that specifies the issue and the member's vote on that issue. If the board makes available a ballot form, then that form must be used to cast a mail ballot on that issue. If the cooperative's articles or bylaws permit it, a member may cast a vote by an alternative voting method. The cooperative shall take reasonable measures to authenticate that a vote is cast by a member eligible to cast that vote.

96 Acts, ch 1010, §17; 2011 Acts, ch 23, §10

Subsection 2 amended

SUBCHAPTER VI  
CONVERSION, SALE, MERGER, AND  
CONSOLIDATION

PART 1

CONVERSION OF EXISTING ASSOCIATIONS  
AND SALE OF ASSETS

**501.601 Existing associations.**

1. As used in this section:

*a. "Dissenting member"* means a voting member who votes in opposition to the plan of conversion and who makes a demand for payment as provided in this section not later than the deadline for members to vote to approve the plan of conversion.

*b. "Issue price"* means the amount paid for an interest in the association or the value stated in a notice of allocation of patronage refunds.

2. An association organized under chapter 497, 498, or 499 may adopt this chapter pursuant to the following procedures:

*a.* The board must adopt a plan of conversion that specifies the changes in the articles to comply with this chapter, the effect of the conversion on the association's outstanding members' equity, and the option or options available to the equity holders who do not want to continue their investment in the association.

*b.* The members must approve the plan of conversion by the vote of two-thirds of the votes cast in which a majority of all votes are cast.

3. *a.* The cooperative shall redeem all of the members' equity held by dissenting members at its issue price within one year after the conversion to this chapter is effective.

*b.* An equity holder who is not a voting member shall have the same rights as a dissenting member if the equity holder makes a demand for payment pursuant to paragraph "a" not later than the deadline for members to vote to approve the plan of conversion.

*c.* The association shall notify all equity holders of their rights pursuant to paragraph "a" at the same time the association notifies the members of the member meeting to vote on the plan of conversion.

96 Acts, ch 1010, §33; 2011 Acts, ch 23, §11 – 13

Subsection 1, paragraph a amended

Subsection 2, paragraph b amended

Subsection 3, paragraph b amended

**501.603 Sale of assets.**

1. A cooperative may, on the terms and conditions and for the consideration determined by the board, mortgage, pledge, or otherwise encumber any or all of its property.

2. A cooperative may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, on the terms and conditions and for the consideration determined by the board, which consideration may include the interests of another cooperative, if the board recommends the proposed transaction to the members, and the members approve it by the vote of two-thirds of the votes cast in which a majority of all votes are cast. The board may condition its submission of the proposed transaction on any basis.

96 Acts, ch 1010, §35; 98 Acts, ch 1152, §34, 69; 2011 Acts, ch 23, §14  
Subsection 2 amended

## PART 2

## MERGER AND CONSOLIDATION

**501.614 Vote of members.**

1. The board of directors of a cooperative, upon approving a plan of merger or consolidation, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. Written notice shall be given not less than twenty days prior to the meeting, either personally or by mail, to each voting member of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

2. At the meeting, a vote of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved if two-thirds of the members vote affirmatively in which a majority of all voting members participate.

98 Acts, ch 1152, §38, 69; 2011 Acts, ch 23, §15  
Subsection 2 amended

## CHAPTER 501A

## COOPERATIVE ASSOCIATIONS ACT

## SUBCHAPTER I

## GENERAL PROVISIONS

**501A.102 Definitions.**

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

1. “*Address*” means mailing address, including a zip code. In the case of a registered address, the term means the mailing address and the actual office location, which shall not be a post office box.

2. “*Alternative voting method*” means a method of voting other than a written ballot, including voting by electronic, telephonic, internet, or other means that reasonably allows members the opportunity to vote.

3. “*Articles*” means the articles of organization of a cooperative as originally filed or subsequently amended as provided in this chapter.

4. “*Association*” means a business entity on a cooperative plan and organized under the laws of this state or another state or that is chartered to conduct business under the laws of another state.

5. “*Board*” means the board of directors of a cooperative.
6. “*Business entity*” means a person organized under statute or common law in this state or another jurisdiction for purposes of engaging in a commercial activity on a profit, cooperative, or not-for-profit basis, including but not limited to a corporation or entity taxed as a corporation under the Internal Revenue Code, nonprofit corporation, cooperative or cooperative association, partnership, limited partnership, limited liability company, limited liability partnership, investment company, joint stock company, joint stock association, or trust, including but not limited to a business trust.
7. “*Cooperative*” means a business association organized under this chapter.
8. “*Crop*” means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.
9. “*Domestic business entity*” means a business entity organized under the laws of this state, including but not limited to a limited liability company as defined in section 489.102; a corporation organized pursuant to chapter 490; a nonprofit corporation organized under chapter 504; a partnership, limited partnership, limited liability partnership, or limited liability limited partnership as provided in chapter 486A or 488; or a cooperative association or other cooperative organized under this chapter or chapter 497, 498, 499, or 501.
10. “*Domestic cooperative*” means a cooperative association or other cooperative organized under this chapter or chapter 497, 498, 499, or 501.
11. “*Foreign business entity*” means a business entity that is not a domestic business entity.
12. “*Foreign cooperative*” means a foreign business entity organized to conduct business consistent with this chapter or chapter 497, 498, or 499.
13. “*Iowa limited liability company*” means a limited liability company governed by chapter 489.
14. “*Livestock*” means the same as defined in section 717.1.
15. “*Member*” means a person or entity reflected on the books of a cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members.
16. “*Member control agreement*” means an instrument which controls the investment or governance of nonpatron members, which may be executed by the board and one or more nonpatron members and which may provide for their individual or collective rights to elect directors or to participate in the distribution or allocation of profits or losses.
17. “*Membership interest*” means a member’s interest in a cooperative consisting of a member’s financial rights, a member’s right to assign financial rights, a member’s governance rights, and a member’s right to assign governance rights. “*Membership interest*” includes patron membership interests and nonpatron membership interests.
18. “*Members’ meeting*” means a regular or special members’ meeting.
19. “*Nonpatron member*” means a member who holds a nonpatron membership interest.
20. “*Nonpatron membership interest*” means a membership interest that does not require the holder to conduct patronage for or with the cooperative to receive financial rights or distributions.
21. “*Patron*” means a person or entity who conducts patronage with the cooperative, regardless of whether the person is a member.
22. “*Patronage*” means business, transactions, or services done for or with the cooperative as defined by the cooperative.
23. “*Patron member*” means a member holding a patron membership interest.
24. “*Patron membership interest*” means the membership interest requiring the holder to conduct patronage for or with the cooperative, as specified by the cooperative to receive financial rights or distributions.
25. “*Secretary*” means the secretary of state.
26. “*Traditional cooperative*” means a cooperative or cooperative association organized under chapter 497, 498, 499, or 501.

SUBCHAPTER V  
ORGANIZATION

**501A.504 Amendment of articles.**

1. *Procedure.*

a. The articles of organization of a cooperative shall be amended only as follows:

(1) The board, by majority vote, must pass a resolution stating the text of the proposed amendment. The text of the proposed amendment and an attached ballot, if the board has provided for a mail ballot in the resolution, shall be mailed or otherwise distributed with a regular or special meeting notice to each member. If the board authorizes an alternative voting method, the text of the proposed amendment and explanation of how to cast a vote using the alternative voting method shall be distributed with the regular or special meeting notice to each member. The notice shall designate the time and place of the meeting for the proposed amendment to be considered and voted on.

(2) If a quorum of the members is registered as being present or represented at the meeting, the proposed amendment is adopted if any of the following occurs:

(a) If approved by a majority of the votes cast.

(b) For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

b. After an amendment has been adopted by the members, the amendment must be signed by the chairperson, vice chairperson, records officer, or assistant records officer and a copy of the amendment filed in the office of the secretary.

2. *Certified statement.*

a. The board shall prepare a certified statement affirming that all of the following are true:

(1) The vote and meeting of the board adopting a resolution of the proposed amendment.

(2) The notice given to members of the meeting at which the amendment was adopted.

(3) The quorum registered at the meeting.

(4) The vote cast adopting the amendment.

b. The certified statement shall be signed by the chairperson, vice chairperson, records officer, or financial officer and filed with the records of the cooperative.

3. *Amendment by directors.* A majority of directors may amend the articles if the cooperative does not have any members with voting rights.

4. *Filing.* An amendment of the articles shall be filed with the secretary as required in section 501A.201. The amendment is effective as provided in subchapter II. After an amendment to the articles of organization has been adopted and approved in the manner required by this chapter and by the articles of organization, the cooperative shall deliver to the secretary of state for filing articles of amendment which shall set forth all of the following:

a. The name of the cooperative.

b. The text of each amendment adopted.

c. The date of each amendment's adoption.

d. If the amendment was adopted by the directors or members and that members' adoption was not required.

e. If an amendment required adoption by the members, a statement that the amendment was duly adopted by the members in the manner required by this chapter and by the articles of organization.

2005 Acts, ch 135, §28; 2006 Acts, ch 1010, §128; 2011 Acts, ch 23, §17, 18

Subsection 1, paragraph a, subparagraph (1) amended

Subsection 1, paragraph a, subparagraph (2), unnumbered paragraph 1 amended

SUBCHAPTER VII  
DIRECTORS — LIABILITY AND  
INDEMNIFICATION — OFFICERS

PART 1  
DIRECTORS

**501A.703 Election of directors.**

1. *First board.* The organizers shall elect and obtain the acknowledgment of the first board to serve until directors are elected by members. Until election by members, the first board shall appoint directors to fill any vacancies.

2. *Generally.*

a. Directors shall be elected for the term, at the time, and in the manner provided in this section and the bylaws.

b. A majority of the directors shall be members and a majority of the directors shall be elected exclusively by the members holding patron membership interests unless otherwise provided in the articles or bylaws.

c. The voting power of the directors may be allocated according to equity classifications or allocation units of the cooperative. If the cooperative authorizes nonpatron membership interests, one of the following must apply:

(1) At least one-half of the voting power on matters of the cooperative that are not specific to equity classifications or allocation units shall be allocated to the directors elected by members holding patron membership interests.

(2) The directors elected by the members holding patron membership interests shall have at least an equal voting power or shall not have a minority voting power on general matters of the cooperative that are not specific to equity classifications or allocation units.

d. A director holds office for the term the director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

e. The expiration of a director's term with or without election of a qualified successor does not make the prior or subsequent acts of the director or the board void or voidable.

f. Subject to any limitation in the articles or bylaws, the board may set the compensation of directors.

g. Directors may be divided into or designated and elected by class or other distinction as provided in the articles or bylaws.

h. A director may resign by giving written notice to the chairperson of the board or the board. The resignation is effective without acceptance when the notice is given to the chairperson of the board or the board unless a later effective time is specified in the notice.

3. *Election at regular meeting.* Directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws. Except for directors elected at district meetings or special meetings to fill a vacancy, all directors shall be elected at the regular members' meeting. There shall be no cumulative voting for directors except as provided in this chapter and the articles or bylaws.

4. *District or local unit election of directors.* For a cooperative with districts or other units, members may elect directors on a district or unit basis if provided in the bylaws. The directors may be nominated or elected at district meetings if provided in the bylaws. Directors who are nominated at district meetings shall be elected at the annual regular members' meeting by vote of the entire membership, unless the bylaws provide that directors who are nominated at district meetings are to be elected by vote of the members of the district, at the district meeting or the annual regular members' meeting.

5. *Vote by ballot or alternative voting method.* The following shall apply to voting by ballot or alternative voting method:

a. A member shall not vote for a director other than by being present at a meeting, by mail ballot, or by alternative voting method, as authorized by the board.

b. The ballot shall be in a form prescribed by the board.

c. The member shall mark the ballot for the candidate chosen and mail the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's name, or the member shall vote by designating the candidate chosen by an alternative voting method in the manner prescribed by the board.

d. If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting or as otherwise prescribed for an alternative voting method, the ballot or alternative voting method shall be accepted and counted as the vote of the absent member.

6. *Business entity members may nominate persons for director.* If a member of a cooperative is not a natural person, and the bylaws do not provide otherwise, the member may appoint or elect one or more natural persons to be eligible for election as a director.

7. *Term.* A director holds office for the term the director was elected and until a successor is elected and has qualified, or the earlier death, resignation, removal, or disqualification of the director.

8. *Acts not void or voidable.* The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the director void or voidable.

9. *Compensation.* Subject to any limitation in the articles or bylaws, the board may fix the compensation of the directors.

10. *Classification.* Directors may be divided into classes as provided in the articles or bylaws.

2005 Acts, ch 135, §37; 2006 Acts, ch 1030, §55; 2011 Acts, ch 23, §19; 2011 Acts, ch 131, §69, 158

Subsection 5 amended

## SUBCHAPTER VIII

### MEMBERS — PROPERTY — OWNERSHIP INTERESTS

#### PART 1

#### MEMBERS

#### **501A.804 Special members' meetings.**

1. *Calling meeting.* Special members' meetings of the members may be called by any of the following:

a. A majority vote of the board.

b. The written petition of at least twenty percent of the patron members and, if authorized by the articles or bylaws, twenty percent of the nonpatron members, twenty percent of all members, or members representing twenty percent of the membership interests collectively submitted to the chairperson.

2. *Notice.* The cooperative shall give notice of a special members' meeting by mailing the special members' meeting notice to each member personally at the person's last known post office address, or by another process determined by the board if the member is to vote by an alternative voting method as approved by the board and agreed to by the member individually or the members generally. For a member that is an entity, the notice mailed, or delivered by another process for vote by an alternative voting method, shall be to an officer of the entity. The special members' meeting notice shall state the time, place, and purpose of the special members' meeting. The special members' meeting notice shall be issued within ten days from and after the date of the presentation of a members' petition, and the special members'

meeting shall be held within thirty days after the date of the presentation of the members' petition.

3. *Waiver and objections.* A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item cannot lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

2005 Acts, ch 135, §54; 2011 Acts, ch 23, §20  
Subsection 2 amended

#### **501A.806 Quorum.**

1. *Quorum.* The quorum for a members' meeting to transact business shall be by any of the following:

a. Ten percent of the total number of members of a cooperative with five hundred or fewer members.

b. Fifty members for cooperatives with more than five hundred members.

2. *Quorum for voting by mail.* In determining a quorum at a meeting, on a question submitted to a vote by mail or by an alternative voting method, members present in person or represented by mail vote or the alternative voting method shall be counted. The attendance of a sufficient number of members to constitute a quorum shall be established by a registration of the members of the cooperative present at the meeting. The registration shall be verified by the chairperson or the records officer of the cooperative and shall be reported in the minutes of the meeting.

3. *Meeting action invalid without quorum.* An action by a cooperative is not valid or legal in the absence of a quorum at the meeting at which the action was taken.

2005 Acts, ch 135, §56; 2011 Acts, ch 23, §21  
Subsection 2 amended

#### **501A.810 Member voting rights.**

1. *Patron and nonpatron member voting.* A patron member of a cooperative is only entitled to one vote on an issue to be voted upon by members holding patron membership interests. However, if authorized in the cooperative's articles or bylaws, a patron member may be entitled to additional votes based on patronage criteria in section 501A.811. If nonpatron members are authorized by the patron members and granted voting rights on any matter voted on by the members of the cooperative, the entire patron members' voting power shall be voted collectively based upon the vote of the majority of patron members voting on the issue and the collective vote of the patron members shall be a majority of the vote cast unless otherwise provided in the bylaws. The bylaws shall not reduce the collective patron member vote to less than fifteen percent of the total vote on matters of the cooperative. A nonpatron member has the voting rights in accordance to the nonpatron member's nonpatron membership interests as granted in the bylaws, subject to the provisions of this chapter.

2. *Right to vote at meeting.* A member or delegate may exercise voting rights on any matter that is before the members as prescribed in the articles or bylaws at a members' meeting from the time the member or delegate arrives at the members' meeting, unless the articles or bylaws specify an earlier and specific time for closing the right to vote.

3. *Voting method.* A member's vote at a members' meeting shall be cast in person, by mail if a mail ballot is authorized by the board, or by an alternative voting method if that is authorized by the board. A vote shall not be cast by proxy, except as provided in subsection 4. The cooperative shall take reasonable measures to authenticate that a vote is cast by a member eligible to cast that vote.

4. *Members represented by delegates.*

a. The provisions of this subsection apply to members represented by delegates.

b. A cooperative may provide in the articles or bylaws that units or districts of members are entitled to be represented at members' meetings by delegates chosen by the members of the unit or district. The delegates may vote on matters at the members' meeting in the same manner as a member. The delegates may only exercise the voting rights on a basis and with the number of votes as prescribed in the articles or bylaws.

c. If the approval of a certain portion of the members is required for adoption of amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates shall be counted as votes by the members represented by the delegate.

d. Patron members may be represented by the proxy of other patron members.

e. Nonpatron members may be represented by proxy if authorized in the bylaws.

5. *Mail ballots.* The provisions of this subsection apply to mail ballots.

a. A member who is or will be absent from a members' meeting may vote by mail on any motion, resolution, or amendment that the board submits for vote by mail.

b. A ballot shall be in the form prescribed by the board and be accompanied by the text of the proposed motion, resolution, or amendment to be acted upon at the meeting.

c. The member shall express a choice by marking an appropriate choice on the ballot and mail, deliver, or otherwise submit the ballot to the cooperative in a plain, sealed envelope inside another envelope bearing the member's name or by an alternative method approved by the board.

d. A properly executed ballot shall be accepted by the board and counted as the vote of the absent member at the meeting.

6. *Alternative voting method.* The board may also allow the members to vote by alternative voting method, provided the members receive a copy of the proposed motion, resolution, or amendment to be acted upon.

2005 Acts, ch 135, §60; 2011 Acts, ch 23, §22 – 24

Subsections 3 and 5 amended

NEW subsection 6

## SUBCHAPTER XI

### MERGER AND CONVERSION

#### **501A.1101 Merger and consolidation.**

1. *Authorization.* Unless otherwise prohibited, cooperatives organized under the laws of this state, including cooperatives organized under this chapter or traditional cooperatives, may merge or consolidate with each other, an Iowa limited liability company under the provisions of section 489.1015, or other business entities organized under the laws of another state by complying with the provisions of this section and the law of the state where the surviving or new business entity will exist. A cooperative shall not merge or consolidate with a business entity organized under the laws of this state, other than a traditional cooperative, unless the law governing the business entity expressly authorizes merger or consolidation with a cooperative. This subsection does not authorize a foreign business entity to do any act not authorized by the law governing the foreign business entity.

2. *Plan.* To initiate a merger or consolidation of a cooperative, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board to prepare a plan. The plan shall state all of the following:

a. The names of the constituent domestic cooperative, the name of any Iowa limited liability company that is a party to the merger, to the extent authorized under section 489.1015, and any foreign business entities.

b. The name of the surviving or new domestic cooperative, Iowa limited liability company as required by section 489.1015, or other foreign business entity.

c. The manner and basis of converting membership or ownership interests of the constituent domestic cooperative, the Iowa limited liability company that is a party as provided in section 489.1015, or foreign business entity into membership or ownership

interests in the surviving or new domestic cooperative, the surviving Iowa limited liability company as authorized in section 489.1015, or foreign business entity.

d. The terms of the merger or consolidation.

e. The proposed effect of the merger or consolidation on the members and patron members of each constituent domestic cooperative.

f. For a consolidation, the plan shall contain the articles of the entity or organizational documents to be filed with the state in which the entity is organized or, if the surviving organization is an Iowa limited liability company, the articles of organization.

3. *Notice.* The following shall apply to notice:

a. The board shall mail or otherwise transmit or deliver notice of the merger or consolidation to each member. The notice shall contain the full text of the plan, and the time and place of the meeting at which the plan will be considered.

b. A cooperative with more than two hundred members may provide the notice in the same manner as a regular members' meeting notice.

4. *Adoption of plan.*

a. A plan of merger or consolidation shall be adopted by a domestic cooperative as provided in this subsection.

b. The plan of merger or consolidation is adopted if all of the following apply:

(1) A quorum of the members eligible to vote is registered as being present at the meeting or voting by mail ballot or alternative voting method.

(2) The plan is approved by the patron members, or if otherwise provided in the articles or bylaws, is approved by a majority of the votes cast in each class of votes cast. For a domestic cooperative with articles or bylaws requiring more than a majority of the votes cast or other conditions for approval, the plan must be approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

c. After the plan has been adopted, articles of merger or consolidation stating the plan and that the plan was adopted according to this subsection shall be signed by the chairperson, vice chairperson, or records officer of each cooperative merging or consolidating.

d. The articles of merger or consolidation shall be filed in the office of the secretary.

e. For a merger, the articles of the surviving domestic cooperative subject to this chapter are deemed amended to the extent provided in the articles of merger.

f. Unless a later date is provided in the plan, the merger or consolidation is effective when the articles of merger or consolidation are filed in the office of the secretary or the appropriate office of another jurisdiction.

g. The secretary shall issue a certificate of organization of the merged or consolidated cooperative.

5. *Effect of merger or consolidation.* For a merger that does not involve an Iowa limited liability company, the following shall apply to the effect of a merger:

a. After the effective date, the domestic cooperative, Iowa limited liability company, if party to the plan, and any foreign business entity that is a party to the plan become a single entity. For a merger, the surviving business entity is the business entity designated in the plan. For a consolidation, the new domestic cooperative, the Iowa limited liability company, if any, and any foreign business entity is the business entity provided for in the plan. Except for the surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity, the separate existence of each merged or consolidated domestic or foreign business entity that is a party to the plan ceases on the effective date of the merger or consolidation.

b. The surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity possesses all of the rights and property of each of the merged or consolidated business entities and is responsible for all their obligations. The title to property of the merged or consolidated domestic cooperative, Iowa limited liability company, or foreign business entity is vested in the surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity without reversion or impairment of the title caused by the merger or consolidation.

c. If a merger involves an Iowa limited liability company, this subsection is subject to the provisions of section 489.1015.

2005 Acts, ch 135, §81; 2006 Acts, ch 1010, §132; 2007 Acts, ch 126, §86; 2008 Acts, ch 1162, §140 – 142, 154, 155; 2011 Acts, ch 23, §25

Subsection 4, paragraph b, subparagraph (1) amended

## CHAPTER 502

### UNIFORM SECURITIES ACT (Blue Sky Law)

This chapter, as amended by 2004 Acts, ch 1161, takes effect January 1, 2005; chapter 502, Code 2003 and Code Supplement 2003, governs actions or proceedings pending on January 1, 2005, or that may be instituted based on conduct occurring before January 1, 2005, subject to certain limitations on civil actions to enforce liability; for provisions relating to the applicable limitations period, to continued effectiveness of registrations and associated regulations under chapter 502, Code 2003 and Code Supplement 2003, and the applicability of that chapter to certain offers or sales made prior to January 1, 2006, see 2004 Acts, ch 1161, §64, 68

### ARTICLE 3

#### REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES

#### **502.302 Notice filing.**

1. *Required filing of records.* With respect to a federal covered security, as defined in section 18(b)(2) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(2), that is not otherwise exempt under sections 502.201 through 502.203, a rule adopted or order issued under this chapter may require the filing of any or all of the following records:

a. Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933 and a consent to service of process complying with section 502.611 signed by the issuer.

(1) A person who is the issuer of a federal covered security under section 18(b)(2) of the Securities Act of 1933 shall initially make a notice filing and annually renew a notice filing in this state for an indefinite amount or a fixed amount. The fixed amount must be for two hundred fifty thousand dollars.

(2) A notice filer shall pay a filing fee when the notice is filed. If the amount covered by the notice is indefinite, the notice filer shall pay a filing fee of one thousand dollars. If the amount covered by the notice is fixed, the notice filer shall pay a filing fee of two hundred fifty dollars, and all of the following shall apply:

(a) The notice filer shall file a sales report with the administrator or pay an additional filing fee of one thousand two hundred fifty dollars within ninety days after the notice filing's annual renewal date. If the notice filer files a sales report with the administrator, the notice filer shall pay an additional filing fee of one-tenth of one percent of the amount of securities sold in excess of two hundred fifty thousand dollars. The additional filing fee must be paid within ninety days after the notice filing's annual renewal date.

(b) The notice filing covering the additional securities shall be effective retroactively as of the effective date of the notice filing that is being amended.

b. After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933.

2. *Notice filing effectiveness and renewal.* A notice filing under subsection 1 is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this chapter to be filed and by paying the renewal fee required by subsection 1, paragraph “a”. A previously filed consent to service of process complying with section 502.611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

3. *Notice filings for federal covered securities under section 18(b)(4)(D).* With respect to a security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(D), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of form D, including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with section 502.611 signed by the issuer not later than fifteen days after the first sale of the federal covered security in this state and the payment of a fee of one hundred dollars; and the payment of a fee of two hundred fifty dollars for any late filing.

4. *Stop orders.* Except with respect to a federal security under section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

5. *Deposit of fees.* Fees collected under this section shall be deposited as provided in section 505.7.

[SS15, §1920-u15, -u16; C24, 27, §8561, 8563, 8571; C31, 35, §8581-c11, -c14; C39, §8581.11, 8581.18; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.18; C77, 79, 81, §502.302; 82 Acts, ch 1003, §2]

83 Acts, ch 169, §10, 18; 91 Acts, ch 40, §20 – 22; 94 Acts, ch 1031, §14; 96 Acts, ch 1025, §8; 97 Acts, ch 114, §10; 98 Acts, ch 1106, §5, 24; 99 Acts, ch 166, §2; 2001 Acts, ch 118, §5; 2004 Acts, ch 1161, §10, 68; 2009 Acts, ch 181, §57

2011 repeal of subsection 5 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

#### **502.304A Expedited registration by filing for small issuers.**

1. *Registration permitted.* A security meeting the conditions set forth in this section may be registered by filing as provided in this section.

2. *Conditions of the issuer.* In order to register under this section, the issuer must meet all of the following conditions:

a. The issuer must be a corporation, limited liability company, or partnership organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production mining or other extractive industries.

b. The securities must be offered and sold only on behalf of the issuer, and must not be used by any selling security holder to register securities for resale.

3. *Conditions for effectiveness of registration — required records and fee.* In order to register under this section, all of the following conditions must be satisfied:

a. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible into common stock must be equal to or greater than one dollar per share. The issuer must not split its common stock, or declare a stock dividend, for two years after effectiveness of the registration, except that in connection with a subsequent registered public offering, the issuer may upon application and consent of the administrator take such action.

b. A commission, fee, or other remuneration shall not be paid or given, directly or indirectly, for the sale of the securities, except for a payment to a broker-dealer or agent registered under this chapter, or except for a payment as permitted by the administrator

by rule or by order issued upon written application showing good cause for allowance of a commission, fee, or other remuneration.

c. The issuer or a broker-dealer offering or selling the securities is not or would not be disqualified under rule 505, 17 C.F.R. § 230.505(2)(iii), adopted under the Securities Act of 1933.

d. The aggregate offering price of the offering of securities by the issuer within or outside this state must not exceed one million dollars, less the aggregate offering price for all securities sold within twelve months before the start of, and during the offering of, the securities under rule 504, 17 C.F.R. § 230.504, in reliance on any exemption under section 3(b) of the Securities Act of 1933 or in violation of section 5(a) of that Act; provided, that if rule 504, 17 C.F.R. § 230.504, adopted under the Securities Act of 1933, is amended, the administrator may by rule increase the limit under this paragraph to conform to amendments to federal law, including but not limited to modification in the amount of the aggregate offering price.

e. An offering document meeting the disclosure requirements of rule 502(b)(2), 17 C.F.R. § 230.502(b)(2), adopted under the Securities Act of 1933, must be delivered to each purchaser in the state prior to the sale of the securities, unless the administrator by rule or order provides for disclosure different from that rule.

f. The issuer must file with the administrator an application for registration and the offering document to be used in connection with the offer and sale of securities.

g. The issuer must pay to the administrator a fee of one hundred dollars and is not required to pay the filing fee set forth in section 502.305, subsection 2.

h. The fees collected under this subsection shall be deposited as provided in section 505.7.

4. *Effectiveness of registration.* Unless the administrator issues a stop order denying the effectiveness of the registration, as provided in section 502.306, the registration becomes effective on the fifth business day after the registration has been filed with the administrator, or earlier if the administrator permits a shorter time period between registration and effectiveness.

5. *Agent registration.* In connection with an offering registered under this section, a person may be registered as an agent of the issuer under section 502.402 by the filing of an application by the issuer with the administrator for the registration of the person as an agent of the issuer and the paying of a fee of ten dollars. Notwithstanding any other provision of this chapter, the registration of the agent shall be effective until withdrawn by the issuer or until the securities registered pursuant to the registration statement have all been sold, whichever occurs first. The registration of an agent shall become effective when ordered by the administrator or on the fifth business day after the agent's application has been filed with the administrator, whichever occurs first, and the administrator shall not impose further conditions upon the registration of the agent. However, the administrator may deny, revoke, suspend, or withdraw the registration of the agent at any time as provided in section 502.412. An agent registered solely pursuant to this section is entitled to sell only securities registered under this section.

6. *Inapplicable issuers.* This section is not applicable to any of the following issuers:

a. An investment company, including a mutual fund.

b. An issuer subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

c. A direct participation program, unless otherwise permitted by the administrator by rule or order for good cause.

d. A blind pool or other offering for which the specific business or properties cannot now be described, unless the administrator determines that the blind pool is a community development, seed, or venture capital fund for which the administrator permits a waiver.

7. *Limits on stop orders.* Notwithstanding any other provision of this chapter, the administrator shall not deny effectiveness to or suspend or revoke the effectiveness of a registration under this section on the basis of section 502.306, subsection 1, paragraph "h".

2004 Acts, ch 1161, §13, 68; 2005 Acts, ch 3, §76; 2009 Acts, ch 181, §58

2011 repeal of subsection 3, paragraph h, stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

**502.305 Securities registration filings.**

1. *Who may file.* A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

2. *Filing.* Except as provided in subsection 10 and section 502.304A, subsection 3, paragraph “g”, a person who files a registration statement or a notice filing shall pay a filing fee of one-tenth of one percent of the proposed aggregate sales price of the securities to be offered to persons in this state pursuant to the registration statement or notice filing. However, except as provided in subsection 10, section 502.302, subsection 1, paragraph “a”, and section 502.304A, subsection 3, paragraph “g”, the annual filing fee shall not be less than fifty dollars or more than one thousand dollars. The administrator shall retain the filing fee even if the notice filing is withdrawn or the registration is withdrawn, denied, suspended, revoked, or abandoned. The fees collected under this subsection shall be deposited as provided in section 505.7. The administrator may adopt rules requiring a filing to be made electronically. The rules may provide for such electronic filing either directly with the administrator or with a designee of the administrator. The rules may require that the filer pay any reasonable costs charged by the designee of the administrator for processing the filings and that the filer submit any fees paid through the designee.

3. *Status of offering.* A registration statement filed under section 502.303 or 502.304 must specify all of the following:

a. The amount of securities to be offered in this state.

b. The states in which a registration statement or similar record in connection with the offering has been or is to be filed.

c. Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

4. *Incorporation by reference.* A record filed under this chapter or its predecessor chapter within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

5. *Nonissuer distribution.* In the case of a nonissuer distribution, information or a record shall not be required under subsection 9 or section 502.304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

6. *Escrow and impoundment.* A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the administrator shall not reject a depository institution solely because of its location in another state.

7. *Form of subscription.* A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which shall not be longer than five years.

8. *Effective period.* Except while a stop order is in effect under section 502.306, a registration statement is effective for one year after its effective date, or for any longer period designated in an order issued under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement shall not be withdrawn until

one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

9. *Periodic reports.* While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

10. *Posteffective amendments.*

a. A registrant who sold securities to persons in this state in excess of the amount of securities registered in this state at the time of the sale may file an amendment to its registration statement to register the additional securities. All of the following requirements shall apply:

(1) If a registrant proposes to sell securities to persons in this state pursuant to a registration statement that is currently effective in this state in an amount that exceeds the amount registered in this state, the registrant must do all of the following:

(a) File an amendment to register the additional securities.

(b) Pay an additional filing fee in the same amount as specified by subsection 2 as though the amendment constitutes a separate issue.

(2) If a registrant sold securities to persons in this state in excess of the amount registered in this state at that time, the registrant must do all of the following:

(a) File an amendment to register the additional securities.

(b) Pay an additional filing fee that is three times the amount specified in subsection 2 as though the amendment constitutes a separate issue.

b. The administrator may order the amendment effective retroactively as of the effective date of the registration statement that is being amended.

98 Acts, ch 1106, §13, 24; 99 Acts, ch 166, §5; 2004 Acts, ch 1161, §14, 68; 2009 Acts, ch 181, §59; 2010 Acts, ch 1121, §3

2011 repeal of 2009 Acts, ch 181, §59, amendment to subsection 2 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## ARTICLE 3A

### TAKEOVER PROVISIONS

#### **502.321G Fees.**

The administrator shall charge a nonrefundable filing fee of two hundred fifty dollars for a registration statement filed by an offeror. The fee shall be deposited as provided in section 505.7.

2004 Acts, ch 1161, §23, 68; 2009 Acts, ch 181, §60

2011 repeal of 2009 Acts, ch 181, §60, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## ARTICLE 4

### BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

#### **502.410 Filing fees.**

1. *Broker-dealers.* A person shall pay a fee of two hundred dollars when initially filing an application for registration as a broker-dealer and a fee of two hundred dollars when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

2. *Agents.* The fee for an individual is forty dollars when filing an application for registration as an agent, a fee of forty dollars when filing a renewal of registration as an

agent, and a fee of forty dollars when filing for a change of registration as an agent. Of each forty-dollar fee collected, ten dollars is appropriated to the securities investor education and financial literacy training fund established under section 502.601, subsection 5. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

3. *Investment advisers.* A person shall pay a fee of one hundred dollars when filing an application for registration as an investment adviser and a fee of one hundred dollars when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

4. *Investment adviser representatives.*

a. The fee for an individual is thirty dollars when filing an application for registration as an investment adviser representative, a fee of thirty dollars when filing a renewal of registration as an investment adviser representative, and a fee of thirty dollars when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

b. However, an investment adviser representative is not required to pay a filing fee if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser.

5. *Federal covered investment advisers.* A federal covered investment adviser required to file a notice under section 502.405 shall pay an initial fee of one hundred dollars and an annual notice fee of one hundred dollars.

6. *Payment.* A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

7. *Deposit of fees.* Except as otherwise provided in subsection 2, fees collected under this section shall be deposited as provided in section 505.7.

2004 Acts, ch 1161, §35, 68; 2008 Acts, ch 1123, §4; 2009 Acts, ch 181, §61

2011 repeal of subsection 7 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

## ARTICLE 6

### ADMINISTRATION AND JUDICIAL REVIEW

#### **502.604 Administrative enforcement.**

1. *Issuance of an order or notice.* If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may do any of the following:

a. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter.

b. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 502.401, subsection 2, paragraph “a”, subparagraph (4) or (6), or an investment adviser under section 502.403, subsection 2, paragraph “a”, subparagraph (3).

c. Issue an order under section 502.204.

2. *Summary process.* An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any restitution order, civil penalty, or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within thirty days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by

the administrator within thirty days after the date of service of the order, the order, including an order for restitution, the imposition of a civil penalty, or a requirement for payment of costs of investigation sought in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

3. *Procedure for final order.* If a hearing is requested or ordered pursuant to subsection 2, a hearing must be held pursuant to chapter 17A. A final order shall not be issued unless the administrator makes findings of fact and conclusions of law in a record in accordance with chapter 17A. The final order may make final, vacate, or modify the order issued under subsection 1.

4. *Civil penalty — restitution — corrective action.* In a final order under subsection 3, the administrator may impose a civil penalty up to an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation, order restitution, or take other corrective action as the administrator deems necessary and appropriate to accomplish compliance with the laws of the state relating to all securities business transacted in the state.

5. *Costs.* In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

6. *Filing of certified final order with court — effect of filing.* If a petition for judicial review of a final order is not filed in accordance with section 502.609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

7. *Enforcement by court — further civil penalty.* If a person does not comply with an order under this section, the administrator may petition the Polk county district court or the district court for the county in which the person resides or is located to enforce the order. The court shall not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

[C31, 35, §8581-c17; C39, §8581.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21(5); C77, 79, 81, §502.604]

91 Acts, ch 40, §33; 96 Acts, ch 1025, §14; 99 Acts, ch 166, §8; 2000 Acts, ch 1147, §17; 2001 Acts, ch 118, §10, 11; 2004 Acts, ch 1161, §53, 68; 2007 Acts, ch 137, §5; 2011 Acts, ch 70, §1

Subsections 2 and 4 amended

CHAPTER 504  
REVISED IOWA NONPROFIT CORPORATION ACT

SUBCHAPTER I  
GENERAL PROVISIONS

PART 2  
FILING DOCUMENTS

**504.113 Filing, service, and copying fees.**

1. The secretary of state shall collect the following fees, as provided by the secretary of state, when the documents described in this subsection are delivered for filing:

DOCUMENT	FEE
a. Articles of incorporation .....	\$ —
b. Application for use of indistinguishable name .....	\$ —
c. Application for reserved name .....	\$ —
d. Notice of transfer of reserved name .....	\$ —
e. Application for registered name .....	\$ —
f. Application for renewal of registered name .....	\$ —
g. Corporation's statement of change of registered agent or registered office or both .....	\$ —
h. Agent's statement of change of registered office for each affected corporation not to exceed a total of .....	\$ —
i. Agent's statement of resignation .....	No fee
j. Amendment of articles of incorporation .....	\$ —
k. Restatement of articles of incorporation with amendments .....	\$ —
l. Articles of merger .....	\$ —
m. Articles of dissolution .....	\$ —
n. Articles of revocation of dissolution .....	\$ —
o. Certificate of administrative dissolution .....	\$ —
p. Application for reinstatement following administrative dissolution .....	\$ —
q. Certificate of reinstatement .....	No fee
r. Certificate of judicial dissolution .....	No fee
s. Application for certificate of authority .....	\$ —
t. Application for amended certificate of authority .....	\$ —
u. Application for certificate of withdrawal .....	\$ —
v. Certificate of revocation of authority to transact business .....	No fee
w. Biennial report .....	\$ —
x. Articles of correction .....	\$ —

- y. Application for certificate of existence or authorization..... \$ \_\_\_
- z. Any other document required or permitted to be filed by this chapter ..... \$ \_\_\_

2. The secretary of state shall collect a fee upon being served with process under this chapter. The party to a proceeding causing service of process is entitled to recover the fee paid the secretary of state as costs if the party prevails in the proceeding.

3. The secretary of state shall collect fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation.

2004 Acts, ch 1049, §5, 192  
 Authority to refund fees; 2011 Acts, ch 127, §27, 85, 89  
 Section not amended; footnote revised

## CHAPTER 505

### INSURANCE DIVISION

#### 505.7 Fees — expenses of division.

1. All fees and charges which are required by law to be paid by insurance companies, associations, and other regulated entities shall be payable to the commissioner of the insurance division of the department of commerce or department of revenue, as provided by law, whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner provided by law for deposit in the department of commerce revolving fund created in section 546.12.

2. The commissioner shall account for receipts and disbursements according to the separate inspection and examination duties imposed upon the commissioner by the laws of this state and each separate inspection and examination duty shall be fiscally self-sustaining.

3. Forty percent of the nonexamination revenues payable to the division of insurance or the department of revenue in connection with the regulation of insurance companies or other entities subject to the regulatory jurisdiction of the division shall be deposited in the department of commerce revolving fund created in section 546.12 and shall be subject to annual appropriation to the division for its operations and is also subject to expenditure under subsection 6. The remaining nonexamination revenues payable to the division of insurance or the department of revenue shall be deposited in the general fund of the state.

4. Except as otherwise provided in subsection 6, the insurance division may expend additional funds if those additional expenditures are actual expenses which exceed the funds budgeted for statutory duties of the division and directly result from the statutory duties of the division. The amounts necessary to fund the excess division expenses shall be collected from additional fees and other moneys collected by the division. The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed to the general fund, and shall also include the division’s justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

5. The insurance division may transfer moneys between budgeted line items of its appropriation, but such transfers may not reduce moneys budgeted for examinations or professional services, including but not limited to actuarial and legal services.

6. a. The insurance division may expend additional funds, including funds for additional personnel if those additional expenditures are actual expenses which exceed the funds budgeted for insurance solvency oversight under the following conditions:

- (1) The division may exceed the line item budgets for examinations and professional

services, including but not limited to legal and actuarial services, provided that the division funds the increased expenditures through assessments or increased nonexamination revenues payable to the division under subsection 1 or otherwise. The amounts necessary to fund the excess expenses may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

(2) Before the division expends or encumbers an amount in excess of the funds budgeted for line items other than examinations and professional services, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses can be paid from nonexamination revenues payable to the division under subsection 1 or otherwise. Upon the approval of the director of the department of management the division may expend and encumber funds for the excess expenses. The amounts necessary to fund the excess expenses may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

b. The annual salaries of the deputy commissioner for supervision and the chief examiner appointed pursuant to section 507.5 shall be expenses of examination of insurance companies and shall be charged to insurance companies examined on a proportionate basis as provided by rule adopted by the commissioner. Insurance companies examined shall pay the proportion of the salaries of the deputy commissioner for supervision and the chief examiner charged to them as part of the costs of examination as provided in section 507.8.

7. The insurance division shall, by January 15 of each year, prepare estimates of projected receipts, refunds, and reimbursements to be generated by the examinations function of the division during the calendar year in which the report is due, and such receipts, refunds, and reimbursements shall be treated in the same manner as repayment receipts, as defined in section 8.2, subsection 8, and shall be available to the division to pay the expenses of the division's examination function.

8. The commissioner may assess the costs of an audit or examination to a health insurance purchasing cooperative, in the same manner as provided for insurance companies under sections 507.7 through 507.9, and may establish by rule reasonable filing fees to fund the cost of regulatory oversight.

9. The commissioner may retain funds collected during the fiscal year beginning July 1, 2003, pursuant to any settlement, enforcement action, or other legal action authorized under federal or state law for the purpose of reimbursing costs and expenses of the division.

10. a. The commissioner shall assess the costs of carrying out the insurance division's duties pursuant to section 505.8, subsection 18, section 505.17, subsection 2, and sections 505.18 and 505.19 that are directly attributable to the performance of the division's duties involving specific health insurance carriers licensed to do business in this state. Such expenses shall be charged to and paid by the specific health insurance carrier to whom the expenses are attributable and upon failure or refusal of any such carrier to pay such expenses, the same may be recovered in an action brought in the name of the state. In addition, the commissioner may revoke the certificate of authority of a health insurance carrier licensed to do business in this state that fails to pay such expenses attributable to that carrier.

b. The commissioner shall assess the costs of carrying out the insurance division's duties generally pursuant to section 505.8, subsection 18, section 505.17, subsection 2, and sections 505.18 and 505.19, and for implementation and maintenance of health insurance information for consumers on the insurance division's internet site, that are not attributable to a specific health insurance carrier, to all health insurance carriers that are licensed to do business in this state on a proportionate basis as provided by rules adopted by the commissioner.

[S13, §1683-r5; C24, 27, 31, 35, 39, §8612; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.7]

86 Acts, ch 1246, §615; 87 Acts, ch 234, §433; 90 Acts, ch 1247, §12, 13; 91 Acts, ch 26, §32; 91 Acts, ch 260, §1239; 93 Acts, ch 88, §3; 94 Acts, ch 1176, §1, 2; 2002 Acts, 2nd Ex, ch 1003, §32, 35; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §135; 2009 Acts, ch 181, §62, 63; 2010 Acts, ch 1121, §4, 33

2011 repeal of 2009 Acts, ch 181, §62, 63, amendments to subsections 1 and 3 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

### **505.8 General powers and duties.**

1. The commissioner of insurance shall be the head of the division, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to federal and state insurance business transacted in the state.

2. The commissioner shall, subject to chapter 17A, establish, publish, and enforce rules not inconsistent with law for the enforcement of this subtitle and for the enforcement of the laws, the administration and supervision of which are imposed on the division, including rules to establish fees sufficient to administer the laws, where appropriate fees are not otherwise provided for in rule or statute.

3. The commissioner shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corporations, and all transactions leading up to the organization of such corporations.

4. The commissioner shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing to engage in any insurance business.

5. The commissioner shall supervise all health insurance purchasing cooperatives providing services or operating within the state and the organization of domestic cooperatives. The commissioner may admit nondomestic health insurance purchasing cooperatives under the same standards as domestic cooperatives.

6. The commissioner shall provide assistance to the public and to consumers of insurance products and services in this state.

a. The commissioner shall accept inquiries and complaints from the public regarding the business of insurance. The commissioner or the commissioner's designee may respond to inquiries and complaints, and may examine or investigate such inquiries and complaints to determine whether laws in this subtitle and rules adopted pursuant to such laws have been violated.

b. The commissioner shall establish a bureau, to be known as the "consumer advocate bureau", which shall be responsible for ensuring fair treatment of consumers and for preventing unfair or deceptive trade practices in the marketplace and by persons under the jurisdiction of the commissioner.

(1) The commissioner, with the advice of the governor, shall appoint a consumer advocate who shall be knowledgeable in the area of insurance and particularly in the area of consumer protection. The consumer advocate shall be the chief administrator of the consumer advocate bureau.

(2) The consumer advocate bureau may receive and may investigate consumer complaints and inquiries from the public, and may conduct investigations to determine whether any person has violated any provision of the insurance code, including chapters 507B and 522B, and any provisions related to the establishment of insurance rates.

(3) The consumer advocate bureau shall perform other functions as may be assigned to it by the commissioner related to consumer advocacy.

(4) The consumer advocate bureau shall work in conjunction with other areas of the insurance division on matters of mutual interest. The insurance division shall cooperate with the consumer advocate in fulfilling the duties of the consumer advocate bureau. The consumer advocate may also seek assistance from other federal or state agencies or private entities for the purpose of assisting consumers.

(5) When necessary or appropriate to protect the public interest or consumers, the consumer advocate may request that the commissioner conduct rate filing reviews as provided in section 505.15 or administrative hearings as provided in section 505.29.

(6) The commissioner, in cooperation with the consumer advocate, shall prepare and deliver a report to the general assembly by January 15 of each year that contains findings and recommendations regarding the activities of the consumer advocate bureau including but not limited to all of the following:

- (a) An overview of the functions of the bureau.
  - (b) The structure of the bureau including the number and type of staff positions.
  - (c) Statistics showing the number of complaints handled by the bureau, the nature of the complaints including the line of business involved and their disposition, and the disposition of similar issues in other states.
  - (d) Actions commenced by the consumer advocate.
  - (e) Studies performed by the consumer advocate.
  - (f) Educational and outreach efforts of the consumer advocate bureau.
  - (g) Recommendations from the commissioner and the consumer advocate about additional consumer protection functions that would be appropriate and useful for the bureau or the insurance division to fulfill based on observations and analysis of trends in complaints and information derived from national or other sources.
  - (h) Recommendations from the commissioner and the consumer advocate about any needs for additional funding, staffing, legislation, or administrative rules.
- c. When necessary or appropriate to protect the public interest or consumers, the commissioner may conduct, or the commissioner's designee may request that the commissioner conduct, administrative hearings as provided in this subtitle.
  - d. The commissioner may adopt rules for the administration of this subsection.
7. The commissioner shall have regulatory authority over health benefit plans and adopt rules under chapter 17A as necessary, to promote the uniformity, cost efficiency, transparency, and fairness of such plans for physicians and osteopathic physicians licensed under chapter 148 and hospitals licensed under chapter 135B, for the purpose of maximizing administrative efficiencies and minimizing administrative costs of health care providers and health insurers.
8. a. Notwithstanding chapter 22, the commissioner shall keep confidential the information submitted to the insurance division or obtained by the insurance division in the course of an investigation or inquiry pursuant to subsection 6, including all notes, work papers, or other documents related to the investigation. Information obtained by the commissioner in the course of investigating a complaint or inquiry may, in the discretion of the commissioner, be provided to the insurance company or insurance producer that is the subject of the complaint or inquiry, to the consumer who filed the complaint or inquiry, and to the individual insured who is the subject of the complaint or inquiry, without waiving the confidentiality afforded to the commissioner or to other persons by this subsection. The commissioner may disclose or release information that is otherwise confidential under this subsection, in the course of an administrative or judicial proceeding.
- b. Notwithstanding chapter 22, the commissioner shall keep confidential both information obtained by or submitted to the insurance division pursuant to chapters 514J and 515D.
  - c. The commissioner shall adopt rules protecting the privacy of information held by an insurer or an agent consistent with the federal Gramm-Leach-Bliley Act, Pub. L. No. 106-102.
  - d. Notwithstanding paragraphs "a", "b", and "c", if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other regulatory authorities or governmental agencies or may publish information concerning a violation of this chapter or a rule or order under this chapter. Such information may be redacted so that personally identifiable information is not made available.
  - e. The commissioner may adopt rules protecting the privacy of information submitted to the insurance division consistent with this section.
9. Notwithstanding chapter 22, the commissioner may keep confidential any social security number, residence address, and residence telephone number that is contained in a record filed as part of a licensing, registration, or filing process if disclosure is not required in the performance of any duty or is not otherwise required under law.
10. The commissioner may, after a hearing conducted pursuant to chapter 17A, assess fines or penalties, assess costs of an investigation or proceeding, order restitution, or take other corrective action as the commissioner deems necessary and appropriate to accomplish compliance with the laws of the state relating to all insurance business transacted in the state.
11. The commissioner may do any of the following:
- a. Conduct public or private investigations within or outside of this state which the

commissioner deems necessary or appropriate to determine whether a person has violated, is violating, or is about to violate a provision of any chapter of this subtitle or a rule adopted or order issued under any chapter of this subtitle, or to aid in the enforcement of any chapter of this subtitle or in the adoption of rules and forms under any chapter of this subtitle.

b. Require or permit a person to testify, file a statement, or produce a record under oath or otherwise as the commissioner determines, concerning facts and circumstances relating to a matter being investigated or about which an action or proceeding will be instituted.

c. Notwithstanding subsection 8, publish a record concerning an action, proceeding, or investigation under, or a violation of, any chapter of this subtitle or a rule adopted or order issued under any chapter of this subtitle, if the commissioner determines that such publication is in the public interest and is necessary and appropriate for the protection of the public.

12. For the purpose of an investigation made under any chapter of this subtitle, the commissioner or the commissioner's designee may administer oaths and affirmations, subpoena witnesses, seek compulsory attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation, pursuant to rules adopted under chapter 17A. The confidentiality provisions of subsection 8 shall apply to information and material obtained pursuant to this subsection.

13. If a person does not appear or refuses to testify, or does not file a statement or produce records, or otherwise does not obey a subpoena or order issued by the commissioner under any chapter of this subtitle, the commissioner may, in addition to assessing the penalties contained in sections 505.7A, 507B.6A, 507B.7, 522B.11, and 522B.17, make application to a district court of this state or another state to enforce compliance with the subpoena or order. A court to whom application is made to enforce compliance with a subpoena or order pursuant to this subtitle may do any of the following:

- a. Hold the person in contempt.
- b. Order the person to appear before the commissioner.
- c. Order the person to testify about the matter under investigation.
- d. Order the production of records.
- e. Grant injunctive relief, including restricting or prohibiting the offer or sale of insurance or insurance advice.
- f. Impose a civil penalty as set forth in section 505.7A.
- g. Grant any other necessary or appropriate relief.

14. This section shall not be construed to prohibit a person from applying to a district court of this state or another state for relief from a subpoena or order issued by the commissioner under any chapter of this subtitle.

15. An individual shall not be relieved of an order to appear, testify, file a statement, produce a record or other evidence, or obey a subpoena or other order of the commissioner made under any chapter of this subtitle on the grounds that fulfillment of the requirement may, directly or indirectly, tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If an individual refuses to obey a subpoena or order by asserting that individual's privilege against self-incrimination, the commissioner may apply to the district court to compel the individual to obey the subpoena or order of the commissioner. Testimony, records, or other evidence that is compelled by a court enforcing an order of the commissioner shall not be used, directly or indirectly, against that individual in a criminal case, except in a prosecution for perjury or contempt or for otherwise failing to comply with the order.

16. Upon request of the insurance regulator of another state or foreign jurisdiction, the commissioner may provide assistance in conducting an investigation to determine whether a person has violated, is violating, or is about to violate an insurance law or rule of the other state or foreign jurisdiction administered or enforced by that insurance regulator. The commissioner may provide such assistance pursuant to the powers conferred under this section as the commissioner determines is necessary or appropriate under the circumstances. Such assistance may be provided regardless of whether the conduct being investigated would constitute a violation of this subtitle or any other law of this state if the conduct occurred in this state. In determining whether to provide such assistance the

commissioner may consider whether the insurance regulator requesting the assistance is permitted to and has agreed to reciprocate in providing assistance to the commissioner upon request, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of division commissioner resources and employees to provide such assistance.

17. The commissioner shall utilize the senior health insurance information program to assist in the dissemination of objective and noncommercial educational material and to raise awareness of prudent consumer choices in considering the purchase of various insurance products designed for the health care needs of older Iowans.

18. The commissioner shall annually convene a work group composed of the consumer advocate, health insurance carriers, health care providers, small employers that purchase health insurance under chapter 513B, and individual consumers in the state for the purpose of considering ways to reduce the cost of providing health insurance coverage and health care services, including but not limited to utilization of uniform billing codes, improvements to provider credentialing procedures, reducing out-of-state care expenses, annually assessing the impact of federal health care reform legislation on health care costs in the state and determining whether such legislation has reduced the cost of health insurance in the state, and the electronic delivery of explanation of benefits statements. The recommendations made by the work group shall be included in the annual report filed with the general assembly pursuant to section 505.18.

19. The commissioner may propose and promulgate administrative rules to effectuate the insurance provisions of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and any amendments thereto, or other applicable federal law.

[S13, §1683-r3; C24, 27, 31, 35, 39, §8613; C46, 50, 54, §505.8; C58, 62, §505.8, 522.3; C66, 71, 73, §505.8, 515.150, 522.3; C75, 77, 79, 81, § 505.8]

83 Acts, ch 27, §10; 88 Acts, ch 1159, §2; 90 Acts, ch 1234, §2; 94 Acts, ch 1176, §3; 97 Acts, ch 23, §61; 98 Acts, ch 1119, §3; 99 Acts, ch 114, §41; 2000 Acts, ch 1023, §4, 5; 2002 Acts, ch 1111, §6; 2003 Acts, ch 91, §2; 2007 Acts, ch 137, §6; 2007 Acts, ch 215, §117; 2008 Acts, ch 1123, §7 - 9; 2008 Acts, ch 1175, §1; 2008 Acts, ch 1188, §21; 2009 Acts, ch 133, §168; 2009 Acts, ch 145, §3; 2010 Acts, ch 1121, §5, 33; 2011 Acts, ch 70, §2, 3

See also §523A.801 and 5231.201

Subsections 1 and 10 amended

NEW subsection 19

### **505.18 Annual report.**

1. Consumers deserve to know the quality and cost of their health care insurance. Health care insurance transparency provides consumers with the information necessary, and the incentive, to choose health plans based on cost and quality. Reliable cost and quality information about health care insurance empowers consumer choice and consumer choice creates incentives at all levels, and motivates the entire health care delivery system to provide better health care and health care benefits at a lower cost. It is the purpose of this section to make information regarding the costs of health care insurance readily available to consumers through the consumer advocate bureau of the insurance division.

2. The commissioner in collaboration with the consumer advocate shall prepare and deliver a report to the governor and to the general assembly no later than November 15 of each year that provides findings regarding health spending costs for health insurance carriers in the state for the previous calendar year. The commissioner may contract with outside vendors or entities to assist in providing the information contained in the annual report. The report shall provide, at a minimum, the following information:

a. Aggregate health insurance data concerning loss ratios of health insurance carriers licensed to do business in the state.

b. Rate increase data.

c. Health care expenditures in the state and the effect of such expenditures on health insurance premium rates.

d. A ranking and quantification of those factors that result in higher costs and those factors that result in lower costs for each health insurance carrier in the state.

e. The current capital and surplus and reserve amounts held in reserve by each health insurance carrier licensed to do business in the state.

f. A listing of any apparent medical trends affecting health insurance costs in the state.

g. Any additional data or analysis deemed appropriate by the commissioner to provide the general assembly with pertinent health insurance cost information.

h. Recommendations made by the work group convened pursuant to section 505.8, subsection 18.

2010 Acts, ch 1121, §7, 33; 2011 Acts, ch 70, §4, 5

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, paragraph d amended

#### **505.19 Health insurance rate increase applications — public hearing and comment.**

1. All health insurance carriers licensed to do business in the state shall immediately notify policyholders of any application for a rate increase exceeding the average annual health spending growth rate stated in the most recent national health expenditure projection published by the centers for Medicare and Medicaid services of the United States department of health and human services, that is filed with the insurance division. Such notice shall specify the rate increase proposed that is applicable to each policyholder and shall include the ranking and quantification of those factors that are responsible for the amount of the rate increase proposed. The notice shall include information about how the policy holder can contact the consumer advocate for assistance.

2. The commissioner shall hold a public hearing at the time a carrier files for proposed health insurance rate increases exceeding the average annual health spending growth rate as provided in subsection 1, prior to approval or disapproval of the proposed rate increases for that carrier by the commissioner.

3. The consumer advocate shall solicit public comments on each proposed health insurance rate increase application if the increase exceeds the average annual health spending growth rate as provided in subsection 1, and shall post without delay during the normal business hours of the division, all comments received on the insurance division's internet site prior to approval, disapproval, or modification of the proposed rate increase by the commissioner.

4. The consumer advocate shall present the public testimony, if any, and public comments received for consideration by the commissioner in determining whether to approve, disapprove, or modify such health insurance rate increase proposals.

5. a. For the purposes of this section, "health insurance" does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

b. For the purposes of this section, "health insurance" does not include benefits provided under a separate policy as follows:

(1) Limited scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

c. For the purposes of this section, "health insurance" does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

d. For the purposes of this section, “*health insurance*” does not include Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55, and similar supplemental coverage provided to coverage under group health insurance coverage.

6. The commissioner shall adopt rules pursuant to chapter 17A to implement the provisions of this section.

2010 Acts, ch 1121, §8, 33; 2011 Acts, ch 70, §6  
Subsections 3 and 4 amended

#### **505.28 Consent to jurisdiction.**

A person committing any act governed by chapter 502, 502A, this chapter, chapters 505A through 523G, or 523I constitutes consent by that person to the jurisdiction of the commissioner of insurance and the district courts of this state.

2006 Acts, ch 1117, §16; 2011 Acts, ch 25, §61  
Section amended

#### **505.29 Administrative hearings.**

The commissioner of insurance shall have the authority to appoint as a hearing officer a designee or an independent administrative law judge. Duties of a hearing officer shall include hearing contested cases arising from conduct governed by chapters 502, 502A, this chapter, chapters 505A through 523G, and 523I. Sections 10A.801 and 17A.11 do not apply to the appointment of a designee or an administrative law judge pursuant to this section.

2006 Acts, ch 1117, §17; 2011 Acts, ch 25, §62  
Section amended

## CHAPTER 507

### EXAMINATION OF INSURANCE COMPANIES

#### **507.9 Fees — accounting.**

All fees collected under the provisions of this chapter shall be paid to the commissioner of insurance and shall be turned in to the state treasury for deposit as provided in section 505.7.

[S13, §1821-c; C24, 27, 31, 35, 39, §8633; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.9]

2009 Acts, ch 181, §64

Deposit of fees, §12.10

2011 repeal of 2009 Acts, ch 181, §64, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 507A

### UNAUTHORIZED INSURERS

#### **507A.4 Transactions where law not applicable.**

The provisions of this chapter shall not apply to:

1. The lawful transaction of surplus lines insurance as permitted by sections 515.120 through 515.122.

2. The lawful transaction of reinsurance by insurers.

3. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

4. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state, covering subjects of insurance not resident located, or expressly to be

performed in this state at the time of issue, and which transactions are subsequent to the issuance of the policy.

5. Transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.

6. Transactions in this state involving any policy of insurance issued prior to July 1, 1967.

7. Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

8. Transactions involving risks located in this state where the policy or contract of insurance for such risk was principally negotiated and delivered outside this state and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to do an insurance business, and where such insurer has no contact with this state except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in this state.

9. *a.* Transactions involving a multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, if the multiple employer welfare arrangement meets all of the following conditions:

(1) The arrangement is administered by an authorized insurer or an authorized third-party administrator.

(2) The arrangement has been in existence and provided health insurance in Iowa for at least five years prior to July 1, 1997.

(3) The arrangement was established by a trade, industry, or professional association of employers that has a constitution or bylaws, and has been organized and maintained in good faith for at least ten continuous years prior to July 1, 1997.

(4) The arrangement registers with and obtains a certificate of registration issued by the commissioner of insurance.

(5) The arrangement is subject to the jurisdiction of the commissioner of insurance, including regulatory oversight and solvency standards as established by rules adopted by the commissioner of insurance pursuant to chapter 17A.

*b.* A multiple employer welfare arrangement registered with the commissioner of insurance that does not meet the solvency standards established by rule adopted by the commissioner of insurance is subject to chapter 507C.

*c.* A multiple employer welfare arrangement that meets all of the conditions of paragraph "a" shall not be considered any of the following:

(1) An insurance company or association of any kind or character under section 432.1.

(2) A member of the Iowa individual health benefit reinsurance association under section 513C.10.

(3) A member insurer of the Iowa life and health insurance guaranty association under section 508C.5, subsection 12.

*d.* A multiple employer welfare arrangement registered with the commissioner of insurance shall file with the commissioner of insurance on or before March 1 of each year a copy of the report required to be filed with the United States department of labor pursuant to 29 C.F.R. § 2520.101-2.

*e.* When not otherwise provided, a foreign or domestic multiple employer welfare arrangement doing business in this state shall pay to the commissioner of insurance the fees as required in section 511.24.

10. *a.* A self-funded health benefit plan sponsored by an employer in this state under the federal Employee Retirement Income Security Act of 1974, as codified in 29 U.S.C. § 1169, which provides health benefits to independent contractors of the employer and to spouses and dependents of the independent contractors, if the plan is granted a waiver from the provisions of this chapter by the commissioner and meets all of the following conditions:

(1) There is a written contract between the sponsor of the health benefit plan and the independent contractor which establishes the relationship between the parties to the contract

and provides for the personal services to be provided by the independent contractor to the sponsor of the health benefit plan pursuant to the contract.

(2) The personal services to be provided by the independent contractor pursuant to the contract are directly related to the principal business of the sponsor of the health benefit plan.

(3) The contract provides that the independent contractor will provide services to the sponsor of the health benefit plan on an exclusive basis.

(4) The inclusion of the independent contractor in the sponsor's health benefit plan is incidental to the contractual relationship between the sponsor of the health benefit plan and the independent contractor.

(5) Independent contractors and their spouses and dependents included in an employer-sponsored health benefit plan do not in total equal more than forty-nine percent of the total persons covered by the health benefit plan.

(6) The health benefit plan is administered by an authorized insurer or an authorized third-party administrator.

b. The sponsor of the health benefit plan shall file an application for waiver from the provisions of this chapter with the commissioner as prescribed by the commissioner and shall file periodic statements and information as required by the commissioner. The commissioner shall adopt rules pursuant to chapter 17A implementing this subsection. All statements and information filed with or disclosed to the commissioner pursuant to this subsection are confidential records pursuant to chapter 22.

c. If at any time the commissioner determines that a health benefit plan for which a waiver has been granted does not meet all of the conditions of paragraph "a", and the rules adopted by the commissioner under paragraph "b", the commissioner may terminate the waiver granted to the health benefit plan.

d. A self-funded employer-sponsored health benefit plan which has a valid waiver from the provisions of this chapter shall not be considered any of the following:

(1) An insurance company or association of any kind or character under section 432.1.

(2) A member insurer of the Iowa life and health insurance guaranty association as defined in section 508C.5, subsection 12.

(3) A carrier under chapter 513B.

(4) A member of the Iowa individual health benefit reinsurance association under section 513C.10.

(5) An entity subject to chapter 514C.

(6) A multiple employer welfare arrangement as defined in subsection 9.

e. A self-funded employer-sponsored health benefit plan which has received a waiver from the provisions of this chapter shall be considered to be a self-funded employer-sponsored health benefit plan under the federal Employee Retirement Income Security Act of 1974, as codified in 29 U.S.C. § 1169, and not subject to this title so long as the waiver is in effect.

f. The provision of health benefits to an independent contractor by a self-funded employer-sponsored health benefit plan which meets all of the conditions of paragraph "a" shall not in and of itself create an employer-employee relationship between the independent contractor and the sponsor of the health benefit plan.

[C71, 73, 75, 77, 79, 81, §507A.4]

94 Acts, ch 1038, §1, 3; 95 Acts, ch 33, §1; 96 Acts, ch 1024, §1; 97 Acts, ch 67, §1, 2; 98 Acts, ch 1012, §1; 2001 Acts, ch 13, §1, 3 - 5; 2001 Acts, ch 69, §4, 39; 2003 Acts, ch 91, §4; 2003 Acts, 1st Ex, ch 2, §39, 209; 2006 Acts, ch 1117, §21; 2007 Acts, ch 152, §52

Section not amended; internal reference change applied

## CHAPTER 507B

## INSURANCE TRADE PRACTICES

**507B.7 Cease and desist orders and penalties.**

1. If, after hearing, the commissioner determines that a person has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings, an order requiring such person to cease and desist from engaging in such method of competition, act, or practice, and the commissioner may at the commissioner's discretion order any one or more of the following:

a. Payment of a civil penalty of not more than one thousand dollars for each act or violation of this subtitle, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of this subtitle, in which case the penalty shall be not more than five thousand dollars for each act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. If the commissioner finds that a violation of this subtitle was directed, encouraged, condoned, ignored, or ratified by the employer of the person or by an insurer, the commissioner shall also assess a fine to the employer or insurer.

b. Suspension or revocation of the license of a person as defined in section 507B.2, subsection 1, if the person knew or reasonably should have known the person was in violation of this subtitle.

c. Payment of interest at the rate of ten percent per annum if the commissioner finds that the insurer failed to pay interest as required under section 507B.4, subsection 16.

2. Until the expiration of the time allowed under section 507B.8 for filing a petition for review if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as the commissioner may deem proper, modify or set aside in whole or in part any order issued by the commissioner under this section.

3. After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by the commissioner under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require.

4. Any person who violates a cease and desist order of the commissioner, and while such order is in effect, may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to any one or more of the following:

a. A monetary penalty of not more than ten thousand dollars for each and every act or violation. A penalty collected under this lettered paragraph shall be deposited as provided in section 505.7.

b. Suspension or revocation of such person's license.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.7; 81 Acts, ch 165, §3]

2001 Acts, ch 69, §10, 39; 2004 Acts, ch 1110, §24; 2009 Acts, ch 181, §65

2011 repeal of 2009 Acts, ch 181, §65, amendment to subsection 4, paragraph a, stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 507E

### INSURANCE FRAUD

#### **507E.8 Law enforcement officer status.**

1. Bureau investigators shall have the power and status of law enforcement officers who by the nature of their duties may be required to perform the duties of a peace officer when making arrests for criminal violations established as a result of their investigations pursuant to this chapter.

2. The general laws applicable to arrests by law enforcement officers of the state also apply to bureau investigators. Bureau investigators shall have the power to execute arrest warrants and search warrants for the same criminal violations, serve subpoenas issued for the examination, investigation, and trial of all offenses identified through their investigations, and arrest upon probable cause without warrant a person found in the act of committing a violation of the provisions of this chapter.

94 Acts, ch 1072, §8; 2011 Acts, ch 70, §7

Section amended

## CHAPTER 508

### LIFE INSURANCE COMPANIES

#### **508.12 Redomestication of insurers.**

1. An insurer which is organized under the laws of any state and has created or will create jobs in this state or which is an affiliate or subsidiary of a domestic insurer, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 490.902 or 491.33 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

2. The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

[C75, 77, 79, 81, §508.12]

88 Acts, ch 1112, §503; 89 Acts, ch 288, §191; 2011 Acts, ch 66, §1

Unnumbered paragraphs 1 and 2 editorially redesignated as subsections 1 and 2  
Subsection 1 amended

#### **508.13 Annual certificate of authority.**

1. On receipt of an application for a certificate of authority or renewal of a certificate of authority, fees, the deposit provided in section 511.8, subsection 16, and the statement, and the statement and evidence of investment of foreign companies, the commissioner of insurance shall issue a certificate or a renewal of a certificate setting forth the corporate name of the company, its home office, that it has fully complied with the laws of the state and is authorized to transact the business of life insurance for the ensuing year, which certificate shall expire on the first day of June of the ensuing year, or sooner upon thirty days' notice given by the commissioner, of the next annual valuation of its policies.

2. A company shall submit annually on or before March 1 a completed application for renewal of its certificate of authority. A certificate of authority shall expire on the first day of June next succeeding its issue and shall be renewed annually so long as the company transacts business in accordance with all legal requirements of the state.

3. A company that fails to timely file an application for renewal of its certificate of authority shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

4. A copy of a certificate of authority, when certified by the commissioner, shall be admissible in evidence for or against a company, with the same effect as the original.

[C73, §1170; C97, §1775; C24, 27, 31, 35, 39, §8657; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.13]

88 Acts, ch 1112, §103; 2006 Acts, ch 1117, §31; 2009 Acts, ch 181, §66

2011 repeal of 2009 Acts, ch 181, §66, amendment to subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

#### **508.14 Violation by domestic company — dissolution — administrative penalties.**

1. Upon a failure of a company organized under the laws of this state to make the deposit provided in section 511.8, subsection 16, or file the statement in the time herein stated, or to file in a timely manner any financial statement required by rule of the commissioner of insurance, the commissioner of insurance shall notify the attorney general of the default, who shall at once apply to the district court of the county where the home office of the company is located for an order requiring the company to show cause, upon reasonable notice to be fixed by the court, why its business shall not be discontinued. If, upon the hearing, sufficient cause is not shown, the court shall decree its dissolution.

2. In lieu of a district court action authorized by this section, the commissioner may impose an administrative penalty of five hundred dollars upon the company. The right of the company to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with.

3. The commissioner may give notice to a company, which has failed to file evidence of deposit and all delinquent statements within the time fixed, that the company is in violation of this section. If the company fails to file evidence of deposit and all delinquent statements within ten days of the date of the notice, the company is subject to an additional administrative penalty of one hundred dollars for each day the failure continues.

4. Amounts received by the commissioner pursuant to subsections 2 and 3 shall be paid to the treasurer of state for deposit as provided in section 505.7.

[C73, §1171; C97, §1776; C24, 27, 31, 35, 39, §8658; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.14]

89 Acts, ch 321, §33; 97 Acts, ch 186, §7; 2009 Acts, ch 181, §67

2011 repeal of 2009 Acts, ch 181, §67, amendment to subsection 4 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

#### **508.15 Violation by foreign company.**

Companies organized and chartered by the laws of a foreign state or country, failing to file the evidence of investment and statement within the time fixed, or failing to timely file any financial statement required by rule of the commissioner of insurance, shall forfeit and pay five hundred dollars, to be collected in an action in the name of the state and paid to the treasurer of state for deposit as provided in section 505.7, and their right to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with. The commissioner may give notice to a company which has failed to file within the time fixed that the company is in violation of this section and if the company fails to file the evidence of investment and statement within ten days of the date of the notice

the company shall forfeit and pay the additional sum of one hundred dollars for each day the failure continues, to be paid to the treasurer of state for deposit as provided in section 505.7.

[C73, §1171; C97, §1776; C24, 27, 31, 35, 39, §8659; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.15]

83 Acts, ch 185, §48, 62; 83 Acts, ch 186, §10105, 10201, 10204; 89 Acts, ch 321, §34; 91 Acts, ch 213, §6; 2009 Acts, ch 181, §68

2011 repeal of 2009 Acts, ch 181, §68, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

### **508.33 Subsidiary companies acquired.**

Any life insurance company incorporated in this state may organize, or acquire by purchase, in whole or in part subsidiary insurance and investment companies in which it owns not less than fifty-one percent of the common stock, and notwithstanding any other provisions of this subtitle inconsistent herewith may do all of the following:

1. Invest funds from surplus for such purpose.
2. Make loans to such subsidiaries.
3. Permit all or part of its officers and directors to serve as officers or directors of such subsidiary companies.

[C66, 71, 73, 75, 77, 79, 81, §508.33]

2011 Acts, ch 34, §116

Section amended

## CHAPTER 508C

### IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

#### **508C.5 Definitions.**

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

1. “*Account*” means any of the four accounts created under section 508C.6.
2. “*Association*” means the Iowa life and health insurance guaranty association created in section 508C.6.
3. “*Authorized assessment*”, or the term “*authorized*” when used in the context of an assessment, means that a resolution has been passed by the board of directors of the association whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.
4. “*Benefit plan*” means a specific employee, union, or association of natural persons benefit plan.
5. “*Called assessment*”, or the term “*called*” when used in the context of an assessment, means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.
6. “*Commissioner*” means the commissioner of insurance.
7. “*Contractual obligation*” means an obligation under a covered policy or contract or a certificate under a group policy or contract, or a portion thereof for which coverage is provided under section 508C.3.
8. “*Covered policy*” means a policy or contract or a portion of a policy or contract for which coverage is provided under section 508C.3.
9. “*Extra-contractual claim*” means, without limitation, a claim relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney fees and costs.
10. “*Impaired insurer*” means a member insurer which, after July 1, 1987, is not an insolvent insurer but is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

11. “*Insolvent insurer*” means a member insurer which, after July 1, 1987, is placed under an order of liquidation with a finding of insolvency by a court of competent jurisdiction.

12. “*Member insurer*” means a person licensed or who holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section 508C.3, including a person whose license or certificate of authority in this state has been suspended, revoked, not renewed, or voluntarily withdrawn but not including any of the following:

a. An entity which is a licensed company specified in section 508C.3, subsection 3, paragraph “e” or “f”.

b. A mandatory state pooling plan.

c. A mutual assessment company or other person which operates on an assessment basis.

d. An insurance exchange.

e. An entity which issues a charitable gift annuity under chapter 508F.

f. An entity similar to any of the entities enumerated in this subsection.

13. “*Moody’s corporate bond yield average*” means the monthly average corporate bond yields published by Moody’s investors service, inc., or any successor thereto.

14. “*Owner*” of a policy of contract, “*policy owner*”, or “*contract owner*” means the person who is identified as the legal owner of a policy or contract under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. “*Owner*”, “*policy owner*”, or “*contract owner*” does not include a person with a mere beneficial interest in a policy or contract.

15. “*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

16. “*Plan sponsor*” means any of the following:

a. The employer in the case of a benefit plan established or maintained by a single employer.

b. The employee organization in the case of a benefit plan established or maintained by an employee organization.

c. In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

17. “*Premium*” means amounts or consideration, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits. “*Premium*” does not include amounts for consideration received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under section 508C.3, subsection 3, except that assessable premium shall not be reduced on account of the provisions of section 508C.3, subsection 3, paragraph “a”, relating to interest limitations and section 508C.8, subsection 8, paragraph “a”, subparagraph (2), subparagraph division (a), relating to limitations with respect to one individual, one participant, and one owner. “*Premium*” also does not include any of the following:

a. Premiums in excess of five million dollars on an unallocated annuity contract not issued under a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code.

b. With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of five million dollars with respect to those policies or contracts, regardless of the number of policies or contracts held by the owner.

18. “*Principal place of business*” of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function as determined pursuant to section 508C.8A.

19. “*Receivership court*” means a court in an insolvent or impaired insurer’s state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

20. “*Resident*” means a person to whom a contractual obligation is owed and who resides in a state on the date of entry of a court order that determines a member insurer is an impaired insurer or a court order that determines a member insurer is an insolvent insurer. A person may be a resident of only one state, which in the case of a person other than a natural person shall be the state of that person’s principal place of business. A citizen of the United States who is a resident of a foreign country, or is a resident of a United States possession, territory, or protectorate that does not have an association similar to the association created by this chapter, shall be deemed a resident of the state or domicile of the insurer that issued the policy or contract.

21. “*State*” means a state, the District of Columbia, Puerto Rico, or a United States possession, territory, or protectorate.

22. “*Structured settlement annuity*” means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injuries suffered by the plaintiff or other claimant.

23. “*Supplemental contract*” means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

24. “*Unallocated annuity contract*” means a guaranteed investment contract, deposit administration contract, or any other annuity contract which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such a contract or certificate.

87 Acts, ch 223, §5; 88 Acts, ch 1135, §4 – 6; 90 Acts, ch 1234, §19, 20; 98 Acts, ch 1057, §7; 2010 Acts, ch 1063, §8 – 15; 2011 Acts, ch 70, §8 – 11

NEW subsections 3 – 5 and former subsections 3 – 12 renumbered as 6 – 15

Subsection 8 amended

NEW subsection 16 and former subsection 13 renumbered as 17

NEW subsections 18 and 19 and former subsections 14 – 18 renumbered as 20 – 24

Subsection 20 amended

#### **508C.8A Principal place of business — determination.**

1. The principal place of business of a plan sponsor or a person other than a natural person shall be determined by the association in its reasonable judgment by considering all of the following factors:

a. The state in which the primary executive and administrative headquarters of the entity is located.

b. The state in which the principal office of the chief executive officer of the entity is located.

c. The state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings.

d. The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings.

e. The state from which the management of the overall operations of the entity is directed.

2. In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the principal place of business of the entity shall be deemed to be the state in which the holding company or controlling affiliate has its principal place of business as determined by the association using the factors enumerated in subsection 1. However, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state shall be determined to be the principal place of business of the entity.

3. In the case of a benefit plan established or maintained by two or more employers, or jointly by one or more employers and one or more employee organizations, the principal place of business of the entity shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan. In lieu of a specific or clear designation of the principal place of business of the entity under this subsection, the principal place of

business of the entity shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

2011 Acts, ch 70, §12

NEW section

### **508C.9 Assessments.**

1. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account established pursuant to section 508C.6, at the time and for the amounts the board finds necessary. An assessment is due not less than thirty days after prior written notice has been sent to the member insurers and accrues interest at ten percent per annum commencing on the due date.

2. There are two classes of assessments as follows:

a. Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

b. Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under section 508C.8 with regard to an impaired or an insolvent insurer.

3. a. The amount of a class A assessment shall be determined by the board and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that the assessment be credited against future class B assessments. The total of all non-pro rata assessments shall not exceed three hundred dollars per member insurer in any one calendar year. The amount of a class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or on any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

b. Class B assessments against member insurers for each account shall be in the proportion that the average of the aggregate premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available, preceding the year in which the insurer became insolvent, or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to the premiums received on business in this state for those calendar years by all assessed member insurers.

c. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection 2 and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

4. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused an abatement or deferral have been removed or rectified, the member insurer shall pay all assessments that were abated or deferred pursuant to a repayment plan approved by the association.

5. a. (1) Subject to the provisions of subparagraph (2) of this paragraph "a", the total of all assessments authorized by the association with respect to a member insurer for each of the accounts established pursuant to section 508C.6, and designated as the health insurance account, the life insurance account, the annuity account, and the unallocated annuity contract

account, shall not in any one calendar year exceed two percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer becomes impaired or insolvent.

(2) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referred to in subparagraph (1) of this paragraph "a" shall be equal and limited to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section.

(3) If the maximum assessment, together with the other assets of the association in the account, does not provide in one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed for the account in succeeding years as soon as permitted by this chapter.

b. The board may provide in its plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

c. If the maximum assessment for either the life insurance account, the annuity account, or the unallocated annuity contract account in one year does not provide an amount sufficient to carry out the responsibilities of the association, the board, pursuant to subsection 3, paragraph "b", shall access any of the other said accounts for the necessary additional amount, subject to the maximum assessments stated in paragraph "a" of this subsection.

6. By an equitable method as established in the plan of operation, the board may refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account, including assets accruing from assignment, subrogation, net realized gains, and income from investments, exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future claims.

7. In determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this chapter, it is proper for a member insurer to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

8. The association shall issue to each insurer paying a class B assessment under this chapter, a certificate of contribution in a form prescribed by the commissioner for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form, for the amount and for a period of time as the commissioner may approve.

9. a. A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be made available to meet association obligations during the pendency of the protest or any subsequent appeal. The payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

b. Within sixty days following the payment of an assessment under protest by a member insurer, the association shall either notify the protesting member insurer in writing of its determination with respect to the protest or notify the protesting member insurer that additional time is required to resolve the issues raised by the protest.

c. Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final decision to the commissioner.

d. As an alternative to rendering a final decision with respect to a protest of an assessment, the association may refer the protest to the commissioner for a final decision, with or without a recommendation from the association.

e. If a protest or subsequent appeal of an assessment is upheld in favor of the protesting member insurer, the amount paid in error or the excess shall be refunded to the member

insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the association during the pendency of the protest or any subsequent appeal.

10. The association may request information from member insurers in order to aid in the exercise of the association's power under this section, and the member insurers shall promptly comply with such a request.

87 Acts, ch 223, §9; 88 Acts, ch 1135, §10; 90 Acts, ch 1234, §23 – 25; 92 Acts, ch 1162, §9, 10; 2000 Acts, ch 1023, §14; 2011 Acts, ch 70, §13, 14

Subsections 2 – 6 amended  
NEW subsections 9 and 10

#### **508C.11 Duties and powers of the commissioner.**

1. The commissioner shall:

a. Upon request of the board of directors, provide the association with a statement of the premiums for each member insurer.

b. When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this chapter.

2. After notice and hearing, the commissioner may suspend or revoke the certificate of authority to transact insurance in this state of a member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy an administrative penalty on any member insurer which fails to pay an assessment when due. The administrative penalty shall not exceed five percent of the unpaid assessment per month. However, an administrative penalty shall not be less than one hundred dollars per month.

3. A final action of the board of directors or the association may be appealed to the commissioner by a member insurer if the appeal is taken within sixty days of the member insurer's receipt of notice of the final action being appealed. A final action or order of the commissioner is subject to judicial review pursuant to chapter 17A in a court of competent jurisdiction.

4. The liquidator, rehabilitator, or conservator of an impaired insurer may notify all interested persons of the effect of this chapter.

87 Acts, ch 223, §11; 88 Acts, ch 1112, §203; 2011 Acts, ch 70, §15, 16

Subsection 1, paragraph c stricken  
Subsection 3 amended

#### **508C.12 Prevention of insolvencies.**

1. To aid in the detection and prevention of insurer insolvencies or impairments the commissioner shall:

a. Notify the commissioners or insurance departments of other states or territories of the United States and the District of Columbia when any of the following actions against a member insurer is taken:

(1) A license is revoked.

(2) A license is suspended.

(3) A formal order is made that a company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

Notice shall be mailed to the commissioners or departments within thirty days following the earlier of when the action was taken or the date on which the action occurs. This subparagraph does not supersede section 507C.9, subsection 5.

b. Report to the board of directors when the commissioner has taken any of the actions set forth in paragraph "a" or has received a report from any other commissioner indicating that such action has been taken in another state. Reports to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

c. Report to the board of directors when there is reasonable cause to believe from an

examination, whether completed or in process, of a member insurer that the insurer may be an impaired or insolvent insurer.

d. Furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system ratios, and listing of insurers not included in the ratios, developed by the national association of insurance commissioners, and the board may use the information in carrying out its duties and responsibilities under this section. The report and the information contained in the report shall be kept confidential by the board of directors until such time as it is made public by the commissioner or other lawful authority.

2. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

3. The board of directors may upon majority vote make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of a member insurer or germane to the solvency of a company seeking to transact insurance business in this state. These reports and recommendations are not public records pursuant to chapter 22.

4. Upon majority vote, the board of directors shall notify the commissioner of any information indicating that a member insurer may be an impaired or insolvent insurer.

5. Upon majority vote, the board of directors may request that the commissioner order an examination of a member insurer which the board in good faith believes may be an impaired or insolvent insurer. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. The examination report shall not be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection 1. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it is not a public record pursuant to chapter 22 until the release of the examination report to the public.

6. Upon majority vote, the board of directors may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

87 Acts, ch 223, §12; 88 Acts, ch 1112, §204; 2011 Acts, ch 70, §17 – 19

Subsection 1, paragraphs b – d amended

Subsection 2 amended

Subsection 7 stricken

#### **508C.16 Immunity — indemnification.**

1. A member insurer and its agents and employees, the association and its agents and employees, members of the board of directors, and the commissioner and the commissioner's representatives are not liable for any action taken by them or omission by them while acting within the scope of their employment and in the performance of their powers and duties under this chapter and such immunity granted under this section shall extend to their participation in any organization of one or more state associations of similar purposes and to that organization and its agents and employees.

2. Sections 490.850 through 490.859 apply to the association.

87 Acts, ch 223, §16; 88 Acts, ch 1170, §9; 91 Acts, ch 97, §55; 2002 Acts, ch 1154, §111, 125; 2011 Acts, ch 70, §20

Section amended

#### **508C.17 Stay of proceedings — reopening default judgments.**

Proceedings in which the insolvent insurer is a party in a court in this state shall be stayed one hundred eighty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on matters germane to its powers or duties. The association may apply to have a judgment under a decision, order, verdict, or

finding based on default, set aside by the same court that entered the judgment, and shall be permitted to defend against the suit on the merits.

87 Acts, ch 223, §17; 2011 Acts, ch 70, §21

Section amended

**508C.18 Prohibited advertisements.**

A person, including an insurer, agent or affiliate of an insurer, shall not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio station or television station, or in any other way, an advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter. However, this section does not apply to the association or any other entity which does not sell or solicit insurance.

87 Acts, ch 223, §18; 2011 Acts, ch 70, §22

Section amended

**508C.18A Notice to policyholders — summary of chapter and disclosure.**

1. *a.* Within one hundred eighty days after enactment of this section, the association shall prepare a summary document describing the general purposes and current provisions of this chapter and containing a disclosure in compliance with subsection 2. This summary document shall be submitted to the commissioner for approval. The approved summary document and disclosure shall be delivered to the owner of an insurance policy or contract as provided in this section.

*b.* This subsection is repealed July 1, 2012.

2. *a.* On or after March 1, 2012, an insurer shall not deliver an insurance policy or contract in Iowa to the owner of the policy or contract unless a summary document describing the general purposes and current provisions of this chapter and containing a disclosure in compliance with subsection 3 is delivered to the policy or contract owner at the same time.

*b.* The summary document shall also be available upon request by an insurance policy or contract owner.

*c.* The distribution, delivery, contents, or interpretation of this summary document does not guarantee that either the insurance policy or contract or the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer.

*d.* The summary document shall be revised by the association and approved by the commissioner as amendments to this chapter may require. Failure to receive a summary document does not give the insurance policy or contract owner, certificate holder, or insured any greater rights than those stated in this chapter.

3. The summary document prepared pursuant to this section shall contain a clear and conspicuous disclosure on its face. The commissioner shall establish the form and content of the disclosure which shall do all of the following:

*a.* State the name and address of the association and the Iowa insurance division.

*b.* Prominently warn the insurance policy or contract owner that the association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in this state.

*c.* State the types of insurance policies and contracts for which the association will provide coverage.

*d.* State that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance.

*e.* State that the insurance policy or contract owner should not rely on coverage from the association when selecting an insurer.

*f.* Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter.

g. Provide other information as directed by the commissioner, including but not limited to sources for information about the financial condition of an insurer provided that the information is not proprietary and is subject to disclosure under chapter 22.

4. A member insurer shall retain evidence of compliance with the provisions of this section for as long as the insurance policy or contract for which the notice is given remains in effect.

2011 Acts, ch 70, §23

NEW section

## CHAPTER 508E

### VIATICAL SETTLEMENT CONTRACTS

#### **508E.3 License requirements.**

1. a. A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator.

b. (1) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or the life insurance producer's home state for at least one year immediately prior to operating as a viatical settlement broker and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.

(2) Not later than thirty days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the commissioner that the life insurance producer is acting as a viatical settlement broker on a form prescribed by the commissioner, and shall pay any applicable fee of up to one hundred dollars as provided by rules adopted by the commissioner. The notification shall include an acknowledgment by the life insurance producer that the life insurance producer will operate as a viatical settlement broker in accordance with this chapter. The notification shall also include proof that the life insurance producer is covered by an errors and omissions policy for an amount of not less than one hundred thousand dollars per occurrence and not less than one hundred thousand dollars total annual aggregate for all claims during the policy period.

(3) The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

c. A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

2. An application for a viatical settlement provider or viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee of not more than one hundred dollars as provided by rules adopted by the commissioner.

3. The license term shall be three years and the license may be renewed upon payment of the renewal fee of not more than one hundred dollars as provided by rules adopted by the commissioner. A failure to pay the fee by the renewal date results in expiration of the license.

4. An applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or

member thereof who may materially influence the applicant's conduct meets the standards of this chapter.

5. A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers or viatical settlement brokers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

6. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant complies with all of the following:

- a. If a viatical settlement provider, has provided a detailed plan of operation.
- b. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.
- c. Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for.
- d. If a legal entity, provides a certificate of good standing from the state of its domicile.
- e. If a viatical settlement provider or viatical settlement broker, has provided an antifraud plan that meets the requirements of section 508E.15, subsection 7.

7. The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

8. A viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, ten-percent-or-more stockholders, partners, directors, members, or designated employees within thirty days of the change.

9. An individual licensed as a viatical settlement broker shall complete on a triennial basis running concurrent with the license term twenty credits of training related to viatical settlements and viatical settlement transactions, as required by the commissioner; provided, however, that a life insurance producer who is operating as a viatical settlement broker pursuant to subsection 1, paragraph "b", shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

10. Fees collected pursuant to this section shall be deposited as provided in section 505.7. 2000 Acts, ch 1147, §37; 2008 Acts, ch 1155, §3; 2009 Acts, ch 145, §6, 7; 2009 Acts, ch 181, §69

2011 repeal of 2009 Acts, ch 181, §69, amendment to subsection 10 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

#### **508E.16 Injunctions — civil remedies — cease and desist orders — civil penalty.**

1. In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for a temporary or permanent order that the commissioner determines is necessary to restrain the person from committing the violation.

2. A person damaged by the act of a person in violation of this chapter may bring a civil action against the person committing the violation in a court of competent jurisdiction.

3. The commissioner may issue, in accordance with chapter 17A, a cease and desist order upon a person that violates any provision of this chapter, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner.

4. When the commissioner finds that an activity in violation of this chapter presents an immediate danger to the health, safety, or welfare of the public requiring immediate agency action, the commissioner may proceed under section 17A.18A.

5. In addition to the penalties and other enforcement provisions of this chapter, any person who violates this chapter is subject to a civil penalty of up to five thousand dollars for each violation of this chapter. The civil penalty shall be deposited as provided in section 505.7. If a person has not been ordered to pay restitution by a court, the commissioner's order

may require a person found to be in violation of this chapter to make restitution to a person aggrieved by a violation of this chapter.

6. Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator.

2008 Acts, ch 1155, §16; 2009 Acts, ch 181, §70

2011 repeal of 2009 Acts, ch 181, §70, amendment to subsection 5 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 509A

### GROUP INSURANCE FOR PUBLIC EMPLOYEES

#### **509A.6 Contract with insurance carrier, health maintenance organization, or organized delivery system.**

The governing body may contract with a nonprofit corporation operating under the provisions of this chapter or chapter 514 or with any insurance company having a certificate of authority to transact an insurance business in this state with respect of a group insurance plan, which may include life, accident, health, hospitalization and disability insurance during period of active service of such employees, with the right of any employee to continue such life insurance in force after termination of active service at such employee's sole expense; may contract with a nonprofit corporation operating under and governed by the provisions of this chapter or chapter 514 with respect of any hospital or medical service plan; and may contract with a health maintenance organization or an organized delivery system authorized to operate in this state with respect to health maintenance organization or organized delivery system activities.

[C50, 54, 58, 62, §365A.6; C66, §509.20; C71, 73, 75, 77, 79, 81, §509A.6]

95 Acts, ch 162, §10

Limitation on additional coverage benefits, lower costs, or other enhancements of group health insurance coverage provided to general assembly members and employees on or after March 7, 2011; 2011 Acts, ch 122, §1, 5  
Section not amended; footnote added

## CHAPTER 511

### PROVISIONS APPLICABLE TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

#### **511.8 Investment of funds.**

A company organized under chapter 508 shall, at all times, have invested in the securities provided in this section, funds equivalent to its legal reserve. Legal reserve is the net present value of all outstanding policies and contracts involving life contingencies. This section does not prohibit a company or association from holding a portion of its legal reserve in cash.

The investment programs developed by companies shall take into account the safety of the company's principal, investment yield and return, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs and investment diversification.

1. *United States government obligations.*

a. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America.

b. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15

U.S.C. § 80a-1 et seq., and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the United States government obligations described in paragraph “a”, and which are included in the national association of insurance commissioners’ securities valuation office’s United States direct obligations – full faith and credit exempt list.

2. *State, District of Columbia, territorial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage, or other district located within any state, or insular or territorial possession of the United States of America, or by any civil subdivision or governmental authority of any such state, or insular or territorial possession, or by any instrumentality of any such state, or insular or territorial possession, civil subdivision, or governmental authority; provided that the obligations are valid, legally authorized and issued.

3. *Canadian government, provincial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality or district therein, provided that the obligations are valid, legally authorized and issued.

4. *International Bank bonds.* Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Inter-American Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report, by the Asian Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report or by the African Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report. However, the combined investment in bonds or evidences of indebtedness permitted by this subsection shall not exceed four percent of its total assets as shown by the last annual report.

5. *Corporate obligations.* Subject to the restrictions contained in subsection 8, bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, or insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. (1) If fixed interest-bearing obligations, the net earnings of the issuing, assuming, or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming, or guaranteeing corporation applicable to such period, and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant.

(2) However, with respect to fixed interest-bearing obligations which are issued, assumed, or guaranteed by a financial company, the net earnings by the financial company available for its fixed charges for the period of five fiscal years preceding the date of acquisition of the obligations by the insurance company shall have averaged per year not less than one and one-fourth times such average annual fixed charges of the issuing, assuming, or guaranteeing financial company applicable to such period, and, during at least one of the last two years of the period, its net earnings shall have been not less than one and one-fourth times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and speculative elements are not predominant in their investment qualities and characteristics. As used in this subparagraph (2), “*financial company*” means a corporation which on the average over its last five fiscal years preceding the date of acquisition of its obligations by the insurer, has had at least fifty percent of its net income, including income derived from subsidiaries, derived from the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, or from banking or factoring, or from similar or related lines of business.

b. If adjustment, income, or other contingent interest obligations, the net earnings of the issuing, assuming, or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming, or guaranteeing corporation and its average annual maximum contingent interest applicable to such period and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year, or if, at the date of acquisition, the obligations are adequately secure and have investment qualities and characteristics and speculative elements are not predominant.

c. Are securities that at the date of acquisition are rated three by the securities valuation office of the national association of insurance commissioners or have the equivalent rating by a rating organization that is approved by the national association of insurance commissioners as an acceptable rating organization and are listed or admitted to trading on a securities exchange in the United States or are publicly held and actively traded in the over-the-counter market and market quotations are readily available. If a security acquired under this paragraph is subsequently downgraded from a three rating by the securities valuation office of the national association of insurance commissioners or the equivalent by a national association of insurance commissioners' acceptable rating organization, the security no longer qualifies as a legal reserve investment.

d. The term "*net earnings available for fixed charges*" as used in this section means the net income after deducting all operating and maintenance expenses, taxes other than any income taxes, depreciation, and depletion, but nonrecurring items of income or expense may be excluded.

e. The term "*fixed charges*" as used in this section includes interest on unfunded debt and funded debt on a parity with or having a priority to the obligation under consideration.

f. The term "*corporation*" as used in this chapter includes a joint stock association, a limited liability company, a partnership, or a trust.

g. The securities, real estate, and mortgages described in this section include participations, which means instruments evidencing partial or undivided collective interests in such securities, real estate, and mortgages.

6. *Preferred and guaranteed stocks.* Subject to the restrictions contained in subsection 8 hereof, preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. Preferred stocks.

(1) All of the obligations and preferred stocks of the issuing corporation, if any, prior to the preferred stock acquired must be eligible as investments under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges and preferred dividends of the issuing corporation shall have been, for each of the five fiscal years immediately preceding the date of acquisition, not less than one and one-half times the sum of the annual fixed charges and contingent interest, if any, and the annual preferred dividend requirements as of the date of acquisition; or at the date of acquisition the preferred stock has investment qualities and characteristics wherein speculative elements are not predominant.

The term "*preferred dividend requirements*" shall mean cumulative or noncumulative dividends whether paid or not.

The term "*fixed charges*" shall be construed in accordance with subsection 5 above. The term "*net earnings available for fixed charges and preferred dividends*" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes, including any income taxes, depreciation and depletion, but nonrecurring items may be excluded.

b. Guaranteed stocks.

(1) All of the fixed interest-bearing obligations of the guaranteeing corporation, if any, must be eligible under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges of the guaranteeing corporation shall meet the requirements outlined in paragraph "a" of subsection 5 above, except that all guaranteed dividends shall be included in "fixed charges".

Any investments in preferred stocks or guaranteed stocks made under the provisions of this subsection shall be considered as moneys and credits for purposes of taxation and their assessment shall be subject to deductions for indebtedness as provided by law in the case of assessment of moneys and credits in general. This provision shall be effective as to assessments made during the year 1947 and thereafter.

7. *Equipment trust obligations.* Subject to the restrictions contained in subsection 8, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used wholly or in part in the United States of America or Canada, that provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue, and also provide:

- a. For vesting of title to such equipment free from encumbrance in a corporate trustee, or
- b. For creation of a first lien on such equipment.

8. *Further restrictions.* Securities included under subsections 5, 6, and 7 shall not be eligible:

a. If the corporation is in default on fixed obligations as of the date of acquisition. Securities provided in paragraph "a" of subsection 6 shall not be eligible if the issuing corporation is in arrears with respect to the payment of any preferred dividends as of the date of acquisition.

b. The investments of any company or association in such securities shall not be eligible in excess of the following percentages of the legal reserve of such company or association:

(1) With the exception of public securities, two percent of the legal reserve in the securities of any one corporation. Five percent of the legal reserve in the securities of any one public utility corporation.

(2) Seventy-five percent of the legal reserve in the securities described in subsection 5 issued by other than public utility corporations. Fifty percent of the legal reserve in the securities described in subsection 5 issued by public utility corporations.

(3) Ten percent of the legal reserve in the securities described in subsection 6.

(4) Ten percent of the legal reserve in the securities described in subsection 7.

c. Statements adjusted to show the actual condition at the time of acquisition or the effect of new financing, known commercially as pro forma statements, may be used in determining whether investments under subsections 5 and 6 are in compliance with requirements. Statements so adjusted or consolidated statements may be used in order to include the earnings of all predecessor, merged, consolidated, or purchased companies.

d. In addition to the restrictions contained in paragraphs "a" and "b", the investments of any company or association in securities included under subsection 5, paragraph "c", are not eligible in excess of two percent of the legal reserve, but not more than one-eighth of one percent of the legal reserve shall be invested in the securities of any one corporation.

9. *Real estate bonds and mortgages.*

a. (1) Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first or second lien upon otherwise unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property where fifty years or more of the term including renewals is unexpired, provided that at the date of acquisition the total indebtedness secured by the first or second lien shall not exceed ninety percent of the value of the property upon which it is a lien. However, a company or organization shall not acquire an indebtedness secured by a first or second lien upon a single parcel of real property, or upon a leasehold interest in a single parcel of real property, in excess of two percent of its legal reserve. These limitations do not apply to obligations described in paragraphs "b", "c", "d", "e", "f", and "g" of this subsection.

(2) Improvements and appurtenances to real property shall not be considered in estimating the value of the property unless the owner contracts to keep the property adequately insured during the life of the loan in some reliable fire insurance companies, or

associations, the insurance to be made payable in case of loss to the mortgagee, trustee, or assignee as its interest appears at the time of the loss.

(3) For the purpose of this subsection a mortgage or deed of trust is not other than a first or second lien upon property by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when the real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

b. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of Congress of the United States of America approved June 27, 1934, entitled the "National Housing Act", 48 Stat. 1246, 12 U.S.C. § 1701 et seq., as amended to and including January 1, 2008, or of an Act of Congress of the United States of America approved July 24, 1970, entitled the "Federal Home Loan Mortgage Corporation Act", 84 Stat. 451, 12 U.S.C. § 1451 et seq., as amended to and including January 1, 2008.

c. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with the terms and provisions of Tit. III of an Act of Congress of the United States of America approved June 22, 1944, known as Public Law 346, Pub. L. No. 78-268, cited as the "Servicemen's Readjustment Act of 1944", 58 Stat. 284, recodified at 72 Stat. 1105, 1273, 38 U.S.C. § 3701 et seq., as amended to and including January 1, 2008.

d. Contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness, or in the acquisition or disposition of real property acquired pursuant to subsection 14.

e. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with Tit. I of the Bankhead-Jones Farm Tenant Act, an Act of the Congress of the United States, cited as the "Farmers Home Administration Act of 1946", 60 Stat. 1062, as amended to and including the effective date or dates of its repeal as set forth in 76 Stat. 318, or with Tit. III of an Act of Congress of the United States of America approved August 8, 1961, entitled the "Consolidated Farm and Rural Development Act", 75 Stat. 307, 7 U.S.C. § 1921 et seq., as amended to and including January 1, 2008.

f. Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real property or both personal and real property, including a leasehold of real estate, within the United States of America, or any insular or territorial possession of the United States of America, or the Dominion of Canada, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under subsection 1, 2 or 3 of this section, or to a corporation whose obligations qualify under paragraph "a" of subsection 5 of this section, if the terms of the bond, note or other evidence of indebtedness provide for the amortization during the initial, fixed period of the lease or contract of one hundred percent of the indebtedness and there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, ground rents and taxes other than the income taxes of the borrower; provided, however, that where the security consists of a first mortgage or deed of trust lien on a fee interest in real property only, the bond, note or other evidence of indebtedness may provide for the amortization during the initial, fixed period of the lease or contract of less than one hundred percent of the indebtedness if there is to be left unamortized at the end of such period an amount not greater than the appraised value of the land only, exclusive of all improvements, and if there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower. Investments made in accordance with the provisions

of this paragraph shall not be eligible in excess of twenty-five percent of the legal reserve, nor shall any one such investment in excess of five percent of the legal reserve be eligible.

g. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of the federal Parliament of the Dominion of Canada, cited as the "National Housing Act", R.S.C. 1985, c. N-11 as amended to and including January 1, 2008.

10. *Real estate.*

a. Real estate in this state which is necessary for the accommodation of the company or association as a home office or in the transaction of its business. In the erection of buildings for such purposes, there may be added rooms for rent. Before the company or association invests any of its funds in accordance with this paragraph it shall first obtain the consent of the commissioner. The maximum amount which a company or association shall be permitted to invest in accordance with these provisions shall not exceed ten percent of the legal reserve. However, a stock company may invest such portion of its paid-up capital, in addition to ten percent of the legal reserve, as is not held to constitute a part of its legal reserve, under section 508.36, and the total legal reserve of the company shall be equal to or exceed the amount of its paid-up capital stock.

b. Any real estate acquired through foreclosure, or in settlement or satisfaction of any indebtedness. Any company or association may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled.

11. *Certificates of sale.* Certificates of sale obtained through foreclosure of liens on real estate.

12. *Policy loans.* Loans upon the security of the policies of the company or association and constituting a lien thereon in an amount not exceeding the legal reserve thereon.

13. *Collateral loans.* Loans secured by collateral consisting of any securities qualified in this section, provided the amount of the loan is not in excess of ninety percent of the value of the securities.

Provided further that subsection 8 of this section shall apply to the collateral securities pledged to the payment of loans authorized in this subsection.

14. *Urban real estate and personal property.* Personal or real property or both located within the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income. However, personal property acquired under this subsection shall be acquired for the purpose of entering into a contract for the sale or for a use under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. Legal title to the real property may be acquired subject to a contract of sale. "Real property" as used in this subsection includes a leasehold of real estate, an undivided interest in a leasehold of real estate, and an undivided interest in the fee title of real estate. Investments under this subsection are not eligible in excess of ten percent of the legal reserve.

15. *Railroad obligations.* Bonds or other evidences of indebtedness which carry a fixed rate of interest and are issued, assumed or guaranteed by any railroad company incorporated under the laws of the United States of America, or of any state, district, insular or territorial possessions thereof, not in reorganization or receivership at the time of such investment, provided that the railroad company:

a. Shall have had for the three-year period immediately preceding investment, for which the necessary data for the railroad company shall have been published, a balance of income available for fixed charges which shall have averaged per year not less than one and one-quarter times the fixed charges for the latest year of the period; and

b. Shall have had for the three-year period immediately preceding investment, for which the necessary data for both the railroad company and all class I railroads shall have been published:

(1) A balance of income available for the payment of fixed charges at least as many times greater than the fixed charges for the latest year of the period as the balance of income

available for the payment of fixed charges of all class I railroads for the same three-year period is times greater than the amount of all fixed charges for such class I railroads for the latest year of the period; and

(2) An amount of railway operating revenues remaining after deduction of three times the fixed charges for the latest year of the period from the balance of income available for the payment of fixed charges for the three-year period, which amount is as great a proportion of its railway operating revenues for the same three-year period as is the proportion of railway operating revenues remaining for all class I railroads, determined in the same manner and for the same period as for the railroad.

The terms “*class I railroads*”, “*balance of income available for the payment of fixed charges*”, “*fixed charges*” and “*railway operating revenues*” when used in this subsection, are to be given the same meaning as in the accounting reports filed by a railroad company in accordance with the regulations for common carriers by rail of the Interstate Commerce Act, 24 Stat. 379, codified at 49 U.S.C. § 1 – 40, 1001 – 1100, provided that the “*balance of income available for the payment of fixed charges*” and “*railway operating revenues remaining*”, as the terms are used in this subsection, shall be computed before deduction of federal income or excess profits taxes; and that in computing “*fixed charges*” there shall be excluded interest and amortization charges applicable to debt called for redemption or which will otherwise mature within six months from the time of investment and for the payment of which funds have been or currently are being specifically set aside.

The eligibility of railroad obligations described in the first sentence of this subsection shall be determined exclusively as provided herein, without regard to the provisions for qualification contained in subsections 5 and 8 of this section. Provisions for qualification contained in this section shall not be construed as applying to equipment trust obligations, guaranteed stocks, or contingent interest bonds of railroad companies. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

16. *Deposit of securities.*

a. Securities in an amount not less than the legal reserve as defined in this section shall be deposited and the deposit maintained with the commissioner of insurance or at such places as the commissioner may designate as will properly safeguard them. There may be included in the deposit an amount of cash on hand not in excess of five percent of the deposit required, that deposit to be evidenced by a certified check, certificate of deposit, or other evidence satisfactory to the commissioner of insurance. Deposits of securities may be made in excess of the amounts required by this section. A stock company organized under the laws of this state shall not be required to make a deposit until the legal reserve, as ascertained by the commissioner, exceeds the amount deposited by it as capital. Real estate may be made a part of the deposit by furnishing evidence of ownership satisfactory to the commissioner and by conveying the real estate to the commissioner or the commissioner’s successors in office by warranty deed. The commissioner and the successors in office shall hold the real estate in trust for the benefit of the policyholders of the company or members of the association. Real estate mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement is subject to check at the discretion of the commissioner.

b. The securities comprising the deposit of a company or association against which proceedings are pending under section 508.18 shall vest in the state for the benefit of all policyholders of the company or association.

c. Securities or title to real estate on deposit may be withdrawn at any time and other eligible securities may be substituted, provided the amount maintained on deposit is equal to the sum of the legal reserve and twenty-five thousand dollars. In the case of real estate the commissioner shall execute and deliver to the company or association a quitclaim deed to the real estate. Any company or association shall, if requested by the commissioner, at the time of withdrawing any securities on deposit, designate for what purpose the securities are being withdrawn.

d. Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other

income from the deposit unless proceedings against the company or association are pending under section 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

e. Any company or association receiving payments or partial payments of principal on any securities deposited with the commissioner of insurance shall notify the commissioner of such fact at such times and in such manner as the commissioner may prescribe, giving the amount and date of payment.

f. The commissioner of insurance may receive on deposit securities or title to real estate of alien companies authorized to do business in the state of Iowa, for the purpose of securing its policyholders in the state of Iowa and the United States. The provisions of this subsection not inconsistent with the deposit agreement shall apply to the deposits of such alien companies.

g. Common stocks or shares issued by any federal home loan bank eligible for inclusion in the legal reserve under subsection 18, paragraph "c", may be made a part of a deposit by filing a verified statement of the common stocks or shares issued by a federal home loan bank that are held in the legal reserve. Attached to the statement shall be the annual capital stock statement of the respective federal home loan bank showing membership stock balance and activity-based stock balance.

h. Financial instruments used in hedging transactions and securities pledged as collateral for financial instruments used in highly effective hedging transactions eligible for inclusion in the legal reserve under subsection 22 may be made a part of the deposit by filing a verified statement of the financial instruments used or securities pledged pursuant to the terms and conditions of the applicable hedging transaction agreement or the applicable collateral or other credit support agreement.

17. *Rules of valuation.*

a. All bonds or other evidences of debt having a fixed term and rate of interest, if amply secured and not in default as to principal or interest, may be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

In applying the above rule, the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

b. Certificates of sale obtained by foreclosure of liens on real estate shall be valued in an amount not greater than the unpaid principal of the defaulted indebtedness plus any amounts actually expended for taxes and acquisition costs.

c. All investments, except those for which a specific rule is provided in this subsection, shall be valued at their market value, or at their appraised value, or at prices determined by the commissioner of insurance as representing their fair market value, or at a value as determined under rules adopted by the national association of insurance commissioners.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rules, but no company or association shall be prevented from valuing any asset at an amount less than that provided by this subsection.

18. *Common stocks or shares.*

a. Common stocks or shares issued by solvent corporations or institutions are eligible if the total investment in stocks or shares in the corporations or institutions does not exceed ten percent of legal reserve, provided not more than one-half percent of the legal reserve is invested in stocks or shares of any one corporation. However, the stocks or shares shall be listed or admitted to trading on an established foreign securities exchange or a securities exchange in the United States or shall be publicly held and traded in the "over-the-counter market" and market quotations shall be readily available, and further, the investment shall not create a conflict of interest for an officer or director of the company between the insurance company and the corporation whose stocks or shares are purchased.

b. Common stocks or shares in a subsidiary corporation, the acquisition or purchase of which is authorized by section 508.33 are eligible if the total investment in these stocks or shares does not exceed five percent of the legal reserve; provided, however, that common stocks or shares of stock in a direct or indirect subsidiary insurance company which is

domiciled in the United States are eligible up to an additional two percent of the legal reserve upon application by the insurer to and upon approval by the commissioner. Stocks or shares of the insurer's subsidiary corporations are not eligible in total in excess of seven percent of the legal reserve and the stock or shares of any one subsidiary corporation are not eligible in excess of five percent of the legal reserve. These stocks or shares are eligible even if the stocks or shares are not listed or admitted to trading on a securities exchange in the United States and are not publicly held and have not been traded in the "over-the-counter market". The stocks or shares shall be valued at their book value; provided, however, that stocks or shares of a direct or indirect subsidiary insurance company held in the legal reserve of up to an additional two percent of the legal reserve shall be valued at their statutory book value, excluding approved permitted practices.

c. Common stocks or shares issued by any federal home loan bank under the Federal Home Loan Bank Act, 12 U.S.C. § 1421 et seq., and the Acts amendatory thereof, are eligible if the total investment in those stocks or shares does not exceed one-half of one percent of the legal reserve.

19. *Other foreign government or corporate obligations.* Bonds or other evidences of indebtedness, not to include currency, issued, assumed, or guaranteed by a foreign government other than Canada, or by a corporation incorporated under the laws of a foreign government other than Canada. Such governmental obligations must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Such corporate obligations must meet the qualifications established in subsection 5 for bonds and other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada. Foreign investments authorized by this subsection are not eligible in excess of twenty percent of the legal reserve of the life insurance company or association. Investments in obligations of a foreign government, other than Canada and the United Kingdom, are not eligible in excess of two percent of the legal reserve in the securities of foreign governments of any one foreign nation. Investments in obligations of the United Kingdom are not eligible in excess of four percent of the legal reserve. Investments in a corporation incorporated under the laws of a foreign government other than Canada are not eligible in excess of two percent of the legal reserve in the securities of any one foreign corporation.

Eligible investments in foreign obligations under this subsection are limited to the types of obligations specifically referred to in this subsection. This subsection in no way limits or restricts investments in Canadian obligations and securities specifically authorized in other subsections of this section.

This subsection shall not authorize investment in evidences of indebtedness issued, assumed, or guaranteed by a foreign government which engages in a consistent pattern of gross violations of human rights.

20. *Venture capital funds.* Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the funds in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its legal reserve under this subsection. For purposes of this subsection, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

"Venture capital fund" includes an equity interest in the Iowa fund of funds as defined in section 15E.62.

21. *Use of custodian banks, clearing corporations, and the federal reserve book-entry system.*

a. As used in this subsection:

(1) “*Clearing corporation*” means a corporation as defined in section 554.8102.

(2) “*Custodian bank*” means a federal or state bank or trust company regulated under the Iowa banking laws or the federal reserve system, which maintains an account in its name in a clearing corporation and acts as custodian of securities owned by a domestic insurer.

(3) “*Federal reserve book-entry system*” means the computerized system sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and its agencies and instrumentalities, in the federal reserve banks through national banks, state banks, or trust companies, which either are members of the federal reserve system or otherwise have access to the computerized systems.

b. Securities deposited by a domestic insurance company with a custodian bank, or redeposited by a custodian bank with a clearing corporation, or held in the federal reserve book-entry system may be used to meet the deposit requirements of subsection 16. The commissioner shall adopt rules necessary to implement this section which:

(1) Establish guidelines on which the commissioner determines whether a custodian bank qualifies as a bank in which securities owned by an insurer may be deposited for the purpose of satisfying the requirements of subsection 16.

(2) Designate those clearing corporations in which securities owned by insurers may be deposited.

(3) Set forth provisions that custodian agreements executed between custodian banks and insurers shall contain. These shall include provisions stating that minimum deposit levels shall be maintained and that the parties agree securities in deposits with custodian banks shall vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

(4) Establish other safeguards applicable to the use of custodian banks and clearing corporations by insurers which the commissioner believes necessary to protect the policyholders of the insurers.

c. A security owned by a domestic insurer and deposited in a custodian bank or clearing corporation does not qualify for purposes of its legal reserve deposit unless the custodian bank and clearing corporation are approved by the commissioner for that purpose.

22. *Financial instruments used in hedging transactions.*

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

(1) “*Financial instrument*” means an agreement, option, instrument, or any series or combination agreement, option, or instrument that provides for either of the following:

(a) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu of such delivery or relinquishment.

(b) Which has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(2) “*Financial instrument transaction*” means a transaction involving the use of one or more financial instruments.

(3) “*Hedging transaction*” means a financial instrument transaction which is entered into and maintained to reduce either of the following:

(a) The risk of a change in the value, yield, price, cash flow, or quality of assets or liabilities which the domestic insurer has acquired and maintains as qualified assets in its legal reserve deposit or which liabilities the domestic insurer has incurred and form the basis for calculation of its legal reserve.

(b) The currency exchange-rate risk or the degree of exposure as to assets or liabilities which the domestic insurer has acquired or incurred.

(4) “*United States government-sponsored enterprise*” means the federal national mortgage corporation under 12 U.S.C. § 1716 – 23i of the National Housing Act and the federal home loan marketing association under the Federal Home Loan Mortgage Act, 12 U.S.C. § 1451 – 59.

b. To be eligible as investments, financial instruments used in hedging transactions shall be either of the following:

(1) Be between an insurer and a counterparty that meets the qualifications established in

subsection 5 for an issuer, obligor, or guarantor of bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or of any state, district, or insular or territorial possession thereof, or Canada, or that meets the qualifications established in subsection 19 for an issuer, obligor, or guarantor of bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of a foreign government other than Canada.

(2) Be between an insurer and a conduit and be collateralized by cash or obligations which are eligible under subsection 1, 2, 3, 5, 19, or 24, are deposited with a custodian bank as defined in subsection 21, and are held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted. Paragraphs “c”, “d”, and “e” of this subsection are not applicable to investments in financial instruments used in hedging transactions eligible pursuant to this subparagraph. As used in this subparagraph, “conduit” means a person within an insurer’s insurance holding company system, as defined in section 521A.1, subsection 5, which aggregates hedging transactions by other persons within the insurance holding company system and replicates them with counterparties.

(a) Financial instruments used in hedging transactions between an insurer and a conduit which are collateralized by obligations eligible under subsection 5, 19, or 24 are eligible only to the extent that such securities deposited as collateral are not in excess of two percent of the legal reserve in the securities of any one corporation, less any securities of that corporation owned by the insurer or which are the subject of hedging transactions by the insurer, that are included in the insurer’s legal reserve.

(b) Financial instruments used in hedging transactions between an insurer and a conduit which are collateralized by obligations eligible under subsection 5 or by cash equivalents eligible under subsection 24, other than a class one money market fund, are eligible only to the extent that such securities deposited as collateral are not in excess of ten percent of the legal reserve, less any obligations eligible under subsection 5 or cash equivalents eligible under subsection 24, other than a class one money market fund, owned by the insurer or which are the subject of hedging transactions by the insurer, that are included in the insurer’s legal reserve.

(c) Financial instruments used in hedging transactions between an insurer and a conduit which are collateralized by obligations eligible under subsection 19 are eligible only to the extent that such securities deposited as collateral are not in excess of twenty percent of the legal reserve, less any securities eligible under subsection 19 owned by the insurer or which are the subject of hedging transactions by the insurer, that are included in the insurer’s legal reserve.

(3) Financial instruments used in hedging transactions shall be eligible only as provided by this paragraph “b” and rules adopted by the commission pursuant to chapter 17A setting standards for hedging transactions between an insurer and a conduit as authorized under section 521A.5, subsection 1, paragraph “b”.

c. Investments in financial instruments used in hedging transactions are not eligible in excess of two percent of the legal reserve in the financial instruments of any one corporation, less any securities of that corporation owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by cash, United States government obligations as authorized by subsection 1, or obligations of or guaranteed by a United States government-sponsored enterprise which on the date they are pledged as collateral are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant, which are deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association

and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

d. Investments in financial instruments used in hedging transactions are not eligible in excess of ten percent of the legal reserve, except insofar as the financial instruments are collateralized by cash, United States government obligations as authorized by subsection 1, or obligations of or guaranteed by a United States government-sponsored enterprise which on the date they are pledged as collateral are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant, which are deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

e. (1) Investments in financial instruments of foreign governments or foreign corporate obligations, other than Canada, used in hedging transactions shall be included in the limitation contained in subsection 19 that allows only twenty percent of the legal reserve of the company or association to be invested in such foreign investments, except insofar as the financial instruments are collateralized by cash, United States government obligations as authorized by subsection 1, or obligations of or guaranteed by a United States government-sponsored enterprise which on the date they are pledged as collateral are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant, which are deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

(2) This paragraph “e” does not authorize the inclusion of financial instruments used in hedging transactions in an insurer’s legal reserve that are in excess of the eligibility limitation provided in paragraph “d” unless the financial instruments are collateralized as provided in this paragraph “e”.

f. Prior to engaging in hedging transactions under this subsection, a domestic insurer shall develop and adequately document policies and procedures regarding hedging transaction strategies and objectives. Such policies and procedures shall address authorized hedging transactions, limitations, internal controls, documentation, and authorization and approval procedures. Such policies and procedures shall also provide for review of hedging transactions by the domestic insurer’s board of directors or the board of directors’ designee.

g. A domestic insurer shall be able to demonstrate to the commissioner the intended hedging characteristics of hedging transactions under this subsection and the ongoing effectiveness of each hedging transaction or combination of hedging transactions.

h. Financial instruments used in hedging transactions shall only be eligible in accordance with this subsection after the commissioner has adopted rules pursuant to chapter 17A regulating hedging transactions under this subsection.

i. Securities held in the legal reserve of a life insurance company or association pledged as collateral for financial instruments used in highly effective hedging transactions as defined in the national association of insurance commissioners’ statement of statutory accounting principles no. 86 shall continue to be eligible for inclusion in the legal reserve of the life insurance company or association subject to all of the following:

(1) The life insurance company or association does not include the financial instruments used in highly effective hedging transactions for which the securities are pledged as collateral in the legal reserve of the life insurance company or association, provided, however, that this subparagraph shall not exclude securities pledged to a counterparty, clearing organization, or clearinghouse on an upfront basis in the form of initial margin, independent amount, or other securities pledged as a precondition of entering into financial instruments used in

highly effective hedging transactions from inclusion in the legal reserve of the life insurance company or association.

(2) Securities pledged as collateral for financial instruments used in highly effective hedging transactions are not eligible in excess of ten percent of the legal reserve of the life insurance company or association, less any financial instruments used in hedging transactions held in the legal reserve under this subsection.

(3) Securities pledged to a counterparty, clearing organization, or clearinghouse on an upfront basis in the form of initial margin, independent amount, or other securities pledged as a precondition of entering into financial instruments used in highly effective hedging transactions are not eligible in excess of one percent of the legal reserve of the life insurance company or association.

23. *Security loans.*

a. A life insurance company or association may loan securities held by it in its legal reserve to a broker-dealer registered under the Securities Exchange Act of 1934, a national bank, or a state bank, foreign bank, or trust company that is a member of the United States federal reserve system, and the loaned securities shall continue to be eligible for inclusion in the legal reserve of the life insurance company or association.

b. The loan shall be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or instrumentality of the United States. The life insurance company or association shall take delivery of the collateral either directly or through an authorized custodian.

c. If the loan is collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the life insurance company or association in class one money market funds as defined in subsection 24, individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association, or in repurchase agreements fully collateralized by such securities if the life insurance company or association takes delivery of the collateral either directly or through an authorized custodian or pooled fund comprised of individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association. If such reinvestment is made in individual securities or in repurchase agreements, the individual securities or the securities which collateralize the repurchase agreements shall mature in less than two hundred seventy days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be one hundred eighty days or less and the individual maturities of the securities comprising such pooled fund must be three hundred ninety-seven days or less. Individual securities and securities comprising the pooled fund shall be investment grade. As used in this paragraph, "*maturity*" means the earlier of the fixed date on which the holder of the security is unconditionally entitled to receive principal and interest in full or the date on which the holder of the security is unconditionally entitled upon demand to receive principal and interest in full.

d. The loan shall be evidenced by a written agreement which provides all of the following:

(1) That the loan will be fully collateralized at all times during the term of the loan, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(2) If the loan is fully collateralized by cash or cash equivalents, the cash or cash equivalent may be reinvested by the life insurance company or association as provided in paragraph "c".

(3) That the loan may be terminated by the life insurance company or association at any time, and that the borrower shall return the loaned stocks or obligations or equivalent stocks or obligations within five business days after termination.

(4) That the life insurance company or association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the life insurance company or association due to default that are not covered by the collateral.

e. Securities loaned pursuant to this subsection are not eligible for inclusion in the legal

reserve of the life insurance company or association in excess of ten percent of the legal reserve.

f. A life insurance company or association may continue to hold in the legal reserve of the life insurance company or association securities which are the subject of a reverse repurchase agreement. If such securities are held in the legal reserve of a life insurance company or association, the securities shall be subject to the limitations of paragraph “e” as if they were securities loaned pursuant to this subsection.

24. *Cash equivalents.*

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

(1) “*Cash equivalents*” means highly liquid investments with an original term to maturity of ninety days or less that are all of the following:

(a) Readily convertible to a known amount of cash without penalty.

(b) So near maturity that the investment presents an insignificant risk of change in value.

(c) Rated any of the following:

(i) “P-1” by Moody’s investors services, inc.

(ii) “A-1” by Standard and Poor’s division of McGraw-Hill companies, inc., or by the national association of insurance commissioners’ securities valuation office.

(iii) Equivalent by a nationally recognized statistical rating organization that is recognized by the national association of insurance commissioners’ securities valuation office.

(2) “*Class one money market fund*” means investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., and operated in accordance with 17 C.F.R. § 270.2a-7, that qualifies for investment using the bond class one reserve factor under the purposes and procedures of the national association of insurance commissioners’ securities valuation office.

b. Cash equivalents include a class one money market fund.

c. Cash equivalents, other than a class one money market fund, are not eligible in excess of two percent of the legal reserve in the obligations of any one corporation, and are not eligible in excess of ten percent of the legal reserve.

[C73, §1179 – 1181; C97, §1791 – 1793, 1803, 1804, 1806, 1807; SS15, §1806; C24, 27, 31, 35, 39, §8698 – 8701, 8735 – 8739, 8741, 8742, 8744, 8747; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.8; 81 Acts, ch 168, §1; 82 Acts, ch 1095, §2 – 5]

84 Acts, ch 1067, §40; 85 Acts, ch 136, §1; 85 Acts, ch 228, §4; 85 Acts, ch 252, §31; 87 Acts, ch 64, §1 – 4; 88 Acts, ch 1112, §205; 89 Acts, ch 83, §69; 89 Acts, ch 311, §29; 91 Acts, ch 26, §38, 59, 60; 96 Acts, ch 1013, §1; 96 Acts, ch 1138, §1, 84; 98 Acts, ch 1014, §1; 2000 Acts, ch 1023, §15 – 18, 60; 2002 Acts, ch 1119, §179; 2003 Acts, ch 91, §20; 2004 Acts, ch 1110, §28 – 31; 2006 Acts, ch 1010, §136, 137; 2006 Acts, ch 1117, §50 – 54; 2008 Acts, ch 1123, §20 – 23; 2009 Acts, ch 145, §8; 2010 Acts, ch 1121, §10 – 14; 2011 Acts, ch 70, §24, 25; 2011 Acts, ch 131, §70, 158

Similar provisions, §515.35

Subsection 16, NEW paragraph h

Subsection 22, NEW paragraph i

## CHAPTER 512B

### FRATERNAL BENEFIT SOCIETIES

#### SUBCHAPTER VI

#### REGULATION

#### **512B.25 Annual license — renewal.**

The authority of a society to transact business in this state may be renewed annually. A license terminates on the first day of June following issuance or renewal. A society shall

submit annually on or before March 1 a completed application for renewal of its license. For each license or renewal the society shall pay the commissioner a fee of fifty dollars. A society that fails to timely file an application for renewal shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7. A duly certified copy or duplicate of the license is prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

90 Acts, ch 1148, §26; 92 Acts, ch 1162, §18; 2006 Acts, ch 1117, §55; 2007 Acts, ch 126, §90; 2009 Acts, ch 181, §71

2011 repeal of 2009 Acts, ch 181, §71, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 513B

### SMALL GROUP HEALTH COVERAGE

#### SUBCHAPTER I

#### RATING PRACTICES — AVAILABILITY

##### **513B.2 Definitions.**

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

1. “*Actuarial certification*” means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of section 513B.4, based upon the person’s examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the small employer carrier in establishing premium rates for applicable health insurance coverages.

2. “*Base premium rate*” means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers for health insurance plans with the same or similar coverage.

3. “*Basic health benefit plan*” means a plan established by the board of the small employer health reinsurance program pursuant to section 513B.13, subsection 8, paragraph “a”.

4. “*Carrier*” means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services.

5. “*Case characteristics*” means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the insurer in the determination of premium rates for the small employer. Claim experience, health status, and duration of coverage since issue are not case characteristics for the purpose of this subchapter.

6. “*Class of business*” means all or a distinct grouping of small employers as shown on the records of the small employer carrier.

a. A distinct grouping may only be established by the small employer carrier on the basis that the applicable health insurance coverages meet one or more of the following requirements:

(1) The coverages are marketed and sold through individuals and organizations which are not participating in the marketing or sales of other distinct groupings of small employers for the small employer carrier.

(2) The coverages have been acquired from another small employer carrier as a distinct grouping of plans.

(3) The coverages are provided by a policy of group health insurance coverage through a bona fide association as provided in section 509.1, subsection 8, which meets the requirements for a class of business under section 513B.4. A small employer carrier may condition coverages under such a policy of group health insurance coverage on any of the following requirements:

(a) Minimum levels of participation by employees of each member of a bona fide association that offers the coverage to its employees.

(b) Minimum levels of contribution by each member of a bona fide association that offers the coverage to its employees.

(c) A specified policy term, subject to annual premium rate adjustments as permitted by section 513B.4.

(4) The coverages are provided by a policy of group health insurance coverage through two or more bona fide associations as provided in section 509.1, subsection 8, which a small employer carrier has aggregated as a distinct grouping that meets the requirements for a class of business under section 513B.4. After a distinct grouping of bona fide associations is established as a class of business, the small employer carrier shall not remove a bona fide association from the class based on the claims experience of that association. A small employer carrier may condition coverages under such a policy of group health insurance coverage on any of the following requirements:

(a) Minimum levels of participation by employees of each member of a bona fide association in the class that offers the coverage to its employees.

(b) Minimum levels of contribution by each member of a bona fide association in the class that offers the coverage to its employees.

(c) A specified policy term, subject to annual premium rate adjustments as permitted by section 513B.4.

b. A small employer carrier may establish additional groupings under each of the subparagraphs in paragraph "a" on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

c. The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace.

7. "Commissioner" means the commissioner of insurance.

8. "Creditable coverage" means health benefits or coverage provided to an individual under any of the following:

a. A group health plan.

b. Health insurance coverage.

c. Part A or Part B Medicare pursuant to Tit. XVIII of the federal Social Security Act.

d. Medicaid pursuant to Tit. XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.

e. 10 U.S.C. ch. 55.

f. A health or medical care program provided through the Indian health service or a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under 5 U.S.C. ch. 89.

i. A public health plan as defined under federal regulations.

j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. § 2504(e).

k. An organized delivery system licensed by the director of public health.

l. A short-term limited duration policy.

m. The hawk-i program authorized by chapter 514I.

9. "Division" means the division of insurance.

10. "Eligible employee" means an employee who works on a full-time basis and has a normal workweek of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under health insurance coverage of a small employer, but does not include an employee who works on a part-time, temporary, or substitute basis.

11. a. “Group health plan” means an employee welfare benefit plan as defined in section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

b. For purposes of this subsection, “medical care” means amounts paid for any of the following:

(1) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.

(2) Transportation primarily for and essential to medical care referred to in subparagraph (1).

(3) Insurance covering medical care referred to in subparagraph (1) or (2).

c. For purposes of this subsection, a partnership which establishes and maintains a plan, fund, or program to provide medical care to present or former partners in the partnership or to their dependents directly or through insurance, reimbursement, or other method, which would not be an employee benefit welfare plan but for this paragraph, shall be treated as an employee benefit welfare plan which is a group health plan.

(1) For purposes of a group health plan, an employer includes the partnership in relation to any partner.

(2) For purposes of a group health plan, the term “participant” also includes both of the following:

(a) An individual who is a partner in relation to a partnership which maintains a group health plan.

(b) An individual who is a self-employed individual in connection with a group health plan maintained by the self-employed individual where one or more employees are participants, if the individual is or may become eligible to receive a benefit under the plan or the individual’s beneficiaries may be eligible to receive a benefit.

12. a. “Health insurance coverage” means benefits consisting of health care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as health care under a hospital or health service policy or certificate, hospital or health service plan contract, or health maintenance organization contract offered by a carrier.

b. “Health insurance coverage” does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers’ compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

c. “Health insurance coverage” does not include benefits provided under a separate policy as follows:

(1) Limited scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

d. “Health insurance coverage” does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

e. “Health insurance coverage” does not include Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act, coverage supplemental

to the coverage provided under 10 U.S.C. ch. 55, and similar supplemental coverage provided to coverage under group health insurance coverage.

f. “*Group health insurance coverage*” means health insurance coverage offered in connection with a group health plan.

13. “*Index rate*” means, for each class of business for small employers, the average of the applicable base premium rate and the corresponding highest premium rate.

14. “*Late enrollee*” means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period for which such individual is entitled to enroll under the terms of the health benefit plan, provided the initial enrollment period is a period of at least thirty days. An eligible employee or dependent shall not be considered a late enrollee if any of the following apply:

a. The individual meets all of the following:

(1) The individual was covered under creditable coverage at the time of the initial enrollment.

(2) The individual lost creditable coverage as a result of termination of the individual’s employment or eligibility, the involuntary termination of the creditable coverage, death of the individual’s spouse, or the individual’s divorce.

(3) The individual requests enrollment within thirty days after termination of the creditable coverage.

b. The individual is employed by an employer that offers multiple health insurance coverages and the individual elects a different coverage during an open enrollment period.

c. A court has ordered that coverage be provided for a spouse or minor or dependent child under a covered employee’s health insurance coverage and the request for enrollment is made within thirty days after issuance of the court order.

d. The individual changes status and becomes an eligible employee and requests enrollment within sixty-three days after the date of the change in status.

e. The individual was covered under a mandated continuation of group health plan or group health insurance coverage plan until the coverage under that plan was exhausted.

15. “*New business premium rate*” means, for each class of business as to a rating period, the lowest premium rate charged or offered by the small employer carrier to small employers for newly issued health insurance coverages with the same or similar coverage.

16. “*Preexisting conditions exclusion*” means, with respect to health insurance coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

17. “*Rating period*” means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

18. “*Small employer*” means a person actively engaged in business who, on at least fifty percent of the employer’s working days during the preceding year, employed not less than two and not more than fifty full-time equivalent eligible employees. In determining the number of eligible employees, companies which are affiliated companies or which are eligible to file a combined tax return for purposes of state taxation are considered one employer.

19. “*Small employer carrier*” means any carrier which offers health benefit plans covering the employees of a small employer.

20. “*Standard health benefit plan*” means a plan established by the board of the small employer health reinsurance program pursuant to section 513B.13, subsection 8, paragraph “a”.

91 Acts, ch 244, §2; 92 Acts, ch 1167, §1; 93 Acts, ch 80, §2, 3; 94 Acts, ch 1176, §9; 95 Acts, ch 185, §9; 97 Acts, ch 103, §2 – 11; 98 Acts, ch 1057, §8; 2000 Acts, ch 1023, §20; 2001 Acts, ch 69, §13, 39; 2007 Acts, ch 57, §3 – 5, 8; 2007 Acts, ch 215, §255; 2009 Acts, ch 118, §20

Organized delivery systems, see 93 Acts, ch 158, §3

For future amendment to subsection 18 effective January 1, 2014, see 2011 Acts, ch 70, §26, 49

Section not amended; editorial change applied and footnote added

## CHAPTER 514

### NONPROFIT HEALTH SERVICE CORPORATIONS

#### **514.9A Certificate of authority — renewal.**

A certificate of authority of a corporation formed under this chapter expires on June 1 succeeding its issue and shall be renewed annually so long as the corporation transacts its business in accordance with all legal requirements. A corporation shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority. A corporation that fails to timely file an application for renewal shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7. A duly certified copy or duplicate of the certificate is admissible in evidence for or against the corporation with the same effect as the original.

2006 Acts, ch 1117, §57; 2009 Acts, ch 181, §72

2011 repeal of 2009 Acts, ch 181, §72, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 514B

### HEALTH MAINTENANCE ORGANIZATIONS

#### **514B.3B Certificate of authority — renewal.**

A certificate of authority of a health maintenance organization formed under this chapter expires on June 1 succeeding its issue and shall be renewed annually so long as the organization transacts its business in accordance with all legal requirements. A health maintenance organization shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority. A health maintenance organization that fails to timely file an application for renewal shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7. A duly certified copy or duplicate of the certificate is admissible in evidence for or against the organization with the same effect as the original.

2006 Acts, ch 1117, §58; 2009 Acts, ch 181, §73

2011 repeal of 2009 Acts, ch 181, §73, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

#### **514B.12 Annual report.**

1. A health maintenance organization shall annually on or before the first day of March file with the commissioner or a depository designated by the commissioner a report verified by at least two of the principal officers of the health maintenance organization and covering the preceding calendar year. The report shall be on forms prescribed by the commissioner and shall include:

a. Financial statements of the organization including a balance sheet as of the end of the preceding calendar year and statement of profit and loss for the year then ended, certified by a certified public accountant or an independent public accountant.

b. Any material changes in the information submitted pursuant to section 514B.3.

c. The number of persons enrolled during the year, the number of enrollees as of the end of the year and the number of enrollments terminated during the year.

d. Other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the commissioner's duties under this chapter.

2. The commissioner shall refuse to renew a certificate of authority of a health maintenance organization that fails to comply with the provisions of this section and the organization's right to transact new business in this state shall immediately cease until the organization has so complied.

3. A health maintenance organization that fails to timely file the report required under subsection 1 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

4. The commissioner may give notice to a health maintenance organization that the organization has not timely filed the report required under subsection 1 and is in violation of this section. If the organization fails to file the required report and comply with this section within ten days of the date of the notice, the organization shall pay an additional administrative penalty of one hundred dollars for each day that the failure continues to the treasurer of state for deposit as provided in section 505.7.

[C75, 77, 79, 81, §514B.12]

92 Acts, ch 1162, §25; 2003 Acts, ch 91, §29; 2004 Acts, ch 1101, §73; 2006 Acts, ch 1117, §59; 2009 Acts, ch 181, §74

2011 repeal of 2009 Acts, ch 181, §74, amendment to subsections 3 and 4 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 514C

### SPECIAL HEALTH AND ACCIDENT INSURANCE COVERAGES

#### **514C.13 Group managed care health plans — requirements attached to limited provider network plan offers.**

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

a. “*Carrier*” means an entity that provides health benefit plans in this state. “*Carrier*” includes an insurance company, group hospital or medical service corporation, health maintenance organization, multiple employer welfare arrangement, and any other person providing health benefit plans in this state subject to regulation by the commissioner of insurance.

b. “*Health benefit plan*” means a policy, certificate, or contract providing hospital or medical coverage, benefits, or services rendered by a health care provider. “*Health benefit plan*” does not include a group conversion plan, accident-only, specific-disease, short-term hospital or medical hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, workers’ compensation or similar insurance, or automobile medical payment insurance.

c. “*Health care provider*” means a hospital licensed pursuant to chapter 135B, a person licensed under chapter 148, 148C, 149, 151, or 154, or a person licensed as an advanced registered nurse practitioner under chapter 152.

d. “*Indemnity plan*” means a hospital or medical expense-incurred policy, certificate, or contract, major medical expense insurance, or hospital or medical service plan contract.

e. “*Large employer*” means a person actively engaged in business who, during at least fifty percent of the employer’s working days during the preceding calendar year, employed more than fifty full-time equivalent employees.

f. “*Limited provider network plan*” means a managed care health plan which limits access to or coverage for services to selected health care providers who are under contract with the managed care health plan.

g. “*Managed care health plan*” means a health benefit plan that selects and contracts with health care providers; manages and coordinates health care delivery; monitors necessity, appropriateness, and quality of health care delivered by health care providers; and performs utilization review and cost control.

h. “*Organized delivery system*” means an organized delivery system as defined in section 513C.3.

i. “*Point of service plan option*” means a provision in a managed care health plan that permits insureds, enrollees, or subscribers access to health care from health care providers who have not contracted with the managed care health plan.

j. “Small employer” means a person actively engaged in business who, during at least fifty percent of the employer’s working days during the preceding calendar year, employed not less than two and not more than fifty full-time equivalent employees.

2. A carrier or organized delivery system which offers to a small employer a limited provider network plan to provide health care services or benefits to the small employer’s employees shall also offer to the small employer a point of service option to the limited provider network plan.

3. A carrier or organized delivery system which offers to a large employer a limited provider network plan to provide health care services or benefits to the large employer’s employees shall also offer to the large employer one or more of the following:

a. A point of service plan option to the limited provider network plan. The price of the point of service plan option shall be actuarially determined.

b. A managed care health plan that is not a limited provider network plan.

c. An indemnity plan.

4. A large employer that offers a limited provider network plan to its employees shall also offer to its employees one or more of the following:

a. A point of service plan option to the limited provider network plan.

b. A managed care health plan that is not a limited provider network plan.

c. An indemnity plan.

97 Acts, ch 88, §1; 2008 Acts, ch 1088, §131

For future amendment to subsection 1, paragraph j, effective January 1, 2014, see 2011 Acts, ch 70, §27, 49  
Section not amended; footnote added

#### **514C.18 Diabetes coverage.**

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits for the cost associated with equipment, supplies, and self-management training and education for the treatment of all types of diabetes mellitus when prescribed by a physician licensed under chapter 148. Coverage benefits shall include coverage for the cost associated with all of the following:

a. Equipment and supplies.

b. Payment for diabetes self-management training and education only under all of the following conditions:

(1) The physician managing the individual’s diabetic condition certifies that such services are needed under a comprehensive plan of care related to the individual’s diabetic condition to ensure therapy compliance or to provide the individual with necessary skills and knowledge to participate in the management of the individual’s condition.

(2) The diabetes self-management training and education program is certified by the Iowa department of public health. The department shall consult with the American diabetes association, Iowa affiliate, in developing the standards for certification of diabetes education programs that cover at least ten hours of initial outpatient diabetes self-management training within a continuous twelve-month period and up to two hours of follow-up training for each subsequent year for each individual diagnosed by a physician with any type of diabetes mellitus.

2. a. This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1999:

(1) Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

(2) An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

(3) An individual or group health maintenance organization contract regulated under chapter 514B.

(4) Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

(5) A plan established pursuant to chapter 509A for public employees.

(6) An organized delivery system licensed by the director of public health.

*b.* This section shall not apply to accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

99 Acts, ch 75, §1; 99 Acts, ch 208, §58; 2008 Acts, ch 1088, §133; 2009 Acts, ch 139, §1, 2; 2011 Acts, ch 70, §28

2009 amendment takes effect May 22, 2009, and applies to the classes of third-party payment provider contracts or policies that are delivered, issued for delivery, continued, or renewed on or after July 1, 2009; 2009 Acts, ch 139, §2

Subsection 1, paragraph a stricken and rewritten

## CHAPTER 514G

### LONG-TERM CARE INSURANCE ACT

#### **514G.105 Disclosure and performance standards for long-term care insurance.**

1. *Prohibited policy practices.* A long-term care insurance policy shall not:

*a.* Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or deterioration of the mental or physical health of the insured individual or certificate holder.

*b.* Contain a provision establishing a new waiting period in the event that existing coverage is converted to or replaced by a new or other policy form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual, the certificate holder, or the group policyholder.

*c.* Provide coverage for skilled nursing care only, or provide significantly more coverage for skilled nursing care in a facility than coverage for lower levels of care.

2. *Preexisting conditions.*

*a.* A long-term care insurance policy or certificate, other than a policy or certificate issued to a group as described in section 514G.103, subsection 9, shall not use a definition of "*preexisting condition*" that is more restrictive than the definition contained in section 514G.103, subsection 15.

*b.* A long-term care insurance policy or certificate, other than a policy or certificate issued to a group as described in section 514G.103, subsection 9, shall not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within six months following the effective date of coverage of an insured individual.

*c.* The commissioner may extend the limitation periods set forth in paragraphs "*a*" and "*b*" as to specific age group categories in specific policy forms upon finding that such an extension is in the best interest of the public.

*d.* The requirements of paragraph "*a*" do not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and on the basis of the answers on that application, underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, is not required to be covered until the waiting period described in paragraph "*b*" expires. A long-term care insurance policy or certificate shall not exclude, or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph "*b*".

3. *Prior hospitalization or institutionalization.*

*a.* A long-term care insurance policy shall not be delivered or issued for delivery in this state if the policy does any of the following:

(1) Conditions eligibility for any benefits on a prior hospitalization requirement.

(2) Conditions eligibility for any benefits provided in an institutional care setting on the receipt of a higher level of institutional care.

(3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

b. A long-term care insurance policy that contains post-confinement, post-acute care, or recuperative benefits shall contain, in a clearly visible, separate paragraph or the policy or certificate entitled “*limitations or conditions on eligibility for benefits*”, a description of such limitations or conditions, including any required number of days of confinement.

c. A long-term care insurance policy or rider that conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days.

d. A long-term care insurance policy or rider that provides benefits only following institutionalization shall not condition such benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

4. *Right to return — free look — refund.*

a. A long-term care insurance applicant shall have the right to return the long-term care insurance policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

b. A long-term care insurance policy or certificate delivered or issued for delivery in this state shall have a notice prominently displayed on the first page of the policy or certificate, or attached thereto, which states in substance that the applicant has the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group as described in section 514G.103, subsection 9, paragraph “a”, the applicant is not satisfied for any reason.

c. Any premium refund shall be made to the applicant within thirty days of the return.

5. *Denials — refund.* If an application is denied by an insurer, any premium refund shall be made to the applicant within thirty days of the denial.

6. *Outline of coverage.*

a. A written outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of the initial solicitation for coverage which prominently directs the attention of the applicant to the document and its purpose.

b. The commissioner shall prescribe, by rule, a standard format, including style, arrangement, and overall appearance, and content of the outline of coverage.

c. In the case of producer solicitations, a producer shall deliver the outline of coverage to a prospective applicant prior to the presentation of an application or enrollment form.

d. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

e. In the case of a policy issued to a group as described in section 514G.103, subsection 9, paragraph “a”, an outline of coverage is not required to be delivered to the applicant, provided that the information described in subsection 7 of this section, paragraphs “a” through “f”, is contained in other enrollment materials provided. Upon request, such other enrollment materials shall be made available to the commissioner.

7. *Contents of outline of coverage.* An outline of coverage of long-term care insurance shall include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change the premium. Continuation or conversion provisions of group coverage shall be specifically described.

d. A statement that the outline of coverage is a summary of coverage only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions.

e. A description of the terms under which the policy or certificate may be returned and the premium refunded.

f. A brief description of the relationship of cost of care and benefits.

g. A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract under section 7702B(b) of the Internal Revenue Code.

8. *Contents of group certificate.* A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state shall include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement that the group master policy determines governing contractual provisions.

9. *Time for delivery.* If an application for a long-term care insurance policy or certificate is approved, the issuer shall deliver the policy or certificate of insurance to the applicant no later than thirty days after the date of approval.

10. *Individual life insurance — policy summary.*

a. A written policy summary shall accompany the delivery of an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver a policy summary upon the applicant's request or at the time of policy delivery, whichever occurs first.

b. A policy summary shall include all of the following:

(1) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits.

(2) An illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits if any, for each covered person.

(3) Any exclusions, reductions, or limitations on long-term care benefits.

(4) A statement that a long-term care inflation protection option required by 191 IAC 39.10 is not available under this policy.

(5) If applicable to the policy type, the summary shall also include all of the following:

(a) A disclosure of the effect of exercising other rights under the policy.

(b) A disclosure of guarantees related to long-term care costs of insurance charges.

(c) Current and projected maximum lifetime benefits.

c. The requirements of a policy summary set forth in paragraph "b" may be incorporated into the basic illustration required to be delivered in accordance with 191 IAC 14, or into the life insurance policy summary required to be delivered in accordance with 191 IAC 15.4.

11. *Monthly report.* If a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. The report shall include all of the following:

a. Any long-term care benefits paid out during the month.

b. An explanation of any changes in the policy, including but not limited to changes in death benefits or cash values due to long-term care benefits being paid out.

c. The amount of long-term care benefits existing or remaining.

12. *Claim denial.* If a claim made under a long-term care insurance policy is denied, the issuer, within sixty days of the date of receipt of a written request by the policyholder, certificate holder, or a representative thereof, shall provide a written explanation of the reasons for the denial, and shall make all information directly related to the denial available to the requestor.

13. *Compliance.* Any policy or rider advertised, marketed, or offered as long-term care insurance or nursing home insurance shall comply with the provisions of this chapter.

2008 Acts, ch 1175, §6; 2011 Acts, ch 34, §117

Subsection 1, paragraph c amended

### **514G.110 Independent review of benefit trigger determinations.**

1. *Request.* An insured may file a written request for independent review of a benefit trigger determination with the commissioner after the internal appeal process has been

exhausted. The request shall be filed within sixty days after the insured receives written notice of the insurer's internal appeal decision.

2. *Fee.* A request for independent review shall be accompanied by a twenty-five dollar filing fee. The commissioner may waive the filing fee for good cause. The filing fee shall be refunded if the insured prevails in the independent review process.

3. *Eligibility for review.* The commissioner shall certify that the request is eligible for independent review if all of the following criteria are satisfied:

a. The insured was covered by a long-term care insurance policy issued by the insurer at the time the benefit trigger determination was made.

b. The sole reason for requesting an independent review is to review the insurer's determination that the benefit trigger was not met.

c. The insured has exhausted all internal appeal procedures provided under the insured's long-term care insurance policy.

d. The written request for independent review was filed by the insured within sixty days from the date of receipt of the insurer's internal appeal decision.

4. *Notice of eligibility.* The commissioner shall provide written notice regarding eligibility of a request for independent review to the insured and the insurer within two business days from the date of receipt of the request.

a. If the commissioner decides that the request is not eligible for independent review, the written notice shall indicate the reasons for that decision.

b. If the commissioner certifies that the request is eligible for independent review, the insurer may appeal that certification by filing a written notice of appeal with the commissioner within three business days from the date of receipt of the notice of certification. If upon further review, the commissioner upholds the certification, the commissioner shall promptly notify the insured and the insurer in writing of the reasons for that decision.

5. *Qualifications of independent review entities.* The commissioner shall maintain a list of qualified independent review entities that are certified by the commissioner. Independent review entities shall be recertified by the commissioner every two years in order to remain on the list. In order to be certified, an independent review entity shall meet all of the following criteria:

a. Have on staff, or contract with, a qualified, licensed health care professional in an appropriate field for determining an insured's functional or cognitive impairment who can conduct an independent review.

(1) In order to be qualified, a licensed health care professional who is a physician shall hold a current certification by a recognized American medical specialty board in a specialty appropriate for determining an insured's functional or cognitive impairment.

(2) In order to be qualified, a licensed health care professional who is not a physician shall hold a current certification in the specialty in which that person is licensed, by a recognized American specialty board in a specialty appropriate for determining an insured's functional or cognitive impairment.

b. Ensure that any licensed health care professional who conducts an independent review has no history of disciplinary actions or sanctions, including but not limited to the loss of staff privileges or any participation restrictions taken or pending by any hospital or state or federal government regulatory agency.

c. Ensure that the independent review entity or any of its employees, agents, or licensed health care professionals utilized does not receive compensation of any type that is dependent on the outcome of a review.

d. Ensure that the independent review entity or any of its employees, agents, or licensed health care professionals utilized are not in any manner related to, employed by, or affiliated with the insured or with a person who previously provided medical care to the insured.

e. Ensure that an independent review entity or any of its employees, agents, or licensed health care professionals utilized is not a subsidiary of, or owned or controlled by, an insurer or by a trade association of insurers of which the insurer is a member.

f. Have a quality assurance program on file with the commissioner that ensures the timeliness and quality of reviews performed, the qualifications and independence of the

licensed health care professionals who perform the reviews, and the confidentiality of the review process.

g. Have on staff or contract with a licensed health care practitioner, as defined in section 514G.103, subsection 3, who is qualified to certify that an individual is chronically ill for purposes of a qualified long-term care insurance contract.

6. *Independent review process.* The independent review process shall be conducted as follows:

a. Within three business days of receiving a notice from the commissioner of the certification of a request for independent review or receipt of a denial of an insurer's appeal from such a certification, the insurer shall do all of the following:

(1) Select an independent review entity from the list certified by the commissioner and notify the insured in writing of the name, address, and telephone number of the independent review entity selected. The independent review entity selected shall utilize a licensed health care professional with qualifications appropriate to the benefit trigger determination that is under review.

(2) Notify the independent review entity that it has been selected to conduct an independent review of a benefit trigger determination and provide sufficient descriptive information to enable the independent review entity to provide licensed health care professionals who will be qualified to conduct the review.

(3) Provide the commissioner with a copy of the notices sent to the insured and to the independent review entity selected.

b. Within three business days of receiving a notice from an insurer that it has been selected to conduct an independent review, the independent review entity shall do one of the following:

(1) Accept its selection as the independent review entity, designate a qualified licensed health care professional to perform the independent review, and provide notice of that designation to the insured and the insurer, including a brief description of the health care professional's qualifications and the reasons that person is qualified to determine whether the insured's benefit trigger has been met. A copy of this notice shall be sent to the commissioner via facsimile. The independent review entity is not required to disclose the name of the health care professional selected.

(2) Decline its selection as the independent review entity or, if the independent review entity does not have a licensed health care professional who is qualified to conduct the independent review available, request additional time from the commissioner to have a qualified licensed health care professional certified, and provide notice to the insured, the insurer, and the commissioner. The commissioner shall notify the review entity, the insured, and the insurer of how to proceed within three business days of receipt of such notice from the independent review entity.

c. An insured may object to the independent review entity selected by the insurer or to the licensed health care professional designated by the independent review entity to conduct the review by filing a notice of objection along with reasons for the objection, with the commissioner within ten days of receipt of a notice sent by the independent review entity pursuant to paragraph "b". The commissioner shall consider the insured's objection and shall notify the insured, the insurer, and the independent review entity of the commissioner's decision to sustain or deny the objection within two business days of receipt of the objection.

d. Within five business days of receiving a notice from the independent review entity accepting its selection or within five business days of receiving a denial of an objection to the review entity selected, whichever is later, the insured may submit any information or documentation in support of the insured's claim to both the independent review entity and the insurer.

e. Within fifteen days of receiving a notice from the independent review entity accepting its selection or within three business days of receipt of a denial of an objection to the independent review entity selected, whichever is later, an insurer shall do all of the following:

(1) Provide the independent review entity with any information submitted to the insurer by the insured in support of the insured's internal appeal of the insurer's benefit trigger determination.

(2) Provide the independent review entity with any other relevant documents used by the insurer in making its benefit trigger determination.

(3) Provide the insured and the commissioner with confirmation that the information required under subparagraphs (1) and (2) has been provided to the independent review entity, including the date the information was provided.

f. The independent review entity shall not commence its review until fifteen days after the selection of the independent review entity is final including the resolution of any objection made pursuant to paragraph “c”. During this time period, the insurer may consider any information provided by the insured pursuant to paragraph “d” and overturn or affirm the insurer’s benefit trigger determination based on such information. If the insurer overturns its benefit trigger determination, the independent review process shall immediately cease.

g. In conducting a review, the independent review entity shall consider only the information and documentation provided to the independent review entity pursuant to paragraphs “d” and “e”.

h. The independent review entity shall submit its decision as soon as possible, but not later than thirty days from the date the independent review entity receives the information required under paragraphs “d” and “e”, whichever is received later. The decision shall include a description of the basis for the decision and the date of the benefit trigger determination to which the decision relates. The independent review entity, for good cause, may request an extension of time from the commissioner to file its decision. A copy of the decision shall be mailed to the insured, the insurer, and the commissioner.

i. All medical records submitted for use by the independent review entity shall be maintained as confidential records as required by applicable state and federal laws. The commissioner shall keep all information obtained during the independent review process confidential pursuant to section 505.8, subsection 8, except that the commissioner may share some information obtained as provided under section 505.8, subsection 8, and as required by this chapter and rules adopted pursuant to this chapter.

j. If an insured dies before completion of the independent review, the review shall continue to completion if there is potential liability of an insurer to the estate of the insured or to a provider for rendering qualified long-term care services to the insured.

7. *Costs.* All reasonable fees and costs of the independent review entity incurred in conducting an independent review under this section shall be paid by the insurer.

8. *Immunity.* An independent review entity that conducts a review under this section is not liable for damages arising from determinations made during the review. Immunity does not apply to any act or omission made by an independent review entity in bad faith or that involves gross negligence.

9. *Effect of independent review decision.*

a. The review decision by the independent review entity conducting the review is binding on the insurer.

b. The independent review process set forth in this section shall not be considered a contested case under chapter 17A.

c. An insured may appeal the review decision by the independent review entity conducting the review by filing a petition for judicial review in the district court in the county in which the insured resides. The petition for judicial review shall be filed within fifteen business days after the issuance of the review decision. The petition shall name the insured as the petitioner and the insurer as the respondent. The petitioner shall not name the independent review entity as a party. The commissioner shall not be named as a respondent unless the insured alleges action or inaction by the commissioner under the standards articulated under section 17A.19, subsection 10. Allegations made against the commissioner under section 17A.19, subsection 10, must be stated with particularity. The commissioner may, upon motion, intervene in a judicial review proceeding brought pursuant to this paragraph. The findings of fact by the independent review entity conducting the review are conclusive and binding on appeal.

d. An insurer shall not be subject to any penalties, sanctions, or damages for complying in good faith with a review decision rendered by an independent review entity pursuant to this section.

e. Nothing contained in this section or in section 514G.109 shall be construed to limit the

right of an insurer to assert any rights an insurer may have under a long-term care insurance policy related to:

- (1) An insured's misrepresentation.
- (2) Changes in the insured's benefit eligibility.
- (3) Terms, conditions, and exclusions contained in the policy, other than failure to meet the benefit trigger.

*f.* The requirements of this section and section 514G.109 are not applicable to a group long-term care insurance policy that is governed by the federal Employee Retirement Income Security Act of 1974, as codified at 29 U.S.C. § 100 et seq.

*g.* The provisions of this section and section 514G.109 are in lieu of and supersede any other third-party review requirement contained in chapter 514J or in any other provision of law.

*h.* The insured may bring an action in the district court in the county in which the insured resides to enforce the review decision of the independent review entity conducting the review or the decision of the court on appeal.

10. *Receipt of notice.* Notice required by this section shall be deemed received within five days after the date of mailing.

2008 Acts, ch 1175, §11, 18; 2011 Acts, ch 34, §118

Subsection 6, paragraph c amended

#### **514G.113 Penalties.**

In addition to any other penalties provided by the laws of this state, any insurer or any producer found to have violated a provision of this chapter or any other requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commission paid for each policy involved in the violation, or up to ten thousand dollars, whichever is greater. A fine collected under this section shall be deposited as provided in section 505.7.

2008 Acts, ch 1175, §14; 2009 Acts, ch 181, §75

2011 repeal of 2009 Acts, ch 181, §75, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 514I

### HEALTHY AND WELL KIDS IN IOWA PROGRAM

(hawk-i program)

Establishment of hawk-i trust fund in state  
treasury; 98 Acts, ch 1218, §48

#### **514I.5 Hawk-i board.**

1. A hawk-i board for the hawk-i program is established. The board shall meet not less than six and not more than twelve times annually, for the purposes of establishing policy for, directing the department on, and adopting rules for the program. The board shall consist of seven voting members and four ex officio, nonvoting members, including all of the following:

- a.* The commissioner of insurance, or the commissioner's designee.
- b.* The director of the department of education, or the director's designee.
- c.* The director of public health, or the director's designee.

*d.* Four public members appointed by the governor and subject to confirmation by the senate. The public members shall be members of the general public who have experience, knowledge, or expertise in the subject matter embraced within this chapter.

*e.* Two members of the senate and two members of the house of representatives, serving as ex officio, nonvoting members. The legislative members of the board shall be appointed one each by the majority leader of the senate, after consultation with the president of the senate, and by the minority leader of the senate, and by the speaker of the house of representatives, after consultation with the majority leader of the house of representatives,

and by the minority leader of the house of representatives. Legislative members shall receive compensation pursuant to section 2.12.

2. A public member shall not have a conflict of interest with the administrative contractor.

3. Members appointed by the governor shall serve two-year staggered terms as designated by the governor, and legislative members of the board shall serve two-year terms. The filling of positions reserved for the public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of the members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties. Public members of the board are also eligible to receive compensation as provided in section 7E.6. A majority of the voting members constitutes a quorum and the affirmative vote of a majority of the voting members is necessary for any substantive action to be taken by the board. The members shall select a chairperson on an annual basis from among the membership of the board.

4. The board shall approve any contract entered into pursuant to this chapter. All contracts entered into pursuant to this chapter shall be made available to the public.

5. The department of human services shall act as support staff to the board.

6. The board may receive and accept grants, loans, or advances of funds from any person and may receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of the program.

7. The hawk-i board shall do all of the following:

a. Develop the criteria to be included in a request for proposals for the selection of any administrative contractor for the program.

b. Define, in consultation with the department, the regions of the state for which plans are offered in a manner as to ensure access to services for all children participating in the program.

c. Approve the benefit package design, review the benefit package design on a periodic basis, and make necessary changes in the benefit design to reflect the results of the periodic reviews.

d. Develop, with the assistance of the department, an outreach plan, and provide for periodic assessment of the effectiveness of the outreach plan. The plan shall provide outreach to families of children likely to be eligible for assistance under the program, to inform them of the availability of and to assist the families in enrolling children in the program. The outreach efforts may include, but are not limited to, solicitation of cooperation from programs, agencies, and other persons who are likely to have contact with eligible children, including but not limited to those associated with the educational system, and the development of community plans for outreach and marketing. Other state agencies shall assist the department in data collection related to outreach efforts to potentially eligible children and their families.

e. In consultation with the clinical advisory committee, assess the initial health status of children participating in the program, establish a baseline for comparison purposes, and develop appropriate indicators to measure the subsequent health status of children participating in the program.

f. Review, in consultation with the department, and take necessary steps to improve interaction between the program and other public and private programs which provide services to the population of eligible children. The board, in consultation with the department, shall also develop and implement a plan to improve the medical assistance program in coordination with the hawk-i program, including but not limited to a provision to coordinate eligibility between the medical assistance program and the hawk-i program, and to provide for common processes and procedures under both programs to reduce duplication and bureaucracy.

g. By January 1, annually, prepare, with the assistance of the department, and submit a report to the governor, the general assembly, and the council on human services, concerning the board's activities, findings, and recommendations.

h. Solicit input from the public regarding the program and related issues and services.

i. Establish and consult with a clinical advisory committee to make recommendations to the board regarding the clinical aspects of the hawk-i program.

j. Prescribe the elements to be included in a health improvement program plan required to be developed by a participating insurer. The elements shall include but are not limited to health maintenance and prevention and health risk assessment.

k. Establish an advisory committee to make recommendations to the board and to the general assembly by January 1 annually concerning the provision of health insurance coverage to children with special health care needs. The committee shall include individuals with experience in, knowledge of, or expertise in this area. The recommendations shall address, but are not limited to, all of the following:

(1) The definition of the target population of children with special health care needs for the purposes of determining eligibility under the program.

(2) Eligibility options for and assessment of children with special health care needs for eligibility.

(3) Benefit options for children with special health care needs.

(4) Options for enrollment of children with special health care needs in and disenrollment of children with special health care needs from qualified child health plans utilizing a capitated fee form of payment.

(5) The appropriateness and quality of care for children with special health care needs.

(6) The coordination of health services provided for children with special health care needs under the program with services provided by other publicly funded programs.

l. Develop options and recommendations to allow children eligible for the hawk-i program to participate in qualified employer-sponsored health plans through a premium assistance program. The options and recommendations shall ensure reasonable alignment between the benefits and costs of the hawk-i program and the employer-sponsored health plans consistent with federal law. In addition, the board shall implement the premium assistance program options described under the federal Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, for the hawk-i program.

8. The hawk-i board, in consultation with the department of human services, shall adopt rules which address, but are not limited to addressing, all of the following:

a. Implementation and administration of the program.

b. The program application form. The form shall include a request for information regarding other health insurance coverage for each child.

c. Criteria for the selection of an administrative contractor for the program.

d. Qualifying standards for selecting participating insurers for the program.

e. The benefits to be included in a qualified child health plan which are those included in a benchmark or benchmark equivalent plan and which comply with Tit. XXI of the federal Social Security Act. Benefits covered shall include but are not limited to all of the following:

(1) Inpatient hospital services including medical, surgical, intensive care unit, mental health, and substance abuse services.

(2) Nursing care services including skilled nursing facility services.

(3) Outpatient hospital services including emergency room, surgery, lab, and x-ray services and other services.

(4) Physician services, including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits.

(5) Ambulance services.

(6) Physical therapy.

(7) Speech therapy.

(8) Durable medical equipment.

(9) Home health care.

(10) Hospice services.

(11) Prescription drugs.

(12) Dental services including preventive services.

(13) Medically necessary hearing services.

(14) Vision services including corrective lenses.

(15) Translation and interpreter services as specified pursuant to the federal Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3.

(16) Chiropractic services.

*f.* Standards for program eligibility. The standards shall not discriminate on the basis of diagnosis. Within a defined group of covered eligible children, the standards shall not cover children of higher income families without covering children of families with lower incomes. The standards shall not deny eligibility based on a child having a preexisting medical condition.

*g.* Presumptive eligibility criteria for the program. Beginning January 1, 2010, presumptive eligibility shall be provided for eligible children.

*h.* The amount of any cost sharing under the program which shall be assessed based on family income and which complies with federal law.

*i.* The reasons for disenrollment including, but not limited to, nonpayment of premiums, eligibility for medical assistance or other insurance coverage, admission to a public institution, relocation from the area, and change in income.

*j.* Conflict of interest provisions applicable to the administrative contractor and participating insurers, and between public members of the board and the administrative contractor and participating insurers.

*k.* Penalties for breach of contract or other violations of requirements or provisions under the program.

*l.* A mechanism for participating insurers to report any rebates received to the department.

*m.* The data to be maintained by the administrative contractor including data to be collected for the purposes of quality assurance reports.

*n.* The use of provider guidelines in assessing the well-being of children, which may include the use of the bright futures for infants, children, and adolescents program as developed by the federal maternal and child health bureau and the American academy of pediatrics guidelines for well-child care.

9. *a.* The hawk-i board may provide approval to the director to contract with participating insurers to provide dental-only services. In determining whether to provide such approval to the director, the board shall take into consideration the impact on the overall program of single source contracting for dental services.

*b.* The hawk-i board may provide approval to the director to contract with participating insurers to provide the supplemental dental-only coverage to otherwise eligible children who have private health care coverage as specified in the federal Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3.

98 Acts, ch 1196, §6, 16; 99 Acts, ch 208, §38; 2002 Acts, ch 1175, §37; 2003 Acts, ch 108, §131; 2003 Acts, ch 124, §2 – 7; 2003 Acts, ch 175, §39; 2007 Acts, ch 218, §106; 2008 Acts, ch 1156, §51, 58; 2008 Acts, ch 1188, §8, 9; 2009 Acts, ch 118, §28 – 31; 2010 Acts, ch 1133, §1; 2011 Acts, ch 34, §119; 2011 Acts, ch 120, §11

Confirmation, see §2.32

Subsection 1, unnumbered paragraph 1 amended

Subsection 3 amended

## CHAPTER 514J

### EXTERNAL REVIEW OF HEALTH CARE COVERAGE DECISIONS

**514J.1 through 514J.15** Repealed by 2011 Acts, ch 101, §21.

Application of former sections 514J.1 through 514J.15 to requests for external review filed prior to July 1, 2011; 2011 Acts, ch 101, §22

#### **514J.101 Purpose — applicability.**

The purpose of this chapter is to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination made by a health carrier as required by the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and

Education Reconciliation Act of 2010, Pub. L. No. 111-152, which amends the Public Health Service Act and adopts, in part, new 42 U.S.C. § 300gg-19, and to address issues which are unique to the external review process in this state.

2011 Acts, ch 101, §1

NEW section

### 514J.102 Definitions.

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

1. “*Adverse determination*” means a determination by a health carrier that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier’s requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service or payment for the service is therefore denied, reduced, or terminated. “*Adverse determination*” does not include a denial of coverage for a service or treatment specifically listed in plan or evidence of coverage documents as excluded from coverage.

2. “*Authorized representative*” means any of the following:

a. A person to whom a covered person has given express written consent to represent the covered person in an external review.

b. A person authorized by law to provide substituted consent for a covered person.

c. A family member of the covered person when the covered person is unable to provide consent.

d. The covered person’s treating health care professional when the covered person is unable to provide consent.

3. “*Best evidence*” means evidence based on randomized clinical trials. If randomized clinical trials are not available, “*best evidence*” means evidence based on cohort studies or case-control studies. If randomized clinical trials, cohort studies, or case-control studies are not available, “*best evidence*” means evidence based on case-series studies. If none of these are available, “*best evidence*” means evidence based on expert opinion.

4. “*Case-control study*” means a retrospective evaluation of two groups of patients with different outcomes to determine which specific interventions the patients received.

5. “*Case-series study*” means an evaluation of a series of patients with a particular outcome, without the use of a control group.

6. “*Certification*” means a determination by a health carrier that an admission, availability of care, continued stay, or other health care service has been reviewed and, based on the information provided, satisfies the health carrier’s requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness.

7. “*Clinical review criteria*” means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services.

8. “*Cohort study*” means a prospective evaluation of two groups of patients with only one group of patients receiving a specific intervention.

9. “*Commissioner*” means the commissioner of insurance.

10. “*Covered benefits*” or “*benefits*” means those health care services to which a covered person is entitled under the terms of a health benefit plan.

11. “*Covered person*” means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan.

12. “*Disclose*” means to release, transfer, or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information.

13. “*Emergency medical condition*” means the sudden and, at the time, unexpected onset of a health condition or illness that requires immediate medical attention, where failure to provide medical attention would result in a serious impairment to bodily functions, serious dysfunction of a bodily organ or part, or would place the person’s health in serious jeopardy.

14. “*Emergency services*” means health care items and services furnished or required to evaluate and treat an emergency medical condition.

15. “*Evidence-based standard*” means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

16. “*Expert opinion*” means a belief or an interpretation by specialists with experience in a specific area about the scientific evidence pertaining to a particular service, intervention, or therapy.

17. “*Facility*” means an institution providing health care services or a health care setting, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings.

18. “*Final adverse determination*” means an adverse determination involving a covered benefit that has been upheld by a health carrier at the completion of the health carrier’s internal grievance process.

19. “*Health benefit plan*” means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

20. “*Health care professional*” means a physician or other health care practitioner licensed, accredited, registered, or certified to perform specified health care services consistent with state law.

21. “*Health care provider*” or “*provider*” means a health care professional or a facility.

22. “*Health care services*” means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

23. “*Health carrier*” means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services. “*Health carrier*” includes, for purposes of this chapter, an organized delivery system.

24. “*Health information*” means information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to any of the following:

a. The past, present, or future physical, mental, or behavioral health or condition of a covered person or a member of the covered person’s family.

b. The provision of health care services to a covered person.

c. Payment to a health care provider for the provision of health care services to a covered person.

25. “*Independent review organization*” means an entity that conducts independent external reviews of adverse determinations and final adverse determinations.

26. “*Medical or scientific evidence*” means evidence found in any of the following sources:

a. Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

b. Peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the national institutes of health’s national library of medicine for indexing in index medicus or medline, or of elsevier science ltd. for indexing in excerpta medicus or embase.

c. Medical journals recognized by the United States secretary of health and human services under section 1861(t)(2) of the federal Social Security Act.

d. The following standard reference compendia:

(1) American hospital formulary service drug information.

(2) Drug facts and comparisons.

(3) American dental association accepted dental therapeutics.

(4) United States pharmacopoeia drug information.

e. Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including any of the following:

- (1) Federal agency for health care research and quality.
- (2) National institutes of health.
- (3) National cancer institute.
- (4) National academy of sciences.
- (5) Centers for Medicare and Medicaid services.
- (6) Federal food and drug administration.
- (7) Any national board recognized by the national institutes of health for the purpose of evaluating the medical value of health care services.

f. Any other medical or scientific evidence that is comparable to the sources listed in paragraphs “a” through “e”.

27. “NAIC” means the national association of insurance commissioners.

28. “Organized delivery system” means an entity system authorized under 1993 Iowa Acts, ch. 158, and licensed by the director of public health, and performing utilization review.

29. “Person” means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

30. “Protected health information” means health information that meets either of the following descriptions:

a. Health information that identifies a covered person who is the subject of the information.

b. Health information with respect to which there is a reasonable basis to believe that the information could be used to identify a covered person.

31. “Randomized clinical trial” means a controlled, prospective study of patients that have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time.

2011 Acts, ch 101, §2

NEW section

#### **514J.103 Applicability and scope.**

1. Except as provided in subsection 2, this chapter shall apply to all health carriers.

2. This chapter shall not apply to any of the following:

a. A policy or certificate that provides coverage only for a specified disease, specified accident or accident-only, credit, disability income, hospital indemnity, long-term care, dental care, vision care, or any other limited supplemental benefit.

b. A Medicare supplement policy of insurance, as defined by the commissioner by rule.

c. Coverage under a plan through Medicare, Medicaid, or the federal employees health benefits program, any coverage issued under 10 U.S.C. ch. 55, and any coverage issued as supplemental to that coverage.

d. Any coverage issued as supplemental to liability insurance.

e. Workers’ compensation or similar insurance.

f. Automobile medical-payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket or individual basis.

2011 Acts, ch 101, §3

Application of former sections 514J.1 through 514J.15 to requests for external review filed prior to July 1, 2011; 2011 Acts, ch 101, §22  
NEW section

#### **514J.104 Notice of right to external review.**

1. A health carrier shall notify a covered person or the covered person’s authorized representative, if known, in writing of the covered person’s right to request an external review and include the appropriate statements and information set forth in this chapter at the time the health carrier sends written notice of a final adverse determination.

2. a. The notice shall include the following, or substantially equivalent, language:

We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or effectiveness of the health care service or treatment you requested by submitting a request for external review to the commissioner of insurance.

b. The notice shall include the current address and contact information for the commissioner as specified in administrative rule.

3. The health carrier shall include in the notice a statement informing the covered person or the covered person's authorized representative, if known, of the following:

a. If the covered person has a medical condition pursuant to which the time frame for completion of a standard external review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review.

b. If the final adverse determination concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility, the covered person or the covered person's authorized representative may request an expedited external review.

c. If the final adverse determination concerns a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational as provided in section 514J.109, the covered person may file a request for external review pursuant to section 514J.109. In addition, if the covered person's treating health care professional certifies in writing that the recommended or requested health care service or treatment that is the subject of the recommendation or request would be significantly less effective if not promptly initiated, the covered person or the covered person's authorized representative may request an expedited external review pursuant to section 514J.109, subsection 18.

4. The health carrier shall include with the notice a copy of the descriptions of both the standard and expedited external review procedures the health carrier is required to provide pursuant to section 514J.116, highlighting the provisions in the external review procedures that give the covered person or the covered person's authorized representative the opportunity to submit additional information and including any forms used to process an external review.

5. The health carrier shall also include with the notice an authorization form, or other document approved by the commissioner that complies with the requirements of 45 C.F.R. § 164.508 and with Tit. I of the federal Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, 122 Stat. 881, by which the covered person or the covered person's authorized representative authorizes the health carrier and the covered person's treating health care provider to disclose protected health information, including medical records, concerning the covered person that is pertinent to the external review.

2011 Acts, ch 101, §4  
NEW section

#### **514J.105 Request for external review.**

A covered person or the covered person's authorized representative may make a request for an external review of a final adverse determination. Except for a request for an expedited external review, all requests for external review shall be made in writing to the commissioner. The commissioner may prescribe by rule the form and content of external review requests.

2011 Acts, ch 101, §5  
NEW section

#### **514J.106 Exhaustion of internal grievance process — exceptions — expedited external review request.**

1. Except as otherwise provided in this section, a request for an external review shall

not be made until the covered person or the covered person's authorized representative has exhausted the health carrier's internal grievance process and received a final adverse determination.

2. A covered person or the covered person's authorized representative shall be considered to have exhausted the health carrier's internal grievance process if the covered person or the covered person's authorized representative has filed a grievance involving an adverse determination and, except to the extent the covered person or the covered person's authorized representative requested or agreed to a delay, has not received a written decision on the grievance from the health carrier within thirty days following the date the covered person or the covered person's authorized representative filed the grievance with the health carrier.

3. A covered person or the covered person's authorized representative may file a request for an expedited external review of an adverse determination without exhausting the health carrier's internal grievance process under either of the following circumstances:

a. The covered person has a medical condition pursuant to which the time frame for completion of an internal review of the grievance involving an adverse determination would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function as provided in section 514J.108.

b. The adverse determination involves a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated as provided in section 514J.109.

4. A request for an external review of an adverse determination may be made before the covered person or the covered person's authorized representative has exhausted the health carrier's internal grievance procedures whenever the health carrier agrees to waive the exhaustion requirement. If the requirement to exhaust the health carrier's internal grievance procedures is waived, the covered person or the covered person's authorized representative may file a request with the commissioner in writing for a standard external review.

2011 Acts, ch 101, §6

NEW section

#### **514J.107 External review — standard.**

1. A covered person or the covered person's authorized representative may file a written request for an external review with the commissioner within four months after any of the following events:

a. The date of receipt of a final adverse determination.

b. The failure of a health carrier to issue a written decision within thirty days following the date the covered person or the covered person's authorized representative filed a grievance involving an adverse determination as provided in section 514J.106, subsection 2.

c. The agreement of the health carrier to waive the requirement that the covered person or the covered person's authorized representative exhaust the health carrier's internal grievance procedures before filing a request for external review of an adverse determination as provided in section 514J.106, subsection 4.

2. Within one business day after the date of receipt of a request for external review, the commissioner shall send a copy of the request to the health carrier.

3. Within five business days following the date of receipt of the external review request from the commissioner, the health carrier shall complete a preliminary review of the request to determine whether:

a. The individual is or was a covered person under the health benefit plan at the time the health care service was recommended or requested.

b. The health care service that is the subject of the adverse determination or of the final adverse determination, is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness.

c. The covered person or the covered person's authorized representative has exhausted the health carrier's internal grievance process, unless the covered person or the covered person's authorized representative is not required to exhaust the health carrier's internal grievance process pursuant to section 514J.106 or this section.

d. The covered person or the covered person's authorized representative has provided all the information and forms required to process an external review request.

4. Within one business day after completion of a preliminary review pursuant to subsection 3, the health carrier shall notify the commissioner and the covered person or the covered person's authorized representative in writing whether the request is complete and whether the request is eligible for external review.

a. If the health carrier determines that the request is not complete, the health carrier shall notify the covered person or the covered person's authorized representative and the commissioner in writing that the request is not complete and what information or materials are needed to make the request complete.

b. If the health carrier determines that the request is not eligible for external review, the health carrier shall issue a notice of initial determination in writing informing the covered person or the covered person's authorized representative and the commissioner of that determination and the reasons the request is not eligible for review. The health carrier shall also include a statement in the notice informing the covered person or the covered person's authorized representative that the health carrier's initial determination of ineligibility may be appealed to the commissioner.

5. The commissioner may specify by rule the form required for the health carrier's notice of initial determination and any supporting information to be included in the notice.

6. The commissioner may determine that a request is eligible for external review, notwithstanding a health carrier's initial determination that the request is not eligible, and refer the request for external review. In making this determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter.

7. Within one business day after receipt of notice from a health carrier that a request for external review is eligible for external review or upon a determination by the commissioner that a request is eligible for external review, the commissioner shall do all of the following:

a. Assign an independent review organization from the list of approved independent review organizations maintained by the commissioner and notify the health carrier of the name of the assigned independent review organization. The assignment of an independent review organization shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns.

b. Notify the covered person or the covered person's authorized representative in writing that the request is eligible and has been accepted for external review including the name of the assigned independent review organization and that the covered person or the covered person's authorized representative may submit in writing to the independent review organization within five business days following receipt of such notice from the commissioner, additional information that the independent review organization shall consider when conducting the external review. The independent review organization may, in the organization's discretion, accept and consider additional information submitted by the covered person or the covered person's authorized representative after five business days.

8. Within five business days after receipt of notice from the commissioner pursuant to subsection 7, the health carrier shall provide to the independent review organization the documents and any information considered in making the adverse determination or final adverse determination. Failure by the health carrier to provide the documents and information within the time specified shall not delay the conduct of the external review.

9. If the health carrier fails to provide the documents and information within the time specified, the independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination. Within one business day after making such a decision, the independent review organization shall notify

the covered person or the covered person's authorized representative, the health carrier, and the commissioner of its decision.

10. The independent review organization shall review all of the information and documents received pursuant to subsection 8 and any other information submitted in writing to the independent review organization by the covered person or the covered person's authorized representative pursuant to subsection 7, paragraph "b". Upon receipt of any information submitted by the covered person or the covered person's authorized representative, the independent review organization shall, within one business day, forward the information to the health carrier. In reaching a decision the independent review organization is not bound by any decisions or conclusions reached during the health carrier's internal grievance process.

11. Upon receipt of information forwarded pursuant to subsection 10, a health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

a. Reconsideration by the health carrier of its determination shall not delay or terminate the external review. The external review shall only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its determination and provide coverage or payment for the health care service that is the subject of the adverse determination or final adverse determination.

b. Within one business day after making a decision to reverse its adverse determination or final adverse determination, the health carrier shall notify the covered person or the covered person's authorized representative, the independent review organization, and the commissioner in writing of its decision. The independent review organization shall terminate the external review upon receipt of notice of the health carrier's decision to reverse its adverse determination or final adverse determination.

12. In addition to the documents and information provided to the independent review organization pursuant to this section, the independent review organization shall, to the extent the information or documents are available and the independent review organization considers them appropriate, consider the following in reaching a decision:

a. The covered person's pertinent medical records.

b. The treating health care professional's recommendation.

c. Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, or the covered person's treating physician or other health care professional.

d. The terms of coverage under the covered person's health benefit plan with the health carrier, to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier.

e. The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, and associations.

f. Any applicable clinical review criteria developed and used by the health carrier.

g. The opinion of the independent review organization's clinical reviewer after considering the information or documents described in paragraphs "a" through "f" to the extent the information or documents are available and the clinical reviewer considers them relevant.

13. a. Within forty-five days after the date of receipt of a request for an external review, the independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or final adverse determination of the health carrier to the covered person or the covered person's authorized representative, the health carrier, and the commissioner.

b. The independent review organization shall include in its decision all of the following:

(1) A general description of the reason for the request for external review.

(2) The date the independent review organization received the assignment from the commissioner to conduct the external review.

(3) The date the external review was conducted.

(4) The date of the decision.

(5) The principal reason or reasons for its decision, including what applicable evidence-based standards, if any, were a basis for its decision.

(6) The rationale for its decision.

(7) References to evidence or documentation, including evidence-based standards, considered in reaching its decision.

14. Upon receipt of notice of a decision reversing the adverse determination or final adverse determination of the health carrier, the health carrier shall immediately approve the coverage that was the subject of the determination.

2011 Acts, ch 101, §7

NEW section

#### **514J.108 External review — expedited.**

1. Notwithstanding section 514J.107, a covered person or the covered person's authorized representative may make an oral or written request to the commissioner for an expedited external review at the time the covered person or the covered person's authorized representative receives any of the following:

a. An adverse determination that involves a medical condition of the covered person for which the time frame for completion of an internal review of a grievance involving an adverse determination would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function.

b. A final adverse determination that involves a medical condition where the time frame for completion of a standard external review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function.

c. A final adverse determination that concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, and has not been discharged from a facility.

2. a. Upon receipt of a request for an expedited external review, the commissioner shall immediately send written notice of the request to the health carrier.

b. Immediately upon receipt of notice of a request for expedited external review, the health carrier shall complete a preliminary review of the request to determine whether the request meets the eligibility requirements for external review set forth in section 514J.107, subsection 3, and this section.

c. The health carrier shall then immediately issue a notice of initial determination informing the commissioner and the covered person or the covered person's authorized representative of its eligibility determination including a statement informing the covered person or the covered person's authorized representative of the right to appeal that determination to the commissioner.

d. The commissioner may specify by rule the form required for the health carrier's notice of initial determination and any supporting information to be included in the notice.

3. The commissioner may determine that a request is eligible for expedited external review, notwithstanding a health carrier's initial determination that the request is not eligible. In making a determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter. The commissioner shall make a determination pursuant to this subsection as expeditiously as possible.

4. a. Upon receipt of notice from a health carrier that a request is eligible for expedited external review or upon a determination by the commissioner that a request is eligible for expedited external review, the commissioner shall immediately assign an independent review organization from the list of approved independent review organizations maintained by the commissioner to conduct the expedited external review. The commissioner shall then immediately notify the health carrier and the covered person or the covered person's authorized representative of the name of the assigned independent review organization.

b. The assignment of an independent review organization shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse

determination or final adverse determination and other circumstances, including conflict of interest concerns.

5. Upon receiving notice of the independent review organization assigned to conduct the expedited external review, the health carrier shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the independent review organization electronically or by telephone or facsimile or any other available expeditious method.

6. The independent review organization is not bound by any decisions or conclusions reached during the health carrier's internal grievance process. The independent review organization shall consider the documents and information provided by the health carrier, and to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

a. The covered person's pertinent medical records.

b. The treating health care professional's recommendation.

c. Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person or the covered person's authorized representative, or the covered person's treating physician or other health care professional.

d. The terms of coverage under the covered person's health benefit plan with the health carrier, to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier.

e. The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, and associations.

f. Any applicable clinical review criteria developed and used by the health carrier.

g. The opinion of the independent review organization's clinical reviewer after considering the information or documents described in paragraphs "a" through "f" to the extent the information or documents are available and the clinical reviewer considers them relevant.

7. a. As expeditiously as the covered person's medical condition or circumstances require, but in no event more than seventy-two hours after the date of receipt of an eligible request for expedited external review, the assigned independent review organization shall do all of the following:

(1) Make a decision to uphold or reverse the adverse determination or final adverse determination of the health carrier.

(2) Notify the covered person or the covered person's authorized representative, the health carrier, and the commissioner of its decision.

b. If the notice given by the independent review organization pursuant to paragraph "a" was not in writing, within forty-eight hours after providing that notice, the independent review organization shall provide written confirmation of the decision to the covered person or the covered person's authorized representative, the health carrier, and the commissioner that includes the information set forth in section 514J.107, subsection 13, paragraph "b".

c. Upon receipt of the notice of decision by an independent review organization pursuant to paragraph "a" reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

2011 Acts, ch 101, §8

NEW section

#### **514J.109 External review of experimental or investigational treatment adverse determinations.**

1. Within four months after the date of receipt of a notice of an adverse determination or final adverse determination that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational, a covered person or the covered person's authorized representative may file a request for external review with the commissioner.

2. Within one business day after the date of receipt of the request, the commissioner shall notify the health carrier of the request.

3. Within five business days following the date of receipt of notice of a request for external review pursuant to this section, the health carrier shall complete a preliminary review of the request to determine whether:

a. The individual is or was a covered person under the health benefit plan at the time the health care service or treatment was recommended or requested.

b. The recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination meets the following conditions:

(1) Is a covered benefit under the covered person's health benefit plan except for the health carrier's determination that the service or treatment is experimental or investigational for a particular medical condition.

(2) Is not explicitly listed as an excluded benefit under the covered person's health benefit plan with the health carrier.

c. The covered person's treating physician has certified that one of the following situations is applicable:

(1) Standard health care services or treatments have not been effective in improving the condition of the covered person.

(2) Standard health care services or treatments are not medically appropriate for the covered person.

(3) There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the recommended or requested health care service or treatment sought.

d. The covered person's treating physician has certified in writing one of the following:

(1) That the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person, in the physician's opinion, than any available standard health care services or treatments.

(2) The physician is a licensed, board-certified, or board-eligible physician qualified to practice in the area of medicine appropriate to treat the covered person's condition, and that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment recommended or requested that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person than any available standard health care services or treatments.

e. The covered person or the covered person's authorized representative has exhausted the health carrier's internal grievance process, unless the covered person or the covered person's authorized representative is not required to exhaust the health carrier's internal grievance process pursuant to section 514J.106 or 514J.108.

f. The covered person or the covered person's authorized representative has provided all the information and forms required by the commissioner that are necessary to process an external review request pursuant to this section.

4. Within one business day after completion of the preliminary review pursuant to subsection 3, the health carrier shall notify the commissioner and the covered person or the covered person's authorized representative in writing whether the request is complete and whether the request is eligible for external review pursuant to this section. If the request is not complete, the health carrier shall notify the commissioner and the covered person or the covered person's authorized representative in writing and include in the notice what information or materials are needed to make the request complete. If the request is not eligible for external review, the health carrier shall notify the covered person or the covered person's authorized representative and the commissioner in writing and include in the notice the reasons for its ineligibility.

5. The commissioner may specify by rule the form required for the health carrier's notice of initial determination and any supporting information to be included in the notice. The notice of initial determination shall include a statement informing the covered person or the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the commissioner.

6. The commissioner may determine that a request is eligible for external review pursuant to this section, notwithstanding a health carrier's initial determination that the request is ineligible, and require that it be referred for external review. In making this determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter.

7. Within one business day after receipt of the notice from the health carrier that the external review request is eligible for external review or upon a determination by the commissioner that a request is eligible for external review, the commissioner shall do all of the following:

a. Assign an independent review organization from the list of approved independent review organizations maintained by the commissioner and notify the health carrier of the name of the assigned independent review organization.

b. Notify the covered person or the covered person's authorized representative in writing of the request's eligibility and acceptance for external review and the name of the assigned independent review organization and that the covered person or the covered person's authorized representative may submit in writing to the independent review organization, within five business days following the date of receipt of such notice, additional information that the independent review organization shall consider when conducting the external review. The independent review organization may, in the organization's discretion, accept and consider additional information submitted by the covered person or the covered person's authorized representative after five business days.

8. Within one business day after receipt of the notice of assignment to conduct the external review, the assigned independent review organization shall select one or more clinical reviewers, as it determines is appropriate pursuant to subsection 9 to conduct the external review.

9. In selecting clinical reviewers, the independent review organization shall select physicians or other health care professionals who meet the minimum qualifications described in this chapter and, through clinical experience in the past three years, are experts in the treatment of the covered person's condition and knowledgeable about the recommended or requested health care service or treatment that is the subject of the adverse determination or the final adverse determination. Neither the covered person or the covered person's authorized representative nor the health carrier shall choose or control the choice of the clinical reviewers selected to conduct the external review.

10. Each clinical reviewer selected shall provide a written opinion to the independent review organization regarding whether the recommended or requested health care service or treatment should be covered. Each clinical reviewer shall review all of the information and documents received and any other information submitted in writing by the covered person or the covered person's authorized representative. In reaching an opinion, a clinical reviewer is not bound by any decisions or conclusions reached during the health carrier's internal grievance process.

11. Within five business days after receipt of notice of the assignment of the independent review organization, the health carrier shall provide to the independent review organization the documents and any information considered in making the adverse determination or the final adverse determination. Failure by the health carrier to provide the documents and information within the time specified shall not delay the conduct of the external review.

12. If the health carrier fails to provide the documents and information within the time specified, the independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination. Within one business day after making such a decision, the independent review organization shall notify the covered person or the covered person's authorized representative, the health carrier, and the commissioner.

13. Within one business day after the receipt of any information submitted by the covered person or the covered person's authorized representative, the independent review organization shall forward the information to the health carrier. Upon receipt of the

forwarded information, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

a. Reconsideration by the health carrier of its adverse determination or final adverse determination shall not delay or terminate the external review. The external review shall only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its determination and provide coverage or payment for the recommended or requested health care service or treatment that is the subject of the determination.

b. Within one business day after making a decision to reverse its determination, the health carrier shall notify the covered person or the covered person's authorized representative, the independent review organization, and the commissioner in writing of its decision. The independent review organization shall terminate the external review upon receipt of such notice from the health carrier.

14. a. Within twenty days after being selected to conduct the external review, each clinical reviewer shall provide an opinion to the assigned independent review organization regarding whether the recommended or requested health care service or treatment should be covered pursuant to this section.

b. Each clinical reviewer's opinion shall be in writing and include the following information:

(1) A description of the covered person's medical condition.

(2) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is likely to be more beneficial to the covered person than any available standard health care services or treatments and that the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments.

(3) A description and analysis of any medical or scientific evidence considered in reaching the opinion.

(4) A description and analysis of any applicable evidence-based standards.

(5) Information on whether the reviewer's rationale for the opinion is based on either of the factors described in subsection 15, paragraph "e".

15. In addition to the documents and information provided, each clinical reviewer, to the extent the information or documents are available and the reviewer considers them appropriate, shall consider all of the following in reaching an opinion:

a. The covered person's pertinent medical records.

b. The treating physician's recommendation or request.

c. Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, the covered person or the covered person's authorized representative, or the covered person's treating physician or other health care professional.

d. The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that, but for the health carrier's determination that the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the reviewer's opinion is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier.

e. Whether either of the following factors is applicable:

(1) The recommended or requested health care service or treatment has been approved by the federal food and drug administration, if applicable, for the condition.

(2) Medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is likely to be more beneficial to the covered person than any available standard health care service or treatment and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments.

16. a. If a majority of the clinical reviewers opine that the recommended or requested health care service or treatment should be covered, the independent review organization shall make a decision to reverse the health carrier's adverse determination or final adverse determination.

b. If a majority of the clinical reviewers opine that the recommended or requested health care service or treatment should not be covered, the independent review organization shall make a decision to uphold the health carrier's adverse determination or final adverse determination.

c. If the clinical reviewers are evenly split as to whether the recommended or requested health care service or treatment should be covered, the independent review organization shall obtain the opinion of an additional clinical reviewer in order for the independent review organization to make a decision based on the opinions of a majority of the clinical reviewers.

d. The additional clinical reviewer selected shall use the same information to reach an opinion as the clinical reviewers who have already submitted their opinions.

e. The selection of an additional clinical reviewer under this subsection shall not extend the time within which the assigned independent review organization is required to make a decision based on the opinions of the clinical reviewers for the external review.

17. Within twenty days after it receives the opinion of each clinical reviewer, the assigned independent review organization shall make a decision based on the opinions of the clinical reviewer or reviewers, to uphold or reverse the adverse determination or final adverse determination of the health carrier and provide written notice of the decision to the covered person or the covered person's authorized representative, the health carrier, and the commissioner.

18. a. A covered person or the covered person's authorized representative may make a written or oral request to the commissioner for an expedited external review of the adverse determination or final adverse determination pursuant to this subsection if the covered person's treating physician certifies, in writing, that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(1) Upon receipt of a request for an expedited external review pursuant to this subsection, the commissioner shall immediately notify the health carrier.

(2) Upon receipt of notice of the request for expedited external review, the health carrier shall immediately determine whether the request is eligible for external review as provided in subsection 3, paragraphs "a" through "f", and shall immediately issue a notice of initial determination informing the commissioner and the covered person or the covered person's authorized representative of its eligibility determination. The notice of initial determination of eligibility issued by a health carrier shall include a statement informing the covered person or the covered person's authorized representative that the health carrier's initial determination that the external review request is ineligible for expedited external review may be appealed to the commissioner.

(3) The commissioner may determine that a request is eligible for external review, notwithstanding a health carrier's initial determination that the request is not eligible, and refer the request for external review. In making this determination, the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter.

b. (1) Upon receipt of the notice of initial determination that the request is eligible for expedited external review or upon a determination by the commissioner that the request is eligible for expedited external review, the commissioner shall immediately assign an independent review organization to conduct the expedited external review, from the list of approved independent review organizations maintained by the commissioner, and notify the health carrier of the name of the assigned independent review organization.

(2) Upon receipt of notice of the independent review organization assigned to conduct an expedited external review, the health carrier shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(3) A clinical reviewer or clinical reviewers shall be selected immediately by the independent review organization and shall provide an opinion orally or in writing to the assigned independent review organization as expeditiously as the covered person's medical condition or circumstances require, but in no event more than five calendar days after being

selected. If the opinion provided was not in writing, within forty-eight hours following the date the opinion was provided, the clinical reviewer shall provide written confirmation of the opinion to the assigned independent review organization and include all required information in support of the opinion.

c. Within forty-eight hours after the date of receipt of the opinion of each clinical reviewer, the assigned independent review organization shall make a decision based on the opinions of the clinical reviewer or reviewers as to whether to reverse or uphold the adverse determination or final adverse determination and provide notice of the decision orally or in writing to the covered person or the covered person's authorized representative, the health carrier, and the commissioner. If the notice was provided orally, within forty-eight hours after the date of providing that notice, the independent review organization shall provide written confirmation of the decision to the covered person or the covered person's authorized representative, the health carrier, and the commissioner.

d. The independent review organization shall include in the notice of its decision all of the following:

- (1) A general description of the reason for the request for an expedited external review.
- (2) The written opinion of each clinical reviewer, including the recommendation of each clinical reviewer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation.
- (3) The date the independent review organization was assigned by the commissioner to conduct the expedited external review.
- (4) The date the expedited external review was conducted.
- (5) The date of its decision.
- (6) The principal reason or reasons for its decision.
- (7) The rationale for its decision.

19. Upon receipt of notice of a decision of the independent review organization reversing an adverse determination or final adverse determination, the health carrier shall immediately approve coverage of the recommended or requested health care service or treatment that was the subject of the determination.

2011 Acts, ch 101, §9; 2011 Acts, ch 131, §71, 158

NEW section

#### **514J.110 Effect of external review decision.**

1. An external review decision pursuant to this chapter is binding on the health carrier except to the extent the health carrier has other remedies available under applicable Iowa law. The external review process shall not be considered a contested case under chapter 17A.

2. a. A covered person or the covered person's authorized representative may appeal the external review decision made by an independent review organization by filing a petition for judicial review either in Polk county district court or in the district court in the county in which the covered person resides. The petition for judicial review must be filed within fifteen business days after the issuance of the review decision. The petition shall name the covered person or the covered person's authorized representative, or the person's health care provider as the petitioner. The respondent shall be the health carrier. The petition shall not name the independent review organization as a party.

b. The commissioner shall not be named as a respondent unless the petitioner alleges action or inaction by the commissioner under the standards articulated in section 17A.19, subsection 10. Allegations against the commissioner under section 17A.19, subsection 10, shall be stated with particularity. The commissioner may, upon motion, intervene in the judicial review proceeding. The findings of fact by the independent review organization conducting the external review are conclusive and binding on appeal.

3. The health carrier shall follow and comply with the decision of the court on appeal. The health carrier or treating health care provider shall not be subject to any penalties, sanctions, or award of damages for following and complying in good faith with the external review decision of the independent review organization or the decision of the court on appeal.

4. The covered person or the covered person's authorized representative may bring an

action in Polk county district court or in the district court in the county in which the covered person resides to enforce the external review decision of the independent review organization or the decision of the court on appeal.

5. A covered person or the covered person's authorized representative shall not file a subsequent request for external review involving any determination for which the covered person or the covered person's authorized representative has already received an external review decision.

6. If a covered person dies before the completion of the external review process, the process shall continue to completion if there is potential liability of a health carrier to the estate of the covered person.

7. *a.* If a covered person who has already received health care services under a health benefit plan requests external review of the plan's adverse determination or final adverse determination and changes to another health benefit plan before the external review process is completed, the health carrier whose coverage was in effect at the time the health care service was received is responsible for completing the external review process.

*b.* If a covered person who has not yet received health care services requests external review of a health benefit plan's adverse determination or final adverse determination and then changes to another plan prior to receipt of the health care services and completion of the external review process, the external review process shall begin anew with the covered person's current health carrier. In this instance, the external review process shall be conducted as an expedited external review.

2011 Acts, ch 101, §10

NEW section

#### **514J.111 Approval of independent review organizations.**

1. The commissioner shall approve applications submitted by independent review organizations to conduct external reviews under this chapter. The commissioner may retain an outside expert to perform reviews of such applications.

2. In order to be eligible for approval by the commissioner to conduct external reviews, an independent review organization shall meet all of the following requirements:

*a.* Be accredited by a nationally recognized private accrediting entity that the commissioner determines has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations established in this chapter.

*b.* Submit an application in a form and format as directed by the commissioner.

*c.* Meet the minimum qualifications contained in section 514J.112.

3. The commissioner may approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation.

4. The commissioner shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

5. The commissioner may charge an initial application fee and a renewal fee as specified by rule.

6. The approval of an independent review organization to conduct external reviews by the commissioner pursuant to this chapter is effective for two years, unless the commissioner determines that the independent review organization is not satisfying the minimum qualifications of this chapter. If the commissioner determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under this chapter, the commissioner shall terminate approval of the independent review organization to conduct external reviews and remove the independent review organization from the list of independent review organizations approved to conduct external reviews that is maintained by the commissioner.

7. The commissioner shall maintain a list of currently approved independent review organizations.

2011 Acts, ch 101, §11

NEW section

**514J.112 Minimum qualifications for independent review organizations.**

1. To be approved to conduct external reviews pursuant to this chapter, an independent review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process and that include, at a minimum, all of the following:

a. A quality assurance mechanism that does all of the following:

(1) Ensures that external reviews are conducted within the specified time frames and that required notices are provided in a timely manner.

(2) Ensures the selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases and that the independent review organization employs or contracts with an adequate number of clinical reviewers to meet this objective.

(3) Ensures the confidentiality of medical and treatment records and clinical review criteria.

(4) Establishes and maintains written procedures to ensure that the independent review organization is unbiased in addition to any other procedures required under this section.

(5) Ensures that any person employed by or under contract with the independent review organization adheres to the requirements of this chapter.

b. A toll-free telephone service to receive information related to external reviews twenty-four hours a day, seven days a week, that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers outside normal business hours.

c. An agreement and a system to maintain required records and provide access to those records by the commissioner.

2. Each clinical reviewer assigned by an independent review organization to conduct external reviews shall be a physician or other appropriate health care professional who meets all of the following minimum qualifications:

a. Is an expert in the treatment of the covered person's medical condition that is the subject of the external review.

b. Is knowledgeable about the recommended or requested health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition as the covered person.

c. Holds a nonrestricted license in a state of the United States and, for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review.

d. Has no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical reviewer's physical, mental, or professional competence or moral character.

3. An independent review organization shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with, a health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

4. Neither the independent review organization selected to conduct an external review nor any clinical reviewer assigned by the independent organization to conduct an external review shall have a material professional, familial, or financial conflict of interest with any of the following:

a. The health carrier that is the subject of the external review.

b. The covered person whose health care service or treatment is the subject of the external review or the covered person's authorized representative.

c. Any officer, director, or management employee of the health carrier that is the subject of the external review.

d. The health care professional or the health care professional's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review.

e. The facility at which the recommended health care service or treatment would be provided.

f. The developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose health care service treatment is the subject of the external review.

5. In determining whether an independent review organization or a clinical reviewer of the independent review organization has a material professional, familial, or financial conflict of interest as provided in subsection 4, the commissioner shall take into consideration situations where the independent review organization to be assigned to conduct an external review of a specified case or a clinical reviewer to be assigned by the independent review organization to conduct an external review of a specified case may have an apparent professional, familial, or financial relationship or connection with a person described in subsection 4, but the characteristics of that relationship or connection are such that they do not constitute a material professional, familial, or financial conflict of interest that would prohibit selection of the independent review organization or the clinical reviewer to conduct the external review.

6. a. An independent review organization that is accredited by a nationally recognized private accrediting entity that has independent review accreditation standards that the commissioner has determined are equivalent to or exceed the minimum qualifications of this section shall be presumed to be in compliance with the requirements of this section.

b. The commissioner shall initially and periodically review the standards of each nationally recognized private accrediting entity that provides accreditation to independent review organizations to determine whether the accrediting entity's standards are, and continue to be, equivalent to or exceed the minimum qualifications established under this section. The commissioner may accept a review of those standards conducted by the national association of insurance commissioners for the purpose of making a determination under this subsection.

c. Upon request, a nationally recognized private accrediting entity shall make its current independent review organization accreditation standards available to the commissioner or to the national association of insurance commissioners in order for the commissioner to determine if the accrediting entity's standards are equivalent to or exceed the minimum qualifications established under this section. The commissioner may exclude consideration of accreditation of independent review organizations by any private accrediting entity whose standards have not been reviewed by the national association of insurance commissioners.

2011 Acts, ch 101, §12

NEW section

#### **514J.113 Immunity for independent review organizations.**

An independent review organization, a clinical reviewer working on behalf of an independent review organization, or an employee, agent, or contractor of an independent review organization shall not be liable in damages to any person for any opinions rendered or acts or omissions performed within the scope of the duties of the organization, the clinical reviewer, or an employee, agent, or contractor of the organization under this chapter during, or upon completion of, an external review conducted pursuant to this chapter, unless the opinion was rendered or the act or omission was performed in bad faith or involved gross negligence.

2011 Acts, ch 101, §13

NEW section

#### **514J.114 External review reporting requirements.**

1. a. An independent review organization assigned to conduct an external review shall

maintain written records in the aggregate by state and by health carrier of all requests for external review for which it conducted an external review during a calendar year.

b. Each independent review organization required to maintain written records pursuant to this section shall submit to the commissioner, upon request, a report in the format specified by the commissioner. The report shall include in the aggregate by state and by health carrier all of the following:

(1) The total number of requests for external review assigned to the independent review organization.

(2) The average length of time for resolution of each request for external review assigned to the independent review organization.

(3) A summary of the types of coverages or cases for which an external review was requested, in the format required by the commissioner by rule.

(4) Any other information required by the commissioner.

c. The independent review organization shall retain the written records for at least three years.

2. a. Each health carrier shall maintain written records in the aggregate by state and by type of health benefit plan offered by the health carrier of all requests for external review that the health carrier receives notice of from the commissioner pursuant to this chapter.

b. Each health carrier required to maintain written records of requests for external review pursuant to this subsection shall submit to the commissioner, upon request, a report in the format specified by the commissioner. The report shall include in the aggregate by state and by type of health benefit plan offered all of the following:

(1) The total number of requests for external review of the health carrier's adverse determinations and final adverse determinations.

(2) Of the total number of requests for external review, the number of requests determined eligible for external review.

(3) The number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination of the health carrier and the number resolved reversing the adverse determination or final adverse determination of the health carrier.

(4) The number of external reviews that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or the covered person's authorized representative.

(5) Any other information the commissioner may request or require.

c. The health carrier shall retain the written records for at least three years.

2011 Acts, ch 101, §14

NEW section

#### **514J.115 Expenses of external review.**

The health carrier against which a request for a standard external review or an expedited external review is filed shall pay the costs of retaining an independent review organization to conduct the external review.

2011 Acts, ch 101, §15

NEW section

#### **514J.116 Disclosure requirements.**

1. Each health carrier shall include a description of the external review procedures contained in this chapter in or attached to any policy, certificate, membership booklet, outline of coverage, or other evidence of coverage that is provided to a covered person. The description shall be in a format prescribed by the commissioner by rule.

2. The description required by subsection 1 shall include a statement that informs the covered person of the right of the covered person to file a request for an external review of an adverse determination or final adverse determination of the health carrier with the commissioner. The statement shall explain that external review is available when the adverse determination or final adverse determination involves an issue of medical necessity,

appropriateness, health care setting, level of care, or effectiveness. The statement shall include the telephone number and address of the commissioner. The statement shall also inform the covered person that when filing a request for external review, the covered person will be required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the request for external review.

2011 Acts, ch 101, §16  
NEW section

**514J.117 Rulemaking authority.**

The commissioner may adopt rules pursuant to chapter 17A to carry out the provisions of this chapter.

2011 Acts, ch 101, §17  
NEW section

**514J.118 Severability.**

If any provision of this chapter, or the application of the provision to any person or circumstance is held invalid, the remainder of the chapter, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

2011 Acts, ch 101, §18  
NEW section

**514J.119 Penalties.**

A person who fails to comply with the provisions of this chapter or the rules adopted pursuant to this chapter is subject to the penalties provided under chapter 507B.

2011 Acts, ch 101, §19  
NEW section

**514J.120 Applicability.**

1. This chapter applies to all requests for external review filed on or after July 1, 2011.
2. Section 514J.116 applies to all health benefit plans delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2011.

2011 Acts, ch 101, §20  
Application of former sections 514J.1 through 514J.15 to requests for external review filed prior to July 1, 2011; 2011 Acts, ch 101, §22  
NEW section

## CHAPTER 515

### INSURANCE OTHER THAN LIFE

**515.42 Tenure of certificate — renewal — evidence.**

A certificate of authority shall expire on the first day of June next succeeding its issue, and shall be renewed annually so long as such company shall transact business in accordance with the requirements of law; a copy of which certificate, when certified to by the commissioner of insurance, shall be admissible in evidence for or against a company with the same effect as the original. A company shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority. A company that fails to timely file an application for renewal shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §8934; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.42]

88 Acts, ch 1112, §107; 2006 Acts, ch 1117, §67; 2009 Acts, ch 181, §76  
2011 repeal of 2009 Acts, ch 181, §76, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

**515.78 Foreign companies may become domestic.**

1. An insurer which is organized under the laws of any state and has created or will create jobs in this state or which is an affiliate or subsidiary of a domestic insurer, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 490.902 or 491.33 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

2. The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

[81 Acts, ch 161, §2]

C83, §515.99

89 Acts, ch 288, §193; 2007 Acts, ch 152, §25

CS2007, §515.78

2011 Acts, ch 66, §2

Unnumbered paragraphs 1 and 2 editorially redesignated as subsections 1 and 2

Subsection 1 amended

**515.121 Administrative penalty.**

1. An excess and surplus lines insurance producer who fails to timely file the report required in section 515.120 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

2. The commissioner shall refuse to renew the license of a producer who fails to comply with the provisions of section 515.120 and this section and the producer's right to transact new business in this state shall immediately cease until the producer has so complied.

3. The commissioner may give notice to a producer that the producer has not timely filed the report required under section 515.120 and is in violation of this section. If the producer fails to file the required report within ten days of the date of the notice, the producer shall pay an additional administrative penalty of one hundred dollars for each day that the failure continues to the treasurer of state for deposit as provided in section 505.7.

2006 Acts, ch 1117, §68

C2007, §515.147A

2007 Acts, ch 152, §49, 77

CS2007, §515.121

2008 Acts, ch 1074, §7; 2009 Acts, ch 181, §77

Former §515.121 transferred to §515.151; 2007 Acts, ch 152, §32

2011 repeal of 2009 Acts, ch 181, §77, amendments to subsections 1 and 3 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

**515.125 Forfeiture of policies — notice.**

1. Unless otherwise provided in section 515.127, 515.128, 515.129, 515.129A, 515.129B, or 515.129C, a policy or contract of insurance provided for in this chapter shall not be forfeited, suspended, or canceled except by notice to the insured as provided in this chapter. A notice of cancellation is not effective unless mailed or delivered by the insurer to the named insured at least thirty days before the effective date of cancellation or, where cancellation is for nonpayment of a premium, assessment, or installment provided for in the policy, or in a note or contract for the payment thereof, at least ten days prior to the date of cancellation. The notice may be made in person, or by sending by mail a letter addressed to the insured

at the insured's address as given in or upon the policy, anything in the policy, application, or a separate agreement to the contrary notwithstanding.

2. An insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A notice of intention not to renew is not required if the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

3. If the reason does not accompany the notice of cancellation or nonrenewal, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation or nonrenewal.

[C97, §1727; C24, 27, 31, 35, 39, §8959; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.80] 87 Acts, ch 132, §3; 88 Acts, ch 1112, §404; 90 Acts, ch 1234, §38; 2002 Acts, ch 1111, §17; 2007 Acts, ch 152, §9, 58

CS2007, §515.125

2008 Acts, ch 1074, §9; 2010 Acts, ch 1121, §18; 2011 Acts, ch 70, §29

Continuation rights and notice under group accident and health insurance, see §509B.5

See §515D.5, 515D.7

Former §515.125 transferred to §515.105; 2007 Acts, ch 152, §33

Subsection 1 amended

#### **515.126 Cancellation of policy — notice to insured or mortgagee.**

1. Unless otherwise provided in section 515.127, 515.128, 515.129, 515.129A, 515.129B, or 515.129C, at any time after the maturity of a premium, assessment, or installment provided for in the policy, or a note or contract for the payment thereof, or after the suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured may pay to the company the customary short rates and costs of action, if one has been commenced or judgment rendered thereon, and may, if the insured so elects, have the policy and all contracts or obligations connected with the policy, whether in judgment or otherwise, canceled, and all such policy and contracts shall be void; and in case of suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured is not liable for a greater amount than the short rates earned at the date of the suspension, forfeiture, or cancellation and the costs of action provided for in this section.

2. If the policy is canceled by the insurance company, the insurer may retain only the pro rata premium, and if the initial cash premium, or any part of the premium, has not been paid, the policy may be canceled by the insurance company by giving notice to the insured as provided in section 515.125 and ten days' notice to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part of the premium, anything to the contrary in the policy notwithstanding.

[C97, §1728; S13, §1728; C24, 27, 31, 35, 39, §8960; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.81]

87 Acts, ch 132, §4; 88 Acts, ch 1112, §405; 90 Acts, ch 1234, §39; 2007 Acts, ch 152, §10, 59

CS2007, §515.126

2011 Acts, ch 70, §30

See §515D.5, 515D.7

Section amended

#### **515.129A Cancellation of personal lines policies or contracts.**

1. After a personal lines policy or contract of insurance has been in effect for sixty days or more, the policy or contract shall not be canceled except by notice to the insured as provided in this chapter.

2. Notice of cancellation of a personal lines policy or contract of insurance is not effective unless the cancellation is based on one or more of the following reasons:

a. Nonpayment of premium.

b. Failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing insurance coverage in force.

c. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining, continuing, or presenting a claim under the policy.

- d. Actions by the insured which substantially change or increase the risk insured.
- e. The insured has acted in a manner which the insured knew or should have known was in violation or breach of a term or condition of the insurance policy or contract.
- f. The occurrence of a change in the risk that substantially increases a hazard insured against after insurance coverage has been issued or renewed.

2010 Acts, ch 1121, §19; 2011 Acts, ch 70, §31

Subsection 1 amended

**515.135 Presumption as to value.** Repealed by 2011 Acts, ch 70, § 48.

**515.146 Certificate refused — administrative penalty.**

The commissioner of insurance shall withhold the commissioner's certificate or permission of authority to do business from a company neglecting or failing to comply with this chapter. In addition, a company organized or authorized under this chapter which fails to file the annual statement referred to in section 515.63 in the time required shall pay and forfeit an administrative penalty in an amount of five hundred dollars to be collected in the name of the state for deposit as provided in section 505.7. The company's right to transact further new business in this state shall immediately cease until the company has fully complied with this chapter. The commissioner may give notice to a company which has failed to file within the time required that the company is in violation of this section and, if the company fails to file the evidence of investment and statement within ten days of the date of the notice, the company shall forfeit and pay the additional sum of one hundred dollars for each day the failure continues, to be paid to the treasurer of state for deposit as provided in section 505.7.

[C97, §1715; C24, 27, 31, 35, 39, §8947; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.65] 85 Acts, ch 228, §6; 91 Acts, ch 213, §26; 2007 Acts, ch 152, §3

CS2007, §515.146

2008 Acts, ch 1074, §16; 2009 Acts, ch 181, §78

Former §515.146 repealed by 2007 Acts, ch 152, §84; see §515.114

2011 repeal of 2009 Acts, ch 181, §78, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

**515.147 Fees.**

Fees shall be paid to the commissioner of insurance for deposit as provided in section 505.7 as follows:

1. For filing an application to do business, including all documents submitted in connection with the application, by a foreign or domestic company, or for filing an application for renewed authority, fifty dollars.
2. For issuing to a foreign or domestic company a certificate of authority to do business or a renewed certificate of authority, fifty dollars.
3. For filing amended articles of incorporation, fifty dollars.
4. For issuing an amended certificate of authority, twenty-five dollars.
5. For affixing the official seal to any paper filed with the division, ten dollars.

[C73, §1153; C97, §1752; S13, §1752; C24, 27, 31, 35, 39, §9007; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.128; 82 Acts, ch 1003, §7]

88 Acts, ch 1112, §304; 2007 Acts, ch 152, §36

CS2007, §515.147

2009 Acts, ch 181, §79

Deposit of fees, §12.10

Former §515.147 transferred to §515.120; 2007 Acts, ch 152, §48

2011 repeal of 2009 Acts, ch 181, §79, amendment to unnumbered paragraph 1 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

## CHAPTER 515A

### WORKERS' COMPENSATION LIABILITY INSURANCE

#### **515A.17 Penalties.**

1. The commissioner may, if the commissioner finds that any person or organization has violated any provision of this chapter, impose a penalty of not more than one thousand dollars for each such violation, but if the commissioner finds such violation to be willful the commissioner may impose a penalty of not more than five thousand dollars for each such violation. Such penalties may be in addition to any other penalty provided by law. A penalty collected under this subsection shall be deposited as provided in section 505.7.

2. The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded, or reversed.

3. A penalty shall not be imposed and a license shall not be suspended or revoked except upon a written order of the commissioner, stating the commissioner's findings, made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violation.

[C50, 54, 58, 62, §515A.17, 515B.16; C66, 71, 73, 75, 77, 79, 81, §515A.17]

2008 Acts, ch 1123, §39; 2009 Acts, ch 181, §80

2011 repeal of 2009 Acts, ch 181, §80, amendment to subsection 1 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 515D

### AUTOMOBILE INSURANCE CANCELLATION CONTROL

#### **515D.5 Delivery of notice.**

1. *a.* Notwithstanding the provisions of section 515.129A, a notice of cancellation of a policy shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the effective date of cancellation, or, where the cancellation is for nonpayment of premium notwithstanding the provisions of section 515.129A, at least ten days prior to the date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of cancellation, the notice shall state that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the date of cancellation, the insurer will state the reason for cancellation together with notification of the right to a hearing before the commissioner within fifteen days as provided in this chapter.

*b.* When the reason does not accompany the notice of cancellation, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation. A statement of reason shall be mailed or delivered to the named insured within five days after receipt of a request.

2. A notice of exclusion of a person under a policy pursuant to section 515D.4, is not effective unless written notice is mailed or delivered to the named insured at least twenty days prior to the effective date of the exclusion. The written notice shall state the reason for the exclusion, together with notification of the right to a hearing before the commissioner

pursuant to section 515D.10 within fifteen days of receipt or delivery of a statement of reason as provided in this section.

[C71, 73, 75, 77, 79, 81, §515D.5]

88 Acts, ch 1112, §601; 97 Acts, ch 186, §21; 2003 Acts, ch 91, §44; 2007 Acts, ch 152, §79; 2011 Acts, ch 70, §32

Subsection 1 amended

#### **515D.7 Notice of intent.**

1. Notwithstanding the provisions of sections 515.125, 515.128, 515.129B, and 515.129C, an insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of intent not to renew, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than thirty days prior to the expiration date of the policy, the insurer will state the reason for nonrenewal.

2. When the reason does not accompany the notice of intent not to renew, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for nonrenewal, together with notification of the right to a hearing before the commissioner within fifteen days as provided herein. A statement of reason shall be mailed or delivered to the named insured within ten days after receipt of a request.

3. This section shall not apply:

- a. If the insurer has manifested its willingness to renew.
- b. If the insured fails to pay any premium due or any advance premium required by the insurer for renewal.
- c. If the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

[C71, 73, 75, 77, 79, 81, §515D.7]

88 Acts, ch 1112, §602; 2002 Acts, ch 1111, §23; 2007 Acts, ch 152, §80; 2011 Acts, ch 70, §33

Subsection 1 amended

## CHAPTER 515E

### RISK RETENTION GROUPS AND PURCHASING GROUPS

#### **515E.4 Risk retention groups not organized in this state.**

Risk retention groups chartered in other states and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as provided in this section.

However, a risk retention group failing to qualify under the definitional requirement of the federal Act, will not benefit from this exemption from state law. The commissioner, therefore, may apply any of the laws that otherwise may be preempted by the federal Act because the nonexempt group will not qualify for the preemption.

1. *Notice of operations and designation of commissioner as agent.* Before offering insurance in this state, a risk retention group shall submit to the commissioner all of the following:

a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner of this state requires to verify that the risk retention group is qualified under section 515E.2, subsection 11.

b. A copy of its plan of operations or a feasibility study and revisions of the plan or study

submitted to its state of domicile. However, the provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to a line or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before that date by a risk retention group which had been organized and operating for not less than three years before that date.

c. A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process for which a filing fee set by the commissioner shall be paid.

d. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section 515E.3 at the same time that such revision is submitted to the commissioner of its chartering state.

2. *Financial condition.* A risk retention group doing business in this state shall submit to the commissioner all of the following:

a. A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist under criteria established by the national association of insurance commissioners.

b. A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.

c. Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group.

d. Information required to verify its continuing qualification as a risk retention group under section 515E.2, subsection 11.

3. *Taxation.*

a. Premiums paid for coverages within this state to risk retention groups are subject to taxation as provided in section 432.5.

b. To the extent agents or brokers are used, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

c. To the extent agents or brokers are not used or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Each risk retention group shall report all premiums paid to it for risks insured within the state.

4. *Compliance with unfair claim settlement practices law.* A risk retention group, its agents, and representatives, shall comply with the unfair claim settlement practices law in section 507B.4, subsection 10.

5. *Deceptive, false, or fraudulent practices.* A risk retention group shall comply with sections 507B.3 and 507B.4 regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

6. *Examination regarding financial condition.* A risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the national association of insurance commissioners' examiner handbook.

7. *Notice to purchasers.* Every application form for insurance from a risk retention agency and every policy issued by a risk retention group shall contain in ten point type on the front page and the declaration page, the following notice:

#### NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

8. *Prohibited acts regarding solicitation or sale.* The following acts by a risk retention group are prohibited:

a. The solicitation or sale of insurance by a risk retention group to a person who is not eligible for membership in the group.

b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

9. *Prohibition against ownership by an insurance company.* A risk retention group shall not be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

10. *Prohibited coverage.* A risk retention group shall not offer insurance policy coverage prohibited by law or declared unlawful by the highest court of this state.

11. *Delinquency proceedings.* A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection 6.

88 Acts, ch 1111, §5; 2011 Acts, ch 25, §63

Subsection 4 amended

## CHAPTER 515F

### CASUALTY INSURANCE

#### DIVISION I

#### REGULATION OF RATES

##### **515F.19 Penalties.**

1. The commissioner may, upon a finding that a person or organization has violated a provision of this chapter, impose a civil penalty of not more than ten thousand dollars for each violation, but if the violation is found to be willful, a penalty of not more than twenty-five thousand dollars may be imposed for each violation.

a. The civil penalties may be in addition to any other penalty provided by law.

b. For purposes of this section, an insurer using a rate for which the insurer has failed to file the rate, supplementary rate information, underwriting rules or guides, or supporting information as required by this chapter, has committed a separate violation for each day the failure continues.

2. a. The commissioner may suspend or revoke the license of an advisory organization or insurer which fails to comply with an order of the commissioner within the time limit set by the order, or an extension of the order.

b. The commissioner may determine when a suspension of license becomes effective and it shall remain in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

3. A penalty shall not be imposed and a license shall not be suspended or revoked except upon a written order of the commissioner stating the commissioner's findings, made after hearing.

4. A penalty collected under this section shall be deposited as provided in section 505.7.

90 Acts, ch 1234, §63; 2009 Acts, ch 181, §81

2011 repeal of subsection 4 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

## CHAPTER 516E

### MOTOR VEHICLE SERVICE CONTRACTS

Chapter transferred from chapter 321I in Code 2001 pursuant  
to directive in 2000 Acts, ch 1147, §15

#### **516E.2 Requirements for doing business — registration — fee.**

1. A service contract shall not be issued, sold, or offered for sale in this state unless the service company does all of the following:

- a. Provides a receipt for the purchase of the service contract to the service contract holder.
- b. Provides a copy of the service contract to the service contract holder within a reasonable period of time after the date of purchase of the service contract.

2. A service company shall not issue a service contract or arrange to perform services pursuant to a service contract unless the service company is registered with the commissioner. A service company shall file a registration with the commissioner annually, on a form prescribed by the commissioner, accompanied by a registration fee in the amount of five hundred dollars. Fees collected under this subsection shall be deposited as provided in section 505.7.

3. In order to assure the faithful performance of a service company's obligations to its service contract holders, service contracts shall be secured by a reimbursement insurance policy in compliance with the requirements set forth in section 516E.4 or the service company shall comply with the financial responsibility and security standards set forth in section 516E.21.

4. a. The commissioner may issue an order denying, suspending, or revoking any registration if the commissioner finds that the order is in the public interest and finds any of the following:

(1) The registration is incomplete in any material respect or contains any statement which, in light of the circumstances under which the registration was made, is determined by the commissioner to be false or misleading with respect to any material fact.

(2) A provision of this chapter or a rule, order, or condition lawfully imposed under this chapter, has been willfully violated in connection with the sale of service contracts by any of the following persons:

(a) The person filing the registration, but only if the person filing the registration is directly or indirectly controlled by or acting for the service company.

(b) The service company, any partner, officer, or director of the service company or any person occupying a similar status or performing similar functions for the service company, or any person directly or indirectly controlling or controlled by the service company.

(3) The service company has not filed a document or information required under this chapter.

(4) The service company's literature or advertising is misleading, incorrect, incomplete, or deceptive.

(5) The service company has failed to pay the proper filing fee. However, the commissioner shall vacate an order issued pursuant to this paragraph when the proper fee has been paid.

b. The commissioner may vacate or modify an order issued under this subsection if the commissioner finds that the conditions which prompted the entry of the order have changed or that it is otherwise in the public interest to do so.

85 Acts, ch 45, §2

CS85, §321I.2

90 Acts, ch 1145, §2; 2000 Acts, ch 1147, §3, 15

C2001, §516E.2

2005 Acts, ch 70, §26; 2006 Acts, ch 1117, §79, 80; 2009 Acts, ch 181, §82

2011 repeal of 2009 Acts, ch 181, §82, amendment to subsection 2 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 518

### COUNTY MUTUAL INSURANCE ASSOCIATIONS

Memorandum of intent, 61 GA (1965), Senate Journal, page 1612;  
House Journal, page 1785

#### **518.15 Reports, examinations, and renewals.**

1. The president or the vice president and secretary of each association authorized to do business under this chapter shall annually before the first day of March prepare under oath and file with the commissioner of insurance a full, true, and complete statement of the condition of such association on the last day of the preceding year. The commissioner of insurance shall prescribe the report forms and shall determine the information and data to be reported.

2. Such associations shall pay the same expenses of any examination made or ordered to be made by the commissioner of insurance and the same fees for the annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 515.

3. A certificate of authority of an association formed under this chapter expires on June 1 succeeding its issue and shall be renewed annually so long as the association transacts its business in accordance with all legal requirements. An association shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority.

4. The commissioner shall refuse to renew the certificate of authority of an association that fails to comply with the provisions of this chapter.

5. An association formed under this chapter that fails to timely file the statement required under subsection 1 or the application for renewal required under subsection 3 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7. The association's right to transact new business in this state shall immediately cease until the association has fully complied with this chapter.

6. The commissioner may give notice to an association that the association has not timely filed the statement required under subsection 1 or an application for renewal under subsection 3 and is in violation of this section. If the association fails to file the required statement or application and comply with this section within ten days of the date of the notice, the association shall pay an additional administrative penalty of one hundred dollars for each day that the failure continues to the treasurer of state for deposit as provided in section 505.7.

[C66, 71, 73, 75, 77, 79, 81, §518.15]

88 Acts, ch 1112, §108; 2006 Acts, ch 1117, §91; 2009 Acts, ch 181, §83

2011 repeal of 2009 Acts, ch 181, §83, amendments to subsections 5 and 6 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 518A

### STATE MUTUAL INSURANCE ASSOCIATIONS

Additional provisions, chapter 515

#### **518A.18 Annual report — penalties.**

1. An association doing business under this chapter, on or before March 1 of each year, shall prepare under oath and file with the commissioner of insurance an accurate and complete statement of the condition of the association as of the last day of the preceding calendar year. The statement shall conform to the annual statement blank prepared pursuant to instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared pursuant to accounting practices and procedures prescribed by the commissioner. Statements filed with the commissioner pursuant to this section shall be tabulated and published by the commissioner of insurance in the annual report of insurance.

2. An association that fails to timely file the statement required under subsection 1 is in violation of this section and shall pay an administrative penalty of five hundred dollars for each violation to the treasurer of state for deposit as provided in section 505.7.

3. The commissioner may give notice to an association that the association has not timely filed the statement required under subsection 1 and is in violation of this section. If the association fails to file the required statement and comply with this section within ten days of the date of the notice, the association shall pay an additional administrative penalty of one hundred dollars for each day that each failure continues to the treasurer of state for deposit as provided in section 505.7.

4. The association's right to transact new business in this state shall immediately cease until the association has fully complied with this chapter.

[C73, §1160; C97, §1762, 1763; S13, §1759-d, -e; C24, 27, 31, 35, 39, §9044; C46, 50, 54, 58, 62, §518.18; C66, 71, 73, 75, 77, 79, 81, §518A.18]

85 Acts, ch 228, §8; 2000 Acts, ch 1023, §46; 2006 Acts, ch 1117, §92; 2009 Acts, ch 181, §84  
2011 repeal of 2009 Acts, ch 181, §84, amendments to subsections 2 and 3 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

#### **518A.40 Annual fees — renewals — penalties.**

1. Such associations shall pay the same fees for annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 515, which certificates shall expire June 1 of the year following the date of issue.

2. A certificate of authority of an association formed under this chapter shall be renewed annually so long as the organization transacts its business in accordance with all legal requirements. Such an association shall submit annually, on or before March 1, a completed application for renewal of its certificate of authority.

3. The commissioner shall refuse to renew the certificate of authority of a state mutual insurance association that fails to comply with the provisions of this chapter and the association's right to transact new business in this state shall immediately cease until the association has so complied.

4. An association that fails to timely file the application for renewal required under subsection 2 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

[C73, §1160; C97, §1764; S13, §1759-f; C24, 27, 31, 35, 39, §9065; C46, 50, 54, 58, 62, §518.40; C66, 71, 73, 75, 77, 79, 81, §518A.40]

2006 Acts, ch 1117, §94; 2009 Acts, ch 145, §47; 2009 Acts, ch 181, §85  
2011 repeal of 2009 Acts, ch 181, §85, amendment to subsection 4 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 518C

### COUNTY AND STATE MUTUAL INSURANCE GUARANTY ASSOCIATION

#### **518C.3 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Association*” means the Iowa county and state mutual insurance guaranty association established pursuant to section 518C.4.

2. “*Claimant*” means an insured making a first-party claim or a person instituting a liability claim against an insolvent insurer. “*Claimant*” does not include a person who is an affiliate of an insolvent insurer.

3. “*Commissioner*” means the commissioner of insurance.

4. a. “*Covered claim*” means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and subject to the applicable limits of an

insurance policy subject to this chapter which is issued by an insurer, if the insurer becomes an insolvent insurer on or after July 1, 2000, and one of the following conditions exists:

(1) The claimant is a resident of this state at the time of the event giving rise to the covered claim. For a claimant other than an individual, the residence of the claimant is the state in which its principal place of business is located.

(2) The claim is a first-party claim by the claimant for damage to property permanently located in this state.

b. “Covered claim” does not include any of the following:

(1) An amount due a reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, indemnity recoveries, or otherwise.

(2) An amount that constitutes the portion of a claim that is within an insured’s deductible or self-insured retention.

(3) A fee or other amount relating to goods or services sought by or on behalf of an attorney, adjuster, witness, or other provider of goods or services retained by the insolvent insurer or by an insured prior to the date the insurer was declared insolvent.

(4) An amount that constitutes a fine, penalty, interest, or punitive or exemplary damages.

(5) A fee or other amount sought by or on behalf of an attorney, adjuster, witness, or other provider of goods or services retained by the insured or claimant in connection with the assertion of any claim, covered or otherwise, against the association.

(6) A claim filed with the association or with a liquidator for protection afforded under the insured’s policy or contract for incurred but not reported losses or expenses.

(7) An amount that is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

Notwithstanding subparagraphs (1) through (7), a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator. However, the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

5. “*Insolvent insurer*” means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 2000, by a court of competent jurisdiction of this state.

6. “*Insurer*” means a person licensed to transact insurance business in this state under either chapter 518 or chapter 518A either at the time the policy was issued or when the insured event occurred.

7. “*Net direct written premiums*” means direct gross premiums written in this state on insurance policies subject to this chapter, less return premiums and dividends paid or credited to policyholders on such direct business. “*Net direct written premiums*” does not include premiums on a contract between insurers or reinsurers.

8. “*Person*” means an individual, corporation, partnership, association, or voluntary organization.

2000 Acts, ch 1035, §3; 2011 Acts, ch 70, §34, 35

Subsection 4, paragraph b, subparagraph (3) amended

Subsection 4, paragraph b, NEW subparagraphs (5) and (6) and former subparagraph (5) renumbered as (7)

### 518C.5 Board of directors.

1. The board of directors of the association shall consist of the officers and directors of the mutual insurance association of Iowa or its successor association, but only if such officers and directors are employed by a corporation organized as a county mutual insurance association pursuant to chapter 518 or a state mutual insurance association pursuant to chapter 518A.

2. An officer and director of the mutual insurance association of Iowa shall serve in the same capacity on the association board as the officer or director serves the mutual insurance association of Iowa or its successor association, but only if the officer and director is employed by a corporation organized as a county mutual insurance association pursuant to chapter 518 or a state mutual insurance association pursuant to chapter 518A.

2000 Acts, ch 1035, §5; 2011 Acts, ch 70, §36

Section amended

**518C.6 Duties and powers of the association.**

1. The association is subject to all of the following:

a. (1) The association is obligated to pay a covered claim as follows:

(a) A covered claim existing prior to the final order of liquidation and arising within thirty days after the final order of liquidation.

(b) A covered claim existing before the policy expiration date if the expiration date is less than thirty days after the final order of liquidation.

(c) A covered claim existing before the insured replaces the policy or causes its cancellation, if the insured replaces or cancels the policy within thirty days of the final order of liquidation.

(2) An obligation under subparagraph (1) is satisfied by paying to the claimant an amount as follows:

(a) An amount not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.

(b) An amount not exceeding the lesser of the policy limits or five hundred thousand dollars per claim for all covered claims for all damages arising out of any one or a series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

b. The association is obligated to pay covered claims subject to a limitation as established by the rights, duties, and obligations under the policy issued by the insolvent insurer.

c. The association shall assess member insurers amounts necessary to pay the obligations of the association under paragraphs "a" and "b" subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 518C.12, and other expenses as authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not less than thirty days before it is due. A member insurer shall not be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, do not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of surplus less than the minimum amounts required for a certificate of authority to transact insurance business. A member insurer serving as a servicing facility pursuant to this section may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

The association may pursue and retain for its own account salvage and subrogation recoverable on paid covered claim obligations. An obligation of the association to defend an insured shall cease upon the association's payment of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limits.

d. The association shall investigate claims filed with the association and adjust, compromise, settle, defend, and pay covered claims to the extent of the association's obligation and deny all other claims.

e. The association shall notify such persons as the commissioner directs under section 518C.8, subsection 2, paragraph "a".

f. The association shall process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

g. The association shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay the other expenses of the association authorized by this chapter.

2. The association may do any of the following:
  - a. Appear in, defend, and appeal an action on a claim brought against the association.
  - b. Employ or retain persons necessary to handle claims and perform other duties of the association.
  - c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.
  - d. Sue or be sued.
  - e. Negotiate and become a party to contracts necessary to carry out the purposes of this chapter.
  - f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.
3. The board of directors, in its discretion, may from time to time refund excess amounts to member insurers that are not needed for current or projected liabilities of a particular insolvency. The amount of each refund is equal to the net direct written premiums of the member insurer for the preceding calendar year divided by the net written premiums of all member insurers for the preceding calendar year, multiplied by the total amount to be refunded to all members. At the discretion of the board of directors, an assessment or refund of any member insurer in an amount not to exceed twenty-five dollars may be waived.

2000 Acts, ch 1035, §6; 2011 Acts, ch 70, §37

Subsection 1, paragraph a, subparagraph (2), subparagraph division (b) amended

#### **518C.15 Immunity.**

There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, the association or its agents or employees, the board of directors, any committee established for the purpose of administering the affairs of the association, or any person serving as an alternate or substitute representative director of the association, or the commissioner, or the commissioner's representatives, for any reasonable action taken or any reasonable failure to act by them in the performance of their duties and powers under this chapter.

2000 Acts, ch 1035, §15; 2011 Acts, ch 70, §38

Section amended

## **CHAPTER 520**

### **RECIPROCAL OR INTERINSURANCE CONTRACTS**

#### **520.10 Annual report — examination — penalties.**

1. Such attorney shall, within the time limited for filing the annual statement by insurance companies transacting the same kind of business, make a report, under oath, to the commissioner of insurance for each calendar year, showing the financial condition of affairs at the office where such contracts are issued and shall, at any and all times, furnish such additional information and reports as may be required; provided, however, that the attorney shall not be required to furnish the names and addresses of any subscribers except in case of an unpaid final judgment. The business affairs, records, and assets of any such organization shall be subject to examination by the commissioner of insurance at any reasonable time, and such examination shall be at the expense of the organization examined.
2. A certificate of authority of a reciprocal or interinsurance insurer authorized under this chapter shall be renewed annually in accordance with section 520.12 so long as the insurer transacts its business in accordance with all legal requirements.
3. The commissioner shall refuse to renew the certificate of authority of a reciprocal or interinsurance insurer that fails to comply with the provisions of this chapter and the insurer's right to transact new business in this state shall immediately cease until the insurer has so complied.
4. A reciprocal or interinsurance insurer that fails to timely file the report required under

subsection 1 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

5. The commissioner may give notice to a reciprocal or interinsurance insurer that the insurer has not timely filed the report required under subsection 1 and is in violation of this section. If the insurer fails to file the required report and comply with this section within ten days of the date of the notice, the insurer shall pay an additional administrative penalty of one hundred dollars for each day that the failure continues to the treasurer of state for deposit as provided in section 505.7.

[C24, 27, 31, 35, 39, §9092; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.10]

2006 Acts, ch 1117, §96; 2009 Acts, ch 181, §86

2011 repeal of 2009 Acts, ch 181, §86, amendments to subsections 4 and 5 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

### **520.12 Certificate of authority — renewal — penalties.**

1. Upon compliance with the requirements of this chapter, the commissioner of insurance shall issue a certificate of authority or a license to the attorney, authorizing the attorney to make such contracts of insurance, which license shall specify the kind or kinds of insurance and shall contain the name of the attorney, the location of the principal office and the name or designation under which such contracts of insurance are issued. The certificate of authority shall expire on the first day of June next succeeding its issue, and shall be renewed annually as long as the company transacts business in accordance with the requirements of law. A copy of the certificate, when certified by the commissioner of insurance, shall be admissible in evidence for or against a company with the same effect as the original.

2. A reciprocal or interinsurance insurer shall submit annually, on or before March 1, a completed application for renewal of the insurer's certificate of authority. An insurer that fails to timely file an application for renewal shall pay an administrative fee of five hundred dollars to the treasurer of state for deposit as provided in section 505.7.

[C24, 27, 31, 35, 39, §9094; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.12]

88 Acts, ch 1112, §110; 2006 Acts, ch 1117, §97; 2009 Acts, ch 181, §87

2011 repeal of 2009 Acts, ch 181, §87, amendment to subsection 2 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## **CHAPTER 521**

### **CONSOLIDATION, MERGER, AND REINSURANCE**

Securities to be deposited by foreign companies, §508.20 – 508.22, 515.70 – 515.72

#### **521.1 Definitions.**

For the purposes of this chapter:

1. “*Affected company*” or “*affected mutual company*” means the company being merged with and into the surviving company.

2. “*Commission*” means the commission created in section 521.5.

3. “*Commissioner*” means the commissioner of insurance.

4. “*Company*” means a company or association organized under chapter 508, 514B, 515, 518, 518A, or 520, and includes a mutual insurance holding company organized pursuant to section 521A.14.

[S13, §1821-m; C24, 27, 31, 35, 39, §9104; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.1]

89 Acts, ch 83, §75; 95 Acts, ch 185, §41; 2006 Acts, ch 1117, §98; 2007 Acts, ch 22, §91; 2011 Acts, ch 70, §39

Subsection 4 amended

#### **521.2 Consolidation, merger, and reinsurance.**

1. One or more domestic mutual insurance companies organized under chapter 491 may

merge or consolidate with a domestic or foreign mutual insurance company as provided in this chapter.

2. One or more domestic insurance companies organized under chapter 490 may merge with a domestic or foreign insurance company as provided in chapter 490 with the approval of the commission pursuant to this chapter.

3. The provisions of this chapter shall not be applicable to the merger or consolidation of a domestic mutual company with a stock company pursuant to chapter 508B or chapter 515G.

4. A domestic insurance company shall not assume or reinsure the whole or any part of the risks of any other company, except as provided in this chapter. However, this chapter shall not be construed to prevent any company, as defined in section 521.1, from reinsuring a fractional part of any risk.

5. One or more foreign or domestic stock insurance companies may merge into a domestic mutual insurance company organized under chapter 491 as provided in this chapter.

6. One or more domestic health maintenance organizations or limited service organizations formed under chapter 514B may merge into a domestic insurance company organized under chapter 490 or chapter 491 as provided in this chapter.

7. Sections 491.102 through 491.105 shall not be applicable to a merger or consolidation of a domestic mutual insurance company pursuant to this chapter.

[S13, §1821-n; C24, 27, 31, 35, 39, §9105; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.2]

95 Acts, ch 185, §42; 2006 Acts, ch 1117, §99; 2007 Acts, ch 137, §21; 2009 Acts, ch 145, §51; 2011 Acts, ch 70, §40, 41

Subsection 1 amended  
NEW subsections 5 - 7

## CHAPTER 521A

### INSURANCE HOLDING COMPANY SYSTEMS

#### 521A.10 Sanctions and penalties.

1. If the commissioner finds after notice and hearing that a person subject to registration under section 521A.4 failed without just cause to file a registration statement as required in this chapter, the person shall be required to pay a penalty of one thousand dollars for each day's delay. The penalty shall be recovered by the commissioner and deposited as provided in section 505.7. The maximum penalty under this section is ten thousand dollars. The commissioner may reduce the penalty if the person demonstrates that the imposition of the penalty would constitute a financial hardship to the person.

2. a. A director or officer of an insurance holding company system who does any of the following is subject to the civil penalty imposed under paragraph "b":

(1) Knowingly participates in or assents to transactions or investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph "b".

(2) Knowingly permits any of the officers or agents of an insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph "b".

(3) Knowingly violates any other provision of this chapter.

b. An officer or director of an insurance holding company system who commits any of the acts or omissions listed in paragraph "a" shall pay, in the person's individual capacity, a civil penalty of not more than one thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

3. If it appears to the commissioner that an insurer subject to this chapter has engaged in a transaction or entered into a contract which is subject to section 521A.5 and which

would not have been approved had approval been requested, the commissioner may order the insurer to immediately cease and desist any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any contracts and restore the status quo if the commissioner finds that action is in the best interest of the policyholders, creditors, or the public.

4. If it appears to the commissioner that an insurer or a director, officer, agent, or employee of an insurer has committed a willful violation of this chapter, the commissioner may institute criminal proceedings against the insurer or the responsible director, officer, agent, or employee in the district court for the county in which the principal office of the insurer is located, or if the insurer has no office in this state, then in the district court for Polk county. An insurer or individual who willfully violates this chapter is guilty of a class “D” felony.

5. A director or officer, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the commissioner in the performance of the commissioner’s duties under this chapter is guilty of a class “D” felony. Any fines imposed shall be paid by the director, officer, or employee in the person’s individual capacity.

[C71, 73, 75, 77, 79, 81, §521A.10]

86 Acts, ch 1102, §23; 91 Acts, ch 26, §55, 56; 2009 Acts, ch 181, §88

2011 repeal of 2009 Acts, ch 181, §88, amendment to subsection 1 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

## CHAPTER 521E

### RISK-BASED CAPITAL REQUIREMENTS FOR INSURERS

#### 521E.3 Company-action-level event.

1. “*Company-action-level event*” means any of the following:

a. The filing of a risk-based capital report by an insurer which indicates any of the following:

(1) For an insurer other than a life and health insurer, the insurer’s total adjusted capital is greater than or equal to its regulatory-action-level risk-based capital but less than its company-action-level risk-based capital.

(2) For a life and health insurer, the insurer’s total adjusted capital is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and two and one-half, and has a negative trend.

(3) For a property and casualty insurer, the insurer’s total adjusted capital is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions.

b. Notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates an event in paragraph “a”, provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. If a hearing is requested pursuant to section 521E.7, notification by the commissioner to the insurer after the hearing that the commissioner has rejected the insurer’s challenge of the adjusted risk-based capital report indicating an event in paragraph “a”.

2. Upon the occurrence of a company-action-level event, the insurer shall prepare and submit to the commissioner a risk-based capital plan which shall include all of the following:

a. Identification of the conditions which contributed to the company-action-level event.

b. Proposed corrective actions which the insurer intends to implement and which are expected to result in the elimination of the company-action-level event.

c. Projections of the insurer’s financial results for the current year and at least the four succeeding years, including projections of statutory operating income, net income, capital,

and surplus. Projections shall be provided assuming the absence of the proposed corrective actions and assuming the implementation of the proposed corrective actions. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

d. Identification of the primary assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions.

e. Identification of the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

3. The risk-based capital plan shall be submitted within forty-five days of the company-action-level event, or, if the insurer requests a hearing pursuant to section 521E.7 for the purpose of challenging the adjusted risk-based capital report, within forty-five days after notification to the insurer that the commissioner, after hearing, has rejected the insurer's challenge.

4. Within sixty days after the submission by an insurer of a risk-based capital plan to the commissioner, the commissioner shall notify the insurer whether the risk-based capital plan shall be implemented or, in the judgment of the commissioner, is unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which in the judgment of the commissioner will render the risk-based capital plan satisfactory. Upon the receipt of notification from the commissioner pursuant to this subsection, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and submit the revised risk-based capital plan to the commissioner within forty-five days of the receipt of notification from the commissioner of the commissioner's determination that the risk-based capital plan is unsatisfactory, or, if the insurer requests a hearing pursuant to section 521E.7 for the purpose of challenging the commissioner's determination, within forty-five days after notification to the insurer that the commissioner, after hearing, has rejected the insurer's challenge.

5. After notification of the insurer by the commissioner that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, at the commissioner's discretion and subject to the insurer's right to a hearing pursuant to section 521E.7, may specify in the notification that the notification constitutes a regulatory-action-level event.

6. A domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in a state in which the insurer is authorized to do business if both of the following apply:

a. The other state has a provision substantially similar to section 521E.8, subsection 1, with respect to the confidentiality and availability of such plans.

b. The insurance commissioner of that state has notified the insurer in writing of its request to receive a copy of the risk-based capital plan or revised risk-based capital plan. Upon receipt of the written request, the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan with the requesting commissioner by no later than the later of the following:

(1) Fifteen days from the receipt of the written request.

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed pursuant to subsection 3 or 4, as applicable.

96 Acts, ch 1046, §11; 2011 Acts, ch 70, §42, 43

Subsection 1, paragraph a, unnumbered paragraph 1 amended  
Subsection 1, paragraph a, NEW subparagraph (3)

## CHAPTER 521F

### RISK-BASED CAPITAL REQUIREMENTS FOR HEALTH ORGANIZATIONS

#### **521F.4 Company-action-level event.**

1. “*Company-action-level event*” means any of the following:

a. The filing of a risk-based capital report by a health organization which indicates that the health organization’s total adjusted capital is greater than or equal to its regulatory-action-level risk-based capital but less than its company-action-level risk-based capital.

b. The filing of a risk-based capital report by a health organization which indicates that the health organization has total adjusted capital which is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the health risk-based capital instructions.

c. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates an event in paragraph “a” or “b”, provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

d. If a hearing is requested pursuant to section 521F.8, notification by the commissioner to the health organization after the hearing that the commissioner has rejected the health organization’s challenge of the adjusted risk-based capital report indicating the event in paragraph “a” or “b”.

2. Upon the occurrence of a company-action-level event, the health organization shall prepare and submit to the commissioner a risk-based capital plan that includes all of the following:

a. Identification of the conditions which contributed to the company-action-level event.

b. Proposed corrective actions which the health organization intends to implement and which are expected to result in the elimination of the company-action-level event.

c. Projections of the health organization’s financial results for the current year and at least the two succeeding years, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. Projections shall be provided assuming the absence of the proposed corrective actions and assuming the implementation of the proposed corrective actions. Projections shall be provided for each major line of business and separately identify each significant income, expense, and benefit component.

d. Identification of the primary assumptions impacting the health organization’s projections and the sensitivity of the projections to the assumptions.

e. Identification of the quality of, and problems associated with, the health organization’s business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

3. The risk-based capital plan shall be filed within forty-five days of the company-action-level event, or, if the health organization requests a hearing pursuant to section 521F.8 for the purpose of challenging the adjusted risk-based capital report, within forty-five days after notification to the health organization that the commissioner, after hearing, has rejected the health organization’s challenge.

4. Within sixty days after the submission by a health organization of a risk-based capital plan to the commissioner, the commissioner shall notify the health organization whether the risk-based capital plan shall be implemented or, in the judgment of the commissioner, is unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination, and may set forth proposed revisions which in the judgment of the commissioner will render the risk-based capital plan satisfactory. Upon the receipt of the notification from

the commissioner, the health organization shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and file the revised risk-based capital plan with the commissioner.

5. The revised risk-based capital plan shall be filed within forty-five days of the receipt of notification from the commissioner of the commissioner's determination that the risk-based capital plan is unsatisfactory, or, if the health organization requests a hearing pursuant to section 521F.8 for the purpose of challenging the commissioner's determination, within forty-five days after notification to the health organization that the commissioner, after hearing, has rejected the health organization's challenge.

6. After notification of the health organization by the commissioner that the health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, pursuant to section 521F.8, may specify in the notification that the notification constitutes a regulatory-action-level event.

7. *a.* A domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in a state in which the health organization is authorized to do business if both of the following apply:

(1) The other state has a risk-based capital provision substantially similar to section 521F.9, with respect to the confidentiality and availability of such plans.

(2) The insurance commissioner of that state has notified the health organization in writing of its request to receive a copy of the risk-based capital plan or revised risk-based capital plan.

*b.* Upon receipt of the written request under paragraph "a", subparagraph (2), the health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan with the requesting commissioner by no later than the later of the following:

(1) Fifteen days after the receipt of the written request.

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection 3 or 5, as applicable.

2000 Acts, ch 1050, §4; 2000 Acts, ch 1232, §80; 2011 Acts, ch 70, §44; 2011 Acts, ch 131, §72, 158

Subsection 1 amended

## CHAPTER 522A

### SALE OF INSURANCE BY VEHICLE RENTAL COMPANIES

#### 522A.5 Fees.

The fee for a counter employee license shall be fifty dollars per counter employee. In no case shall any combined fees exceed one thousand dollars in any calendar year for any one rental company or limited license or licensee or renewal license. The fees collected under this section shall be deposited as provided in section 505.7.

99 Acts, ch 143, §5; 2009 Acts, ch 181, §89

2011 repeal of 2009 Acts, ch 181, §89, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 522B

### LICENSING OF INSURANCE PRODUCERS

#### 522B.5 Application for license.

1. A person applying for a resident insurance producer license shall make application

to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find all of the following:

- a. The individual is at least eighteen years of age.
- b. The individual has not committed any act that is a ground for denial, suspension, or revocation as set forth in section 522B.11.
- c. The individual has paid the license fee of fifty dollars.
- d. The individual has successfully passed the examinations for the lines of authority for which the person has applied.
- e. In order to protect the public interest, the individual has the requisite character and competence to receive a license as an insurance producer.

2. A business entity acting as an insurance producer may elect to obtain an insurance producer license. Application shall be made using the uniform business entity application. Prior to approving the application, the commissioner shall find both of the following:

- a. The business entity has paid the appropriate fees.
- b. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws and rules of this state.

3. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

4. Fees collected under this section shall be deposited as provided in section 505.7.

2001 Acts, ch 16, §19, 37; 2009 Acts, ch 181, §90

2011 repeal of subsection 4 stricken pursuant to 2011 Acts, ch 127, §57, 89

Section not amended; footnote revised

#### **522B.11 License denial, nonrenewal, or revocation — limitation on duties and responsibilities of insurance producers.**

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:

- a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
- b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.
- c. Obtaining or attempting to obtain a license through misrepresentation or fraud.
- d. Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business.
- e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- f. Having been convicted of a felony.
- g. Having admitted or been found to have committed any unfair insurance trade practice or fraud.
- h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
- i. Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.
- j. Forging another's name to an application for insurance or to any document related to an insurance transaction.
- k. Improperly using notes or any other reference material to complete an examination for an insurance license.
- l. Knowingly accepting insurance business from an individual who is not licensed.
- m. Failing to comply with an administrative or court order imposing a child support obligation.
- n. Failing to comply with an administrative or court order related to repayment of loans to the college student aid commission.

o. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

p. Failing or refusing to cooperate in an investigation by the commissioner.

q. Is the subject of an order of the securities administrator of this state or any other state, province, district, or territory, denying, suspending, revoking, or otherwise taking action against a registration as a broker-dealer, agent, investment adviser, or investment adviser representative.

r. Using an insurance producer's license for the principal purpose of procuring, receiving, or forwarding applications for insurance of any kind, or placing, or effecting such insurance directly or indirectly upon or in connection with the property of the licensee or the property of a relative, employer, or employee of the licensee, or upon or in connection with property for which the licensee or a relative, employer, or employee of the licensee is an agent, custodian, vendor, bailee, trustee, or payee.

2. If the commissioner does not renew a license or denies an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the licensee or applicant of the reason for the nonrenewal of the license or denial of the application for a license. The licensee or applicant may request a hearing on the nonrenewal or denial. A hearing shall be conducted according to section 507B.6.

3. The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by a partner, officer, or manager acting on behalf of the business entity and the violation was not reported to the commissioner and corrective action was not taken.

4. In addition to, or in lieu of, any applicable denial, suspension, or revocation of a license, a person, after hearing, may be subject to a civil penalty as provided in section 522B.17.

5. The commissioner may conduct an investigation of any suspected violation of this chapter pursuant to section 507B.6 and may enforce the provisions and impose any penalty or remedy authorized by this chapter and chapter 507B against any person who is under investigation for, or charged with, a violation of either chapter even if the person's license has been surrendered or has lapsed by operation of law.

6. a. In order to assure a free flow of information for accomplishing the purposes of this section, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of the commissioner or the commissioner's employees or agents that relates to licensee discipline are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. A final written decision of the commissioner in a disciplinary proceeding is a public record.

b. Investigative information in the possession of the commissioner or the commissioner's employees or agents that relates to licensee discipline may be disclosed, in the commissioner's discretion, to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license.

c. If the investigative information in the possession of the commissioner or the commissioner's employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency.

d. Pursuant to the provisions of section 17A.19, subsection 6, upon an appeal by the licensee, the commissioner shall transmit the entire record of the contested case to the reviewing court.

e. Notwithstanding the provisions of section 17A.19, subsection 6, if a waiver of privilege has been involuntary and evidence has been received at a disciplinary hearing, the court shall issue an order to withhold the identity of the individual whose privilege was waived.

7. a. Unless an insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for consultation and advice apart from commissions paid by an insurer, the duties and responsibilities of an insurance producer are

limited to those duties and responsibilities set forth in *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457 (Iowa 1984).

b. The general assembly declares that the holding of *Langwith v. Am. Nat'l Gen. Ins. Co.*, (No. 08-0778) (Iowa 2010) is abrogated to the extent that it overrules *Sandbulte* and imposes higher or greater duties and responsibilities on insurance producers than those set forth in *Sandbulte*.

2001 Acts, ch 16, §25, 37; 2004 Acts, ch 1110, §60 – 62; 2008 Acts, ch 1123, §42; 2011 Acts, ch 70, §45

NEW subsection 7

## CHAPTER 523A

### CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES

This chapter replaces former chapter 523A, repealed effective July 1, 2001; 2001 Acts, ch 118, §17 – 54, 57

#### SUBCHAPTER II

#### ESTABLISHMENT OF TRUSTS — DEPOSIT, INVESTMENT, AND REPORTING REQUIREMENTS

##### **523A.201 Establishment of trust funds.**

Unless proceeding under section 523A.401, 523A.402, or 523A.403, a seller must establish a trust fund prior to advertising, selling, promoting, or offering cemetery merchandise, funeral merchandise, funeral services, or a combination thereof in this state as follows:

1. The trust fund must be established at a financial institution.
2. If a seller agrees to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and performance or delivery may be more than one hundred twenty days following the initial payment on the account, a minimum of eighty percent of all payments made under a guaranteed purchase agreement or a minimum of one hundred percent of all payments made under a nonguaranteed purchase agreement shall be placed and remain in trust until the person for whose benefit the funds were paid dies.
3. If a purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof provides that payments are to be made in installments, the seller shall deposit eighty percent of each payment made under a guaranteed purchase agreement and one hundred percent of each payment made under a nonguaranteed purchase agreement in the trust fund until the full amount required to be placed in trust has been deposited. If the purchase agreement is financed with or sold to a financial institution, the purchase agreement shall be considered paid in full and the trust requirements shall be satisfied within fifteen days after the seller receives funds from the financial institution.
4. A seller shall not invade the trust principal for any purpose.
5. Unless a seller deposits all of each payment in a trust fund that meets the requirements of this section and section 523A.202, the seller shall have a fidelity bond or similar insurance in an amount of not less than fifty thousand dollars to protect against the loss of purchaser payments not placed in trust within the time period required by this section and section 523A.202. The commissioner may require a greater amount as the commissioner determines is necessary. If the seller changes ownership, the fidelity bond or similar insurance shall continue in force for at least one year after the transfer of ownership.
6. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.
7. Commingling of trust funds with other funds of the seller is prohibited.

8. Interest or income earned on amounts deposited in trust shall remain in trust under the same terms and conditions as payments made under the purchase agreement, except that a seller may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or income on a calendar-year basis. The early withdrawal of interest or income under this provision does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation, or nonperformance by such a seller.

9. The commissioner may require amendments to a trust agreement not in accord with the provisions of this chapter.

10. If a seller voluntarily or involuntarily ceases doing business and the seller's obligation to provide merchandise or services has not been assumed by another seller holding a current preneed seller's license, all trust funds, including accrued interest or income, shall be repaid to the purchaser within thirty days following the seller's cessation of business. A seller may petition the commissioner, upon a showing of good cause, for a longer period of time for repayment. A seller shall notify the commissioner at least thirty days prior to ceasing business.

2001 Acts, ch 118, §19; 2007 Acts, ch 175, §6 – 8; 2011 Acts, ch 62, §1, 2  
Subsections 2, 3, and 8 amended

#### **523A.204 Preneed seller annual reporting requirements — penalty.**

1. A preneed seller shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner.

2. A preneed seller filing an annual report shall pay a filing fee of ten dollars per purchase agreement sold during the year covered by the report. Duplicate fees are not required for the same purchase agreement. If a purchase agreement has multiple sellers, the fee shall be paid by the preneed seller actually providing the merchandise and services.

3. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon the approval of the commissioner or the attorney general.

4. The commissioner shall levy an administrative penalty in the amount of up to five hundred dollars against a preneed seller that fails to file the annual report when due, payable to the state for deposit as provided in section 505.7. However, the commissioner may waive the administrative penalty upon a showing of good cause or financial hardship.

5. A preneed seller that fails to file the annual report when due shall immediately cease soliciting or executing purchase agreements until the annual report is filed and any administrative penalty assessed has been paid.

2001 Acts, ch 118, §22; 2007 Acts, ch 175, §11; 2009 Acts, ch 102, §1, 3; 2009 Acts, ch 181, §91; 2010 Acts, ch 1121, §23

See also §523A.814

2011 repeal of 2009 Acts, ch 181, §91, amendment to subsection 4 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

#### **523A.206 Examinations — authority and scope.**

1. The commissioner may conduct an examination under this chapter of any seller as often as the commissioner deems appropriate. If a seller has a trust arrangement, the commissioner shall conduct an examination of such seller doing business in this state not less than once every five years unless the seller has provided to the commissioner, on an annual basis, a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter. The commissioner may require an audit of a seller, or other person by a certified public accountant to verify compliance with the requirements of this chapter, including rules adopted and orders issued pursuant to this chapter.

2. A seller shall reimburse the division for the expense of conducting the examination, including an audit conducted by a certified public accountant, unless the commissioner waives this requirement, or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying

compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination involving multiple sellers or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the seller.

4. Upon determining that an examination should be conducted, the commissioner may appoint one or more examiners to perform the examination and instruct those examiners as to the scope of the examination.

5. A seller, or other person from whom information is sought, and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the seller being examined and shall facilitate the examination as much as possible.

a. The refusal of a seller, by its officers, directors, employees, or agents, to submit to an examination or to comply with a reasonable written request of an examiner shall constitute grounds for the suspension, revocation, or denial of an application to renew any license held by the seller to engage in business subject to the commissioner's jurisdiction.

b. If a seller declines or refuses to submit to an examination as provided in this chapter, the commissioner shall immediately suspend, revoke, or deny an application to renew any license held by the seller or business to engage in business subject to the commissioner's jurisdiction, and shall report the commissioner's action to the attorney general, who shall immediately apply to the district court for the appointment of a receiver to administer the final affairs of the seller.

6. The commissioner shall not make information obtained in the course of an examination public, except when a duty under this chapter requires the commissioner to take action against a seller or to cooperate with another law enforcement agency, or when the commissioner is called as a witness in a civil or criminal proceeding.

7. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

2001 Acts, ch 118, §24; 2007 Acts, ch 175, §12; 2008 Acts, ch 1123, §43; 2011 Acts, ch 70, §46

Subsection 1 amended

## SUBCHAPTER IV TRUSTING ALTERNATIVES

### **523A.405 Bond in lieu of trust fund.**

1. In lieu of trust requirements, a seller may file with the commissioner a surety bond issued by a surety company authorized to do business and doing business within this state. The bond must be conditioned upon the seller's faithful performance of purchase agreements subject to this chapter. The surety's liability extends to each such agreement executed while the bond is in force and until performance or rescission of the purchase agreement. The aggregate liability of the surety for any and all breaches of the conditions of the bond shall not exceed the penal sum of the bond. To the extent expressly agreed to in writing by the surety, the surety's liability extends to each such agreement subject to this chapter executed prior to the time the bond was in force and until performance or rescission of the agreement. A purchaser aggrieved by a breach of a condition of the bond covering

the purchaser's agreement may maintain an action against the bond. If, at the time of the breach, the purchaser is aware of the purchaser's rights under the bond and how to file a claim against the bond, the surety shall not be liable for any breach of condition unless the surety receives notice of a claim within sixty days following discovery of the acts, omissions, or conditions constituting the breach of condition, except as otherwise provided in this section. A surety bond shall not be canceled by a surety except upon a written notice of cancellation given by the surety to the commissioner by restricted certified mail, and not prior to the expiration of sixty days after receipt of the notice by the commissioner. The surety's liability shall extend to each purchase agreement subject to this chapter executed prior to cancellation of the surety bond until the seller has complied with subsection 3.

2. If a seller becomes insolvent or otherwise ceases to engage in business prior to or within sixty days after cancellation of a bond, the seller shall be deemed to have breached the bond conditions for outstanding agreements under this chapter as of the day prior to cancellation of the bond. The commissioner shall mail written notice by restricted certified mail to the purchaser under each outstanding purchase agreement of the seller that a claim against the bond must be filed with the surety company within sixty days after the mailing date of the notice. The surety shall cease to be liable for all purchase agreements except those for which claims are filed with the surety company within sixty days after the date the commissioner mails the notices.

3. If a surety bond is canceled by a surety under any conditions other than those specified in subsection 2, the seller shall comply with all of the following:

a. The seller shall comply with the trust requirements of section 523A.201 for all purchase agreements subject to this chapter executed on or after the effective date of cancellation of the surety bond. In the alternative, the seller may submit a substitute surety bond meeting the requirements of subsection 1, but the seller must comply with section 523A.201 for any purchase agreements executed on or after the effective cancellation date of the earlier surety bond and prior to the effective date of the later surety bond.

b. Within sixty days after the effective cancellation date of the surety bond, the seller shall submit to the commissioner an undertaking by another surety company that a substitute surety bond meeting the requirements of subsection 1 is in effect and that the liability of the substitute surety bond extends to all outstanding purchase agreements of the seller that were executed but not performed or extinguished prior to the effective date of the substitute surety bond, or the seller shall submit to the commissioner a financial statement accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state certifying the total amount of outstanding liabilities of the seller on purchase agreements subject to this chapter and proof of deposit by the seller in trust under section 523A.201 of either the amount specified in section 523A.201, including interest as set by the commissioner based on the interest which would have been earned had the funds been maintained in trust, with respect to all of those outstanding purchase agreements or, where applicable, that delivery of merchandise has been made in compliance with section 523A.404. The surety may require such security as is necessary to comply with this section. Upon compliance by the seller with this paragraph, the surety company canceling the surety bond shall cease to be liable with respect to any outstanding purchase agreements of the seller except those purchase agreements with respect to which a breach of condition occurred prior to cancellation and for which timely claims were filed.

4. Section 523A.202 and, to the extent it is applicable, section 523A.206, apply to sellers whose purchase agreements are covered by a surety bond maintained under this section, and section 523A.202 continues to apply to any purchase agreements of those sellers that are not covered by a surety bond maintained under this section.

5. Upon receiving a notice of cancellation of a surety bond, the commissioner shall notify the seller of the requirements of this chapter resulting from cancellation of the bond. The notice may be in the form of a copy of this section and sections 523A.201 and 523A.202.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the attorney general shall seek an injunction to prohibit the seller from making further purchase agreements subject to this chapter. The attorney general shall commence an action to attach and levy execution upon property of the seller

when the seller fails to perform a purchase agreement subject to this chapter, to the extent necessary to secure compliance with this chapter. The county attorney may bring criminal charges under subchapter VII.

7. The surety under this section shall not be owned, under the control of, or affiliated with the seller.

8. The amount of the surety bond shall equal eighty percent of the payments received pursuant to guaranteed purchase agreements and one hundred percent of the payments received pursuant to nonguaranteed purchase agreements, or the applicable portion thereof, for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, and the amount needed to adjust the amount of the surety bond for inflation as set by the commissioner based on the consumer price index. The seller shall review the amount of the surety bond no less than annually and shall increase the bond as necessary to reflect additional payments. The amount needed to adjust for inflation shall be added annually to the surety bond during the first quarter of the seller's fiscal year.

9. With the consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement funded by a surety bond provided the seller and the surety bond comply with the following provisions:

a. The amount of the trust funds transferred to the surety company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of the surety bond issued on an individual must be no less than the amount of principal and interest transferred for that individual to the surety company, and any supplemental surety bond issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the surety bond purchased shall not, under the circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The seller shall maintain a copy of any prepaid trust-funded agreement that was converted to a prepaid purchase agreement funded by a surety bond and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

2001 Acts, ch 118, §32; 2001 Acts, ch 176, §74; 2007 Acts, ch 175, §63, 64; 2008 Acts, ch 1103, §4; 2008 Acts, ch 1123, §46; 2011 Acts, ch 62, §3

Subsection 8 amended

## SUBCHAPTER V

### PRENEED SELLER AND SALES LICENSES

#### **523A.501 Preneed sellers — licenses.**

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account without a preneed seller's license.

2. An application for a preneed seller's license shall be filed on a form prescribed by the commissioner and be accompanied by a fifty dollar filing fee.

3. a. The commissioner shall request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for any director of, or person with a financial interest in, a preneed seller who is an applicant for an initial license issued pursuant to this section, an applicant for reinstatement of a license issued pursuant to this section, or a licensee who is being monitored as a result of an order of the commissioner or agreement resolving an

administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a preneed seller, as required by the commissioner by rules adopted pursuant to chapter 17A. The commissioner may limit this requirement to those persons who have the ability to control or direct control of trust funds under this chapter. The commissioner shall inform an applicant or licensee to whom the criminal history requirement applies and obtain a signed waiver from the applicant or licensee prior to submitting a criminal history data request.

b. A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1. The commissioner may also require such applicants or licensees to provide a full set of fingerprints, in a form and manner prescribed by the commissioner. Such fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for a national criminal history check. The commissioner may authorize alternate methods or sources for obtaining criminal history record information. The commissioner may, in addition to any other fees, charge and collect such amounts as may be incurred by the commissioner, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

c. Criminal history information relating to an applicant or licensee obtained by the commissioner pursuant to this section is confidential. The commissioner may, however, use such information in a license denial proceeding.

4. The commissioner shall request and obtain a financial history for any director of, or person with a financial interest in, a preneed seller who is an applicant for an initial license issued pursuant to this section, an applicant for reinstatement of a license issued pursuant to this section, or a licensee who is being monitored as a result of an order of the commissioner or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a preneed seller, as required by the commissioner by rules adopted pursuant to chapter 17A. The commissioner may limit this requirement to those persons who have the ability to control or direct control of trust funds under this chapter. "Financial history" means the record of a person's current loans, the date of a person's loans, the amount of the loans, the person's payment record on the loans, current liens against the person's property, and the person's most recent financial statement setting forth the assets, liabilities, and the net worth of the person.

5. A preneed seller's license is not assignable or transferable. A licensee selling all or part of a business entity that has a preneed seller's license shall cancel the license, and the purchaser shall apply for a new license in the purchaser's name within thirty days of the sale.

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the license, the commissioner shall notify the person in writing of the reasons for the denial.

7. A preneed seller's license shall be renewed every four years by filing the form prescribed by the commissioner under subsection 2, accompanied by a renewal fee in an amount set by the commissioner by rule.

8. The commissioner may by rule create or accept a multijurisdiction preneed seller's license. If the preneed seller's license is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of fifty dollars for an application. The application or notice form utilized and the effective dates and terms of the license may vary from the provisions set forth in this section.

9. Fees collected under this section shall be deposited as provided in section 505.7.

2001 Acts, ch 118, §33; 2002 Acts, ch 1119, §82; 2004 Acts, ch 1104, §2; 2004 Acts, ch 1110, §66; 2007 Acts, ch 175, §16; 2008 Acts, ch 1103, §5, 6; 2008 Acts, ch 1123, §47, 48; 2009 Acts, ch 181, §92

2011 repeal of subsection 9 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

### **523A.502 Sales agents — licenses.**

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account unless the person has a sales license and is a sales agent of a person holding a preneed seller's license. The preneed seller licensee is liable for the acts of its sales agents performed in advertising, selling, promoting, or offering to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter does not permit a person to practice mortuary science without a license. A person holding a current sales license may advertise, sell, promote, or offer to furnish a funeral director's services as an employee or agent of a funeral establishment furnishing the funeral services under chapter 156.

3. An application for a sales license shall be filed on a form prescribed by the commissioner and be accompanied by a filing fee in an amount set by the commissioner by rule. The fees collected under this subsection shall be deposited as provided in section 505.7.

4. a. The commissioner shall request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for any applicant for an initial license issued pursuant to this section, any applicant for reinstatement of a license issued pursuant to this section, or any licensee who is being monitored as a result of an order of the commissioner or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a sales agent. The commissioner shall adopt rules pursuant to chapter 17A to implement this section. The commissioner shall inform the applicant or licensee of the criminal history requirement and obtain a signed waiver from the applicant or licensee prior to submitting a criminal history data request.

b. A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1. The commissioner may also require such applicants or licensees, to provide a full set of fingerprints, in a form and manner prescribed by the commissioner. Such fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for a national criminal history check. The commissioner may authorize alternate methods or sources for obtaining criminal history record information. The commissioner may, in addition to any other fees, charge and collect such amounts as may be incurred by the commissioner, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

c. Criminal history information relating to an applicant or licensee obtained by the commissioner pursuant to this section is confidential. The commissioner may, however, use such information in a license denial proceeding.

5. A sales license shall be renewed every four years by filing the form prescribed by the commissioner under subsection 3, accompanied by a renewal fee in an amount set by the commissioner by rule.

6. A sales agent licensed pursuant to this section shall satisfactorily fulfill continuing education requirements for the license as prescribed by the commissioner by rule. However, this continuing education requirement is not applicable to a sales agent who is also a licensed insurance producer under chapter 522B or a licensed funeral director under chapter 156.

7. A sales licensee shall inform the commissioner of changes in the information required to be provided in the application within thirty days of the change.

8. A sales license is not assignable or transferable.

9. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the license, the commissioner shall notify the applicant in writing of the reasons for the denial.

10. The commissioner may by rule create or accept a multijurisdiction sales license. If the sales license is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee. The application or notice form utilized and the effective dates and terms of the license may vary from the provisions set forth in subsections 3 and 5.

2001 Acts, ch 118, §34; 2002 Acts, ch 1119, §83; 2004 Acts, ch 1104, §3; 2007 Acts, ch 175, §17; 2008 Acts, ch 1103, §7; 2008 Acts, ch 1123, §49, 50; 2009 Acts, ch 181, §93

2011 repeal of 2009 Acts, ch 181, §93, amendment to subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

#### **523A.502A Sales agent annual reporting requirements — penalty.**

1. A sales agent shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner describing each purchase agreement sold by the sales agent during the year.

2. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon the approval of the commissioner or the attorney general.

3. The commissioner shall levy an administrative penalty in the amount of up to five hundred dollars against a sales agent who fails to file an annual report when due, payable to the state for deposit as provided in section 505.7. However, the commissioner may waive the administrative penalty upon a showing of good cause or financial hardship.

4. A sales agent who fails to file the annual report when due shall immediately cease soliciting or executing purchase agreements until the annual report is filed and any administrative penalty assessed has been paid.

2007 Acts, ch 175, §18; 2009 Acts, ch 102, §2, 3; 2009 Acts, ch 181, §94; 2010 Acts, ch 1121, §26

2011 repeal of 2009 Acts, ch 181, §94, amendment to subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

#### **523A.504 Appointment of sales agents — fee.**

1. A person shall not sell or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account except through a sales agent who holds a sales license issued pursuant to section 523A.502. If a person holding a preneed seller's license appoints a sales agent to act on behalf of the preneed seller, the person shall file a notice of such appointment with the commissioner within thirty days of the appointment, in a format approved by the commissioner, and annually thereafter.

2. A preneed seller shall pay an annual fee of five dollars for each sales agent appointed by the preneed seller, which fee shall be submitted with the annual report. Fees collected under this subsection shall be deposited as provided in section 505.7.

2007 Acts, ch 175, §20; 2009 Acts, ch 181, §95

2011 repeal of 2009 Acts, ch 181, §95, amendment to subsection 2 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

SUBCHAPTER VI  
PURCHASE AGREEMENTS

**523A.601 Disclosures.**

1. A purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof shall be written in clear, understandable language, and shall be printed or typed in an easy-to-read font, size, and style, and shall:

a. Identify the preneed seller by name and license number, the sales agent by name and license number, the purchaser, and the person for whom the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof is purchased, if other than the purchaser.

b. Specify the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof to be provided, and the cost of each merchandise item or service.

c. State clearly the conditions upon which substitution will be allowed.

d. State the total purchase price and the terms under which it is to be paid.

e. State clearly whether the purchase agreement is a guaranteed price agreement or a nonguaranteed price agreement. A nonguaranteed price agreement shall contain in twelve point boldface type an explanation of the consequences of such agreement in substantially the following language:

THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS AGREEMENT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES AGREED UPON. ADDITIONAL CHARGES MAY BE INCURRED WHEN ADDITIONAL MERCHANDISE OR SERVICES OR BOTH ARE PROVIDED OR WHEN PRICES HAVE INCREASED MORE THAN ACCRUED INCOME.

f. State that the purchase of the cemetery merchandise, funeral merchandise, and funeral services is revocable and specify the damages for cancellation, if any.

g. State clearly who has the authority to cancel, amend, or revoke the purchase agreement to purchase cemetery merchandise, funeral merchandise, and funeral services.

h. State clearly that the purchaser is entitled to rescind the purchase agreement under terms and conditions specified by section 523A.602.

i. Include an explanation of regulatory oversight by the insurance division in twelve point boldface type, in substantially the following language:

THIS AGREEMENT IS SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT (515)281-5705. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE IOWA SECURITIES AND REGULATED INDUSTRIES BUREAU, 330 MAPLE STREET, DES MOINES, IOWA 50319.

2. A purchase agreement that is funded by a trust shall also:

a. State the percentage of money to be placed in trust.

b. Explain the disposition of the income generated from investments and include a statement of the purchaser's responsibility for income taxes owed on the income if applicable.

c. State that if, after all payments are made under the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, any funds remain in the nonguaranteed irrevocable burial trust fund, the seller shall disburse the remaining funds according to law.

d. State clearly the terms of the funeral and burial trust agreement and whether it is revocable or irrevocable.

e. State clearly that the purchaser is entitled to transfer the trust funding, insurance funding, or other trust assets or select another seller to receive the trust funding, insurance funding, or any other trust assets.

f. State clearly who has the authority to amend or revoke the trust agreement, if revocable, and who has the authority to appoint successor trustees if the purchase agreement is canceled.

3. The commissioner may adopt rules establishing disclosure and format requirements to promote consumer understanding of the merchandise and services purchased and the available funding mechanisms for a purchase agreement under this chapter.

4. A purchase agreement shall be signed by the purchaser, the seller, and if the agreement is for mortuary science services as mortuary science is defined in section 156.1, a person licensed to deliver funeral services.

5. The seller shall disclose the following information prior to accepting the initial payment under a purchase agreement:

a. The specific method or methods (trust deposits, certificates of deposit, life insurance or an annuity, a surety bond, or warehousing) that will be used to fund the purchase agreement.

b. The relationship between the soliciting agent or agents, the provider of the cemetery merchandise, funeral merchandise, or funeral services, or combination thereof, the commissioner, and any other person.

c. The relationship of the life insurance policy or other trust assets to the funding of the purchase agreement and the nature and existence of any guarantees regarding the purchase agreement.

d. The impact on the purchase agreement of the following:

(1) Changes in the funding, including but not limited to changes in the assignment, beneficiary designation, trustee, or use of proceeds.

(2) Any penalties to be incurred by the purchaser as a result of the failure to make any additional payments required.

(3) Penalties to be incurred upon cancellation.

e. A list of cemetery merchandise, funeral merchandise, and funeral services which are agreed upon under the purchase agreement and all relevant information concerning the price of the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, including a statement that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the funding and the amount actually needed to fund the purchase agreement.

g. Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, upon delivery of cemetery merchandise, funeral merchandise, or funeral services, or the purchase agreement guarantee.

h. If the funding is being transferred from another seller, any material facts related to the revocation of the prior purchase agreement and the transfer of the existing trust funds.

6. a. (1) A guaranteed purchase agreement that is funded by a trust shall include a conspicuous statement in language substantially similar to the following language:

For your prearranged funeral agreement, we will deposit not less than eighty percent of your payments in trust at (name of financial institution), (street address), (city), (state) (zip code) within fifteen days following receipt of the funds. For your protection, you will be notified within sixty days from the date of deposit by the financial institution, if acting as a trustee of trust funds under this chapter, to confirm that the deposit of these funds has been made establishing a trust fund as required by law. If you do not receive this notification, you may contact the Iowa insurance division for assistance by calling the insurance division at (telephone number) or by mail at (street address), (city), Iowa (zip code), or you may contact the financial institution by calling the financial institution at (telephone number) or by mail at the address indicated above.

(2) A nonguaranteed purchase agreement that is funded by a trust shall include a conspicuous statement in language substantially similar to the following language:

For your prearranged funeral agreement, we will deposit all of your payments in trust at (name of financial institution), (street address), (city), (state) (zip code) within fifteen days following receipt of the funds. For your protection, you will be notified within sixty days from the date of deposit by the financial institution, if acting as a trustee of trust funds under this chapter, to confirm that the deposit of these funds has been made establishing a trust fund as required by law. If you do not receive this notification, you may contact the Iowa insurance division for assistance by calling the insurance division at (telephone number) or by mail at (street address), (city), Iowa (zip code), or you may contact the financial institution by calling the financial institution at (telephone number) or by mail at the address indicated above.

b. A purchase agreement that is funded with an insurance policy or an annuity shall include a conspicuous statement in language substantially similar to the following language:

An (insurance policy or annuity) will be purchased from (name of issuer of the policy or annuity), (street address), (city), (state) (zip code). You should receive confirmation of the purchase of an insurance policy or certificate or an annuity within sixty days of making payment. Delivery of the actual insurance policy or certificate or annuity shall also constitute confirmation. For your protection, you have the right to confirm that the insurance policy or annuity is issued as required by law. If you do not receive confirmation that an insurance policy or certificate or an annuity has been purchased or receive the insurance policy or certificate or the annuity, you should report this fact to the Iowa insurance division by calling the insurance division at (telephone number). Written reports should be mailed to the Iowa insurance division at (street address), (city), Iowa (zip code).

c. A purchase agreement that is funded with a surety bond shall include a conspicuous statement in language substantially similar to the following language:

Coverage under a surety bond in the amount of \$(amount) will be purchased from (name of issuer of surety bond), (street address), (city), (state) (zip code) to fund your purchase. If you pay pursuant to your purchase agreement with a single payment, you should receive confirmation of the purchase of a surety bond within sixty days of making the payment. If you pay pursuant to your purchase agreement with multiple, periodic payments, you should receive confirmation of the purchase of a surety bond within sixty days of making the first payment and within sixty days of making the last payment pursuant to the agreement. For your protection, you have the right to confirm that the surety bond is issued as required by law. If you do not receive confirmation of coverage under a surety bond within sixty days of making the first payment and within sixty days of making the last payment, you should report this fact to the Iowa insurance division by calling the insurance division at (telephone number). Written reports should be mailed to the Iowa insurance division at (street address), (city), Iowa (zip code).

2001 Acts, ch 118, §36; 2002 Acts, ch 1119, §84; 2006 Acts, ch 1117, §116; 2007 Acts, ch 175, §21, 22, 65, 66; 2008 Acts, ch 1103, §8; 2008 Acts, ch 1191, §140; 2010 Acts, ch 1121, §27; 2011 Acts, ch 62, §4

Subsection 6, paragraph a amended

## SUBCHAPTER VIII

### ADMINISTRATION AND ENFORCEMENT

#### **523A.807 Prosecution for violations of law.**

1. A violation of this chapter or rules adopted or orders issued under this chapter is

a violation of section 714.16, subsection 2, paragraph “a”. The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and penalties, apply to violations of this chapter.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner’s possession, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate.

3. If the commissioner finds that a person has violated section 523A.201, 523A.202, 523A.203, 523A.207, 523A.401, 523A.402, 523A.403, 523A.404, 523A.405, 523A.501, 523A.502, or 523A.504 or any rule adopted pursuant thereto, the commissioner may order any or all of the following:

a. Payment of a civil penalty of not more than one thousand dollars for each violation, but not exceeding an aggregate of ten thousand dollars during any six-month period, except that if the commissioner finds that the person knew or reasonably should have known that the person was in violation of such provisions or rules adopted pursuant thereto, the penalty shall be not more than five thousand dollars for each violation, but not exceeding an aggregate of fifty thousand dollars during any six-month period. The commissioner shall assess the penalty on the employer of an individual and not on the individual, if the commissioner finds that the violations committed by the individual were directed, encouraged, condoned, ignored, or ratified by the individual’s employer. Any civil penalties collected under this subsection shall be deposited as provided in section 505.7.

b. Issuance of an order prohibiting the person committing a violation from selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under this chapter or chapter 523I. A person who has been named in such an order may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. The commissioner may, pursuant to chapter 17A, deny any application filed under section 523A.501 or 523A.502 if the applicant, or an officer, director, or owner of the applicant, is named in a final order issued pursuant to this subsection.

4. The commissioner shall post on the website of the division of insurance of the department of commerce a list of all persons licensed under this chapter and an index of orders issued by the commissioner pertaining to such persons.

2001 Acts, ch 118, §47; 2007 Acts, ch 175, §29; 2008 Acts, ch 1123, §52; 2009 Acts, ch 181, §96; 2010 Acts, ch 1121, §28

2011 repeal of 2009 Acts, ch 181, §96, amendment to subsection 3, paragraph a, stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

### **523A.812 Insurance division regulatory fund.**

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. The commissioner shall allocate annually from the fees paid pursuant to section 523A.204, two dollars for each purchase agreement reported on a preneed seller’s annual report filed pursuant to section 523A.204 for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.204 shall be deposited as provided in section 505.7. The commissioner shall also allocate annually the examination fees paid pursuant to section 523A.814 and any examination expense reimbursement for deposit to the regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay examiners, examination expenses, investigative expenses, the expenses of mediation ordered by the commissioner, consumer education expenses, the expenses of a toll-free telephone line to receive consumer complaints, and the expenses of receiverships established under section 523A.811. If the commissioner determines that funding is not otherwise available to reimburse the expenses of a person who receives title to a cemetery subject to chapter 523I, pursuant to such a receivership, the commissioner shall use moneys in the regulatory fund as necessary to

preserve, protect, restore, and maintain the physical integrity of that cemetery and to satisfy claims or demands for cemetery merchandise, funeral merchandise, and funeral services based on purchase agreements which the commissioner determines are just and outstanding. An annual allocation to the regulatory fund shall not be imposed if the current balance of the fund exceeds five hundred thousand dollars.

2001 Acts, ch 118, §52; 2005 Acts, ch 128, §4; 2007 Acts, ch 175, §32; 2009 Acts, ch 181, §97  
 2011 repeal of 2009 Acts, ch 181, §97, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
 Section not amended; footnote revised

## CHAPTER 523C

### RESIDENTIAL SERVICE CONTRACTS

#### 523C.3 Application for license.

1. Application for a license as a service company shall be made to and filed with the commissioner on forms approved by the commissioner and shall include all of the following information:

- a. The name and principal address of the applicant.
- b. The state of incorporation of the applicant.
- c. The name and address of the applicant's registered agent for service of process within Iowa.

2. The application shall be accompanied by all of the following:

- a. A certificate of good standing for the applicant issued by the secretary of state and dated not more than thirty days prior to the date of the application.
- b. A surety bond, a copy of the receipt from the treasurer of state that a cash deposit has been made, or a copy of a custodial agreement as provided in section 523C.5.
- c. A copy of the most recent financial statement, including balance sheets and related statements of income, of the applicant, prepared in accordance with generally accepted accounting principles, audited by a certified public accountant and dated not more than twelve months prior to the date of the application.
- d. An affidavit of an authorized officer of the service company stating the number of contracts issued by the service company in the preceding calendar year, and stating that the net worth of the service company satisfies the requirements of section 523C.6.
- e. A license fee in the amount of two hundred fifty dollars.

3. If the application contains the required information and is accompanied by the items set forth in subsection 2, and if the net worth requirements of section 523C.6 are satisfied, as evidenced by the audited financial statements, the commissioner shall issue the license. If the form of application is not properly completed or if the required accompanying documents are not furnished or in proper form, the commissioner shall not issue the license and shall give the applicant written notice of the grounds for not issuing the license. A notice of license denial shall be accompanied by a refund of fifty percent of the fee submitted with the application.

4. Fees collected under this section shall be deposited as provided in section 505.7.

83 Acts, ch 87, §4; 88 Acts, ch 1112, §704; 92 Acts, ch 1078, §2; 2009 Acts, ch 181, §98  
 2011 repeal of subsection 4 stricken pursuant to 2011 Acts, ch 127, §57, 89  
 Section not amended; footnote revised

#### 523C.13 Prohibited acts or practices — penalty.

The commissioner shall adopt rules which regulate residential service contracts to prohibit misrepresentation, false advertising, defamation, boycotts, coercion, intimidation, false statements and entries and unfair discrimination or practices. If the commissioner finds that a person has violated the rules adopted under this section, the commissioner may order any or all of the following:

1. Payment of a civil penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate of ten thousand dollars, unless the person knew

or reasonably should have known the person was in violation of this section, in which case the penalty shall be not more than five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. The commissioner shall, if it finds the violations of this section were directed, encouraged, condoned, ignored, or ratified by the employer of such person, assess such fine to the employer and not such person. Any civil penalties collected under this subsection shall be deposited as provided in section 505.7.

2. Suspension or revocation of the license of a person, if the person knew or reasonably should have known the person was in violation of this section.

83 Acts, ch 87, §14; 92 Acts, ch 1078, §7; 2009 Acts, ch 181, §99

2011 repeal of 2009 Acts, ch 181, §99, amendment to subsection 1 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 523D

### RETIREMENT FACILITIES

#### 523D.2A Annual certification.

On or before March 1 of each year, a provider shall file a certification with the commissioner in a manner and according to requirements established by the commissioner. The certification shall be accompanied by a one hundred dollar administrative fee which fee shall be deposited as provided in section 505.7. The certification shall attest that according to the best knowledge and belief of the attesting party, the facility administered by the provider is in compliance with the provisions of this chapter, including rules adopted by the commissioner or orders issued by the commissioner as authorized under this chapter. The attesting person may be any of the following:

1. A person serving as the president or chief executive officer of a corporation.
2. A person acting as the general partner of a limited partnership.
3. A person acting as the general partner of a limited liability partnership.
4. A person acting in a fiduciary capacity or as a trustee on behalf of a provider.
5. A person who is a manager of a limited liability company.

2004 Acts, ch 1104, §33; 2009 Acts, ch 181, §100

2011 repeal of 2009 Acts, ch 181, §100, amendment to unnumbered paragraph 1 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 523I

### IOWA CEMETERY ACT

Former ch 523I repealed effective July 1, 2005;  
2005 Acts, ch 128, §74

#### SUBCHAPTER II

### ADMINISTRATION AND ENFORCEMENT

#### 523I.205 Prosecution for violations of law — civil penalties.

1. A violation of this chapter or rules adopted or orders issued under this chapter is a violation of section 714.16, subsection 2, paragraph “a”. The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and penalties, apply to violations of this chapter.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons

subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county attorney's county.

3. A person who violates a provision of this chapter or rules adopted or orders issued under this chapter may be subject to civil penalties in addition to criminal penalties. The commissioner may impose, assess, and collect a civil penalty not exceeding ten thousand dollars for each violation. For the purposes of computing the amount of each civil penalty, each day of a continuing violation constitutes a separate violation. All civil penalties collected pursuant to this section shall be deposited as provided in section 505.7.

2005 Acts, ch 128, §13; 2009 Acts, ch 181, §101

2011 repeal of 2009 Acts, ch 181, §101, amendment to subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

### **523I.213A Examinations — authority and scope.**

1. The commissioner or the commissioner's designee may conduct an examination under this chapter of any cemetery as often as the commissioner deems appropriate. If a cemetery has a trust arrangement, the commissioner shall conduct an examination not less than once every five years.

2. A cemetery shall reimburse the division for the expense of conducting the examination unless the commissioner waives this requirement or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination involving multiple cemeteries or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination pursuant to this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the cemetery.

4. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee may appoint one or more examiners to perform the examination and instruct them as to the scope of the examination.

5. A cemetery or person from whom information is sought, and its officers, directors, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the cemetery being examined and shall facilitate the examination as much as possible. If a cemetery, by its officers, directors, employees, or agents, refuses to submit to an examination as provided in this chapter, the commissioner shall immediately report the refusal to the attorney general, who shall then immediately apply to district court for the appointment of a receiver to administer the final affairs of the cemetery.

6. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

7. Notwithstanding chapter 22, the commissioner shall not make information obtained in the course of an examination public, except when a duty under this chapter requires the commissioner to take action against a cemetery or to cooperate with another law enforcement agency, or when the commissioner is called as a witness in a civil or criminal proceeding.

2007 Acts, ch 175, §42; 2010 Acts, ch 1121, §29; 2011 Acts, ch 70, §47

Subsection 1 amended

SUBCHAPTER VIII  
PERPETUAL CARE CEMETERIES  
— REQUIREMENTS

**523I.813 Annual report by perpetual care cemeteries.**

1. A perpetual care cemetery shall file an annual report at the end of each fiscal year of the cemetery.

2. The report shall be filed with the commissioner within four months following the end of the cemetery's fiscal year in the form required by the commissioner.

3. The commissioner shall levy an administrative penalty in the amount of up to five hundred dollars against a cemetery that fails to file the annual report when due, payable to the state for deposit as provided in section 505.7. However, the commissioner may waive the administrative penalty upon a showing of good cause or financial hardship.

2005 Acts, ch 128, §68; 2007 Acts, ch 175, §49, 50; 2009 Acts, ch 181, §102; 2010 Acts, ch 1121, §31

2011 repeal of 2009 Acts, ch 181, §102, amendment to subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

CHAPTER 524

BANKS

DIVISION II

DIVISION OF BANKING

**524.207 Expenses of the banking division — fees.**

1. Except as otherwise provided by statute, all expenses required in the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce, the superintendent, and the state banking council by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the department of commerce revolving fund created in section 546.12. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other moneys received by the superintendent to the treasurer of state within the time required by section 12.10 and the fees and other moneys shall be deposited into the department of commerce revolving fund created in section 546.12.

2. The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

3. The banking division may expend additional funds, including funds for additional personnel, if those additional expenditures are actual expenses which exceed the funds budgeted for bank or licensee examinations or investigations and directly result from examinations or investigations of banks or licensees. The amounts necessary to fund the excess examination or investigation expenses shall be collected from banks and licensees being regulated, and the collections shall be treated as repayment receipts as defined in section 8.2. The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed as provided in section 546.12, subsection 2, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

4. All fees and moneys collected shall be deposited into the department of commerce revolving fund created in section 546.12 and expenses required to be paid under this section shall be paid from moneys in the department of commerce revolving fund and appropriated for those purposes.

[C24, 27, 31, 35, 39, §9144, 9145, 9149; C46, 50, 54, 58, 62, 66, §524.16, 524.17, 524.22; C71, 73, 75, 77, 79, 81, §524.207]

86 Acts, ch 1246, §616; 87 Acts, ch 234, §435; 90 Acts, ch 1247, §14; 91 Acts, ch 260, §1243; 93 Acts, ch 131, §22; 94 Acts, ch 1107, §85; 2003 Acts, ch 35, §45, 49; 2004 Acts, ch 1141, §6; 2009 Acts, ch 181, §103

2011 repeal of 2009 Acts, ch 181, §103, amendments to subsections 1, 3, and 4 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

#### **524.211 Prohibitions relating to banking division personnel.**

1. The superintendent, general counsel, examiners, and other employees assigned to the bank bureau of the banking division are prohibited from obtaining a loan of money or property from a state-chartered bank, a state savings and loan association, or any person or entity affiliated with a state-chartered bank or a state savings and loan association, unless they do not personally participate in the examination, oversight, or official review concerning the regulation of the bank or savings and loan association.

2. The superintendent, general counsel, examiners, and other employees assigned to the finance bureau of the banking division are prohibited from obtaining a loan of money or property from a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or a person or entity affiliated with such licensee.

3. The superintendent, general counsel, examiners, and other employees of the banking division, who have credit relations with a person or entity licensed or registered pursuant to chapter 535B, 535D, or 536C, are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee or registrant.

4. Examiners and other employees assigned to the bank bureau of the banking division who have credit relations with a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or with a person or entity affiliated with such licensee, are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee.

5. An employee of the banking division, other than the superintendent or a member of the state banking council or one of the boards in the professional licensing and regulation bureau of the division, shall not perform any services for, and shall not be a shareholder, member, partner, owner, director, officer, or employee of, any enterprise, person, or affiliate subject to the regulatory purview of the banking division.

6. For the purposes of this section and section 524.212, an affiliate of a person other than a state bank shall include any corporation, trust, estate, association or other similar organization:

a. Of which such person, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees or other individuals exercising similar functions.

b. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of such person who own or control either a majority of the shares of such person or more than fifty percent of the number of shares voted for the election of directors of such person at the preceding election or by trustees for the benefit of the shareholders of any such person.

c. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one such person.

d. Which owns or controls, directly or indirectly, either a majority of the voting shares of such person or more than fifty percent of the total number of shares voted for the election of directors of such person at the preceding election, or controls in any manner the election of a

majority of the directors of such person, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of such person is held by trustees.

7. The superintendent, examiners, or other employees who are convicted of a felony while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

[C97, §1875, 1876; SS15, §1875; C24, 27, 31, 35, 39, §9146; C46, 50, 54, 58, 62, 66, §524.18; C71, 73, 75, 77, 79, 81, §524.211; 81 Acts, ch 172, §1]

95 Acts, ch 148, §11 – 13; 96 Acts, ch 1056, §3; 2004 Acts, ch 1141, §10; 2006 Acts, ch 1177, §33; 2007 Acts, ch 88, §3; 2008 Acts, ch 1160, §3; 2011 Acts, ch 102, §1

Subsection 3 amended

#### **524.212 Prohibition against disclosure of regulatory information.**

1. The superintendent, members of the state banking council, general counsel, examiners, or other employees of the banking division shall not disclose, in any manner, to any person other than the person examined and those regulatory agencies referred to in section 524.217, subsection 2, any information relating specifically to the supervision and regulation of any state bank, persons subject to the provisions of chapter 533A, 533C, 536, or 536A, any affiliate of any state bank, or an affiliate of a person subject to the provisions of chapter 533A, 533C, 536, or 536A, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in section 524.215, subsection 2, paragraphs “a”, “b”, “c”, “e”, and “f”.

2. The superintendent may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from other local, state, federal, and international regulatory agencies, the conference of state bank supervisors and its affiliates or subsidiaries, the American association of mortgage regulators and its affiliates or subsidiaries, and the national association of consumer credit administrators and its affiliates or subsidiaries, and shall maintain as confidential and privileged any such document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information. With respect to documents, materials, or other information that is shared or stored electronically, the superintendent is authorized to take any necessary steps to ensure the division’s information technology systems comply with the information technology security requirements established by any of the regulatory agencies or associations of state regulatory agencies described in this section.

[C31, 35, §9146-c1; C39, §9146.1; C46, 50, 54, 58, 62, 66, §524.19; C71, 73, 75, 77, 79, 81, §524.212]

95 Acts, ch 148, §14; 2003 Acts, ch 96, §40, 42; 2004 Acts, ch 1141, §11; 2008 Acts, ch 1031, §56; 2008 Acts, ch 1160, §4; 2011 Acts, ch 102, §2

Subsection 2 amended

#### **524.221 Preservation of bank records — statute of limitations.**

1. a. A state bank is not required to preserve its records for a period longer than seven years after the first day of January of the year following the time of the making or filing of such records, provided, however, that account records showing unpaid balances due to depositors shall not be destroyed. A copy of an original may be kept in lieu of any such original record. For purposes of this subsection, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

b. A copy is deemed to be an original and shall be treated as an original record in a judicial or administrative proceeding for purposes of admissibility in evidence. A facsimile, exemplification, or certified copy of any such copy reproduced from a film record is deemed to be a facsimile, exemplification, or certified copy of the original. A printout or other tangible output readable by sight shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, which contains a signature made or created

by electronic or digital means such that it is stored by a computer or similar device, is deemed to be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

2. All causes of action, other than actions for relief on the grounds of fraud or mistake, against a state bank based upon a claim or claims founded on a written contract, or a claim or claims inconsistent with an entry or entries in a state bank record, made in the regular course of business, shall be deemed to have accrued, and shall accrue for the purpose of the statute of limitations one year after the breach or failure of performance of a written contract, or one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of six years from the date of such accrual.

3. The provisions of this section, insofar as applicable, shall apply to the records of a national bank or a federally chartered savings bank or a federally chartered savings and loan association.

[C50, 54, 58, 62, 66, §528A.1 – 528A.5; C71, 73, 75, 77, 79, 81, §524.221]

91 Acts, ch 95, §1; 99 Acts, ch 34, §1; 2011 Acts, ch 87, §1, 2

Subsection 1, unnumbered paragraph 1 amended and editorially designated as paragraph a

Subsection 1, unnumbered paragraph 2 editorially designated as paragraph b

Subsections 2 and 3 amended

### DIVISION III INCORPORATION

#### **524.310 Name of state bank.**

1. The name of a state bank originally incorporated or organized after the effective date of this chapter shall include the word “bank” and may include the word “state” or “trust” in its name. A state bank using the word “trust” in its name must be authorized under this chapter to act in a fiduciary capacity. A national bank or federal savings association shall not use the word “state” in its legally chartered name.

2. The provisions of this section shall not require any state bank existing and operating on January 1, 1970, to add to, modify or otherwise change its corporate or organizational name, either on January 1, 1970, or upon renewal of its corporate existence pursuant to section 524.314.

3. If a state bank existing and operating on January 1, 1970, causes its corporate or organizational name to be changed, the name as changed shall comply with subsection 1 of this section.

4. a. A person may reserve the exclusive use of a corporate or organizational name for a state bank by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate or organizational name applied for is available, the secretary of state shall reserve the name for the applicant’s exclusive use for a nonrenewable one hundred twenty-day period.

b. The owner of a reserved corporate or organizational name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

5. A state bank using a fictitious name to transact business in this state may file its fictitious name with the secretary of state by delivering to the superintendent for filing with the secretary of state a copy of the resolution of its board of directors certified by its secretary, adopting the fictitious name. A state bank using a fictitious name shall comply with the requirements of section 524.1206 and with any other regulatory requirements governing use of its name. The fictitious name must be distinguishable upon the record of the secretary of state from all of the following:

a. The corporate name of a business or nonprofit corporation incorporated or authorized to transact business in this state.

b. A corporate or company name reserved, registered, or protected as provided in section 489.109, 490.402, 490.403, 504.402, or 504.403.

c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state.

[C97, §1861, 1889; S13, §1889, 1889-i; C24, 27, 31, 35, 39, §9202, 9261, 9295, 9296; C46, 50, 54, 58, 62, 66, §527.1, 528.54, 532.12, 532.13; C71, 73, 75, 77, 79, 81, §524.310]

84 Acts, ch 1202, §1; 91 Acts, ch 11, §1; 91 Acts, ch 258, §61; 95 Acts, ch 148, §30; 2004 Acts, ch 1141, §18, 58; 2005 Acts, ch 19, §108; 2010 Acts, ch 1028, §8; 2011 Acts, ch 34, §120; 2011 Acts, ch 131, §73, 158

Subsection 5, paragraph b amended

## DIVISION IX

### INVESTMENT AND LENDING POWERS

#### 524.904 Loans and extensions of credit to one borrower.

1. For purposes of this section, “*loans and extensions of credit*” means a state bank’s direct or indirect advance of funds to a borrower based on an obligation of that borrower to repay the funds or repayable from specific property pledged by the borrower and shall include:

a. A contractual commitment to advance funds, as defined in section 524.103.

b. A maker or endorser’s obligation arising from a state bank’s discount of commercial paper.

c. A state bank’s purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period.

d. A state bank’s purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the state bank’s loan is the total unpaid balance of the paper owned by the state bank less any applicable dealer reserves retained by the state bank and held by the state bank as collateral security. Where the seller’s obligation to repurchase is limited, the state bank’s loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A state bank’s purchase of third-party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller.

e. An overdraft.

f. Amounts paid against uncollected funds.

g. Loans or extensions of credit that have been charged off the books of the state bank in whole or in part, unless the loan or extension of credit has become unenforceable by reason of discharge in bankruptcy; or is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or forgiven under an executed written agreement by the state bank and the borrower.

h. The aggregate rentals payable by the borrower under leases of personal property by the state bank as lessor.

i. Loans and extensions of credit to one borrower consisting of investments in which the state bank has invested pursuant to section 524.901.

j. Amounts invested by a state bank for its own account in the shares and obligations of a corporation which is a customer of the state bank.

k. All other loans and extensions of credit to one borrower of the state bank not otherwise excluded by subsection 7, whether directly or indirectly, primarily or secondarily.

2. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed fifteen percent of the state bank’s aggregate capital as defined in section 524.103, unless the additional lending provisions described in subsection 3 or 4 apply.

3. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed twenty-five percent of the state bank’s aggregate capital if any amount that exceeds the lending limitation described in subsection 2 is fully secured by one or any combination of the following:

a. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring

or securing title covering readily marketable nonperishable staples when such goods are covered by insurance to the extent that insuring the goods is customary, and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

b. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable refrigerated or frozen staples when such goods are fully covered by insurance and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

c. Shipping documents or instruments that secure title to or give a first lien on livestock. At inception, the current value of the livestock securing the loans must equal at least one hundred percent of the amount of the outstanding loans and extensions of credit. For purposes of this section, "livestock" includes dairy and beef cattle, hogs, sheep, and poultry, whether or not held for resale. For livestock held for resale, current value means the price listed for livestock in a regularly published listing or actual purchase price established by invoice. For livestock not held for resale, the value shall be determined by the local slaughter price. The bank must maintain in its files evidence of purchase or an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate.

d. Mortgages, deeds of trust, or similar instruments granting a first lien on farmland or on single-family or two-family residences, subject to the provisions of section 524.905, provided the amount loaned shall not exceed fifty percent of the appraised value of such real property.

e. With the prior approval of the superintendent, other readily marketable collateral. The market value of the collateral securing the loans must at all times equal at least one hundred percent of the outstanding loans and extensions of credit.

4. A state bank may grant loans and extensions of credit to one borrower not to exceed thirty-five percent of the state bank's aggregate capital if any amount that exceeds the lending limitations described in subsection 2 or 3 consists of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.

5. a. A state bank may grant loans and extensions of credit to a borrowing group in an amount not to exceed twenty-five percent of the state bank's aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to subsection 2 or 3, and the financial strength, assets, guarantee, or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member. A state bank may grant loans and extensions of credit to a borrowing group in an amount not to exceed thirty-five percent of aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to subsection 2, 3, or 4, and the financial strength, assets, guarantee, or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member. While not to be construed as an endorsement of the quality of any loan or extension of credit, the superintendent may authorize a state bank to grant loans and extensions of credit to a borrowing group in an amount not to exceed fifty percent of aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to subsection 2 or 3, and the financial strength, assets, guarantee, or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member.

b. For the purposes of this subsection, a borrowing group includes a person and any legal entity, including but not limited to corporations, limited liability companies, partnerships, trusts, and associations where the following exist:

(1) The interests of a group of more than one borrower, or any combination of the members of the group, are so interrelated that they should be considered a unit for the purpose of applying the lending limit limitations of this section. For the purposes of this subparagraph, interrelated borrowers include but are not limited to borrowers having separate operations that cannot exist without the other, borrowers sharing collateral,

borrowers commingling assets, borrowers sharing operational proceeds, or borrowers for whom there is a common source of repayment for the borrowers' loans.

(2) One or more persons owns or controls fifty percent or more of the voting securities or membership interests of the borrowing entity or a member of the group.

(3) One or more persons controls, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of the borrowing entity or a member of the group.

(4) One or more persons has the power to vote fifty percent or more of any class of voting securities or membership interests of the borrowing entity or a member of the group.

c. To demonstrate compliance with this subsection, a bank shall maintain in its files, at a minimum, all of the following:

(1) Documentation demonstrating the current ownership of the borrowing entity.

(2) Documentation identifying the persons who have voting rights in the borrowing entity.

(3) Documentation identifying the board of directors and senior management of the borrowing entity.

(4) The bank's assessment of the borrowing entity's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrowing entity's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrowing entity by members of the borrowing group and third parties.

6. For purposes of this section:

a. Loans and extensions of credit to one person will be attributed to another person and will be considered one borrower if either of the following apply:

(1) The proceeds, or assets purchased with the proceeds, benefit another person, other than a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(2) The expected source of repayment for each loan or extension of credit is the same for each borrower and no borrower has another source of income from which the loan may be fully repaid.

b. Loans and extensions of credit to a partnership, joint venture, or association are deemed to be loans and extensions of credit to each member of the partnership, joint venture, or association. This provision does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement or other written agreement, are not to be held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

c. Loans and extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless loans and extensions of credit are made to the member to purchase an interest in the partnership, joint venture, or association, or the proceeds are used for a common purpose with the proceeds of loans and extensions of credit to the partnership, joint venture, or association.

d. Loans and extensions of credit to one borrower which are endorsed or guaranteed by another borrower will not be combined with loans and extensions of credit to the endorser or guarantor unless the endorsement or guaranty is relied upon as a basis for the loans and extensions of credit. A state bank shall not be deemed to have violated this section if the endorsement or guaranty is relied upon after inception of loans and extensions of credit, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to one borrower in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

e. When the superintendent determines the interests of a group of more than one borrower, or any combination of the members of the group, are so interrelated that they should be considered a unit for the purpose of applying the limitations of this section, some or all loans and extensions of credit to that group of borrowers existing at any time shall be combined and deemed loans and extensions of credit to one borrower. A state bank shall not be deemed to have violated this section solely by reason of the fact that loans and extensions of credit to a group of borrowers exceed the limitations of this section at the

time of a determination by the superintendent that the indebtedness of that group must be combined, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to the group in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

7. Total loans and extensions of credit to one borrower for the purpose of applying the limitations of this section shall not include any of the following:

a. Additional funds advanced for taxes or for insurance if the advance is for the protection of the state bank.

b. Accrued and discounted interest on existing loans or extensions of credit.

c. Any portion of a loan or extension of credit sold as a participation by a state bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. If an originating state bank funds the entire loan, it must receive funding from the participants on the same day or the portions funded will be treated as loans by the originating state bank to the borrower.

d. Loans and extensions of credit to one borrower to the extent secured by a segregated deposit account which the state bank may lawfully set off. An amount held in a segregated deposit account in the name of more than one customer shall be counted only once with respect to all borrowers. Where the deposit is eligible for withdrawal before the secured loan matures, the state bank must establish internal procedures to prevent release of the security without the state bank's prior consent.

e. Loans and extensions of credit to one borrower which is a bank.

f. Loans and extensions of credit to one borrower which are fully secured by bonds and securities of the kind in which a state bank is authorized to invest for its own account without limitation under section 524.901, subsection 3.

g. Loans and extensions of credit to a federal reserve bank or to the United States, or of any department, bureau, board, commission, agency, or establishment of the United States, or to any corporation owned directly or indirectly by the United States, or loans and extensions of credit to one borrower to the extent that such loans and extensions of credit are fully secured or guaranteed or covered by unconditional commitments or agreements to purchase by a federal reserve bank or by the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States. Loans and extensions of credit to one borrower secured by a lease on property under the terms of which the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States, or the state of Iowa, or any political subdivision of the state, is lessee and under the terms of which the aggregate rentals payable to the borrower will be sufficient to satisfy the amount loaned is considered to be loans and extensions of credit secured or guaranteed as provided for in this paragraph.

h. Loans and extensions of credit to one borrower as the drawer of drafts drawn in good faith against actually existing values in connection with a sale of goods which have been endorsed by the borrower with recourse or which have been accepted.

i. Loans and extensions of credit arising out of the discount of commercial paper actually owned by a borrower negotiating the same and endorsed by a borrower without recourse and which is not subject to repurchase by a borrower.

j. Loans and extensions of credit drawn by a borrower in good faith against actually existing values and secured by nonnegotiable bills of lading for goods in process of shipment.

k. Loans and extensions of credit in the form of acceptances of other banks of the kind described in section 524.903, subsection 3.

l. Loans and extensions of credit of the borrower by reason of acceptances by the state bank for the account of the borrower pursuant to section 524.903, subsection 1.

m. A renewal or restructuring of a loan as a new loan or extension of credit following

the exercise by a state bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower or unless a new borrower replaces the original borrower or unless the superintendent determines that the renewal or restructuring was undertaken as a means to evade the bank's lending limit.

[C97, §1870; SS15, §1870; C24, 27, 31, 35, 39, §9223; C46, 50, 54, 58, 62, 66, §528.14, 528.15; C71, 73, 75, 77, 79, 81, §524.904; 81 Acts, ch 173, §4]

89 Acts, ch 257, §16; 95 Acts, ch 148, §90; 96 Acts, ch 1056, §10; 99 Acts, ch 6, §2; 2004 Acts, ch 1141, §25; 2011 Acts, ch 102, §3, 4, 10

Subsection 5 amended

Subsection 7, NEW paragraph m

## DIVISION XII

### OFFICES

#### 524.1201 General provisions.

1. A state bank may establish and operate any number of bank offices at any location in this state subject to the approval and regulation of the superintendent. A bank office may furnish all banking services ordinarily furnished to customers and depositors at the principal place of business of the state bank which operates the office, and a bank office manager or an officer of the bank shall be physically present at each bank office during a majority of its business hours. The central executive and official business and principal recordkeeping functions of a state bank shall be exercised only at its principal place of business or at another bank office as authorized by the superintendent for these functions.

2. Notwithstanding subsection 1, data processing services referred to in section 524.804 may be performed for the state bank at some other location. All transactions of a bank office shall be immediately transmitted to the principal place of business or other bank office authorized under subsection 1 of the state bank which operates the office, and no current recordkeeping functions shall be maintained at a bank office other than the bank office authorized under subsection 1, except to the extent the state bank which operates the office deems it desirable to keep there duplicates of the records kept at the principal place of business or authorized bank office of the state bank.

3. Notwithstanding any of the other provisions of this section, original loan documentation and trust recordkeeping functions may be located at any authorized bank office or at any other location approved by the superintendent.

[C27, 31, 35, §9258-b1; C39, §9258.1; C46, 50, 54, 58, 62, 66, §528.51; C71, 73, 75, 77, 79, 81, §524.1201; 81 Acts, ch 173, §6]

89 Acts, ch 257, §23; 91 Acts, ch 72, §1; 95 Acts, ch 32, §1; 96 Acts, ch 1056, §13, 14; 2001 Acts, ch 4, §1, 11; 2004 Acts, ch 1141, §26; 2005 Acts, ch 19, §109; 2006 Acts, ch 1015, §8; 2011 Acts, ch 102, §5

Subsection 4 stricken

## DIVISION XIV

### MERGER, CONSOLIDATION, AND CONVERSION

#### 524.1406 Appraisal rights of shareholders.

1. A shareholder of a state bank, which is a party to a proposed merger plan which will result in a state bank subject to this chapter, who objects to the plan is entitled to appraisal rights as provided in chapter 490, division XIII.

2. If a shareholder of a national bank which is a party to a proposed merger plan which will result in a state bank, or a shareholder of a state bank which is a party to a plan which will result in a national bank, objects to the plan and complies with the requirements of the applicable laws of the United States, the resulting state bank or national bank, as the case

may be, is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

3. *a.* Notwithstanding any contrary provision in chapter 490, division XIII, in determining the fair value of the shareholder's shares of a bank organized under this chapter or a bank holding company as defined in section 524.1801 in a transaction or event in which the shareholder is entitled to appraisal rights, due consideration shall be given to valuation factors recognized for federal and state estate tax purposes, including discounts for minority interests and discounts for lack of marketability. However, any payment made to shareholders under section 490.1324 shall be in an amount not less than the stockholders' equity in the bank disclosed in its last statement of condition filed under section 524.220 or the total equity capital of the bank holding company disclosed in the most recent report filed by the bank holding company with the board of governors of the federal reserve system, divided by the number of shares outstanding.

*b.* Prior to giving notice of a meeting at which a shareholder of a bank organized under this chapter or a bank holding company as defined in section 524.1801 would be entitled to appraisal rights, such bank or bank holding company may seek a declaratory judgment to establish the fair value for purposes of section 490.1301, subsection 4, of shares held by such shareholders. Another cause of action or a counterclaim shall not be joined with such a declaratory action. A declaratory judgment shall be filed in the county where the principal place of business of the bank or bank holding company is located. The court shall appoint an attorney to represent minority shareholders. All shareholders of the bank or bank holding company shall be served with notice of the action and be advised of the name, address, and telephone number of the attorney appointed to represent minority shareholders. The attorney appointed to represent minority shareholders shall select an appraiser to give an opinion of the fair value of such shares. The bank or bank holding company may select an appraiser to give an opinion on the fair value of the shares of the bank or bank holding company. Any shareholder may participate individually and present evidence of the fair value of such shareholder's shares. All court costs, appraiser's fees, and the fees and expenses of the attorney appointed to represent the minority shareholders shall be assessed against the bank or the bank holding company. A judgment in the action shall not determine fair value for a share to be less than the stockholders' equity in the bank disclosed in its last statement of condition filed under section 524.220 or the total equity capital of the bank holding company disclosed in the most recent report filed by the bank holding company with the board of governors of the federal reserve system, divided by the number of shares outstanding. A final judgment in the action shall establish fair value for the purposes of chapter 490, division XIII and shall be disclosed to the shareholders in the notice to shareholders of the meeting to approve the transaction that gives rise to appraisal rights. If the proposed transaction is approved by the shareholders, upon consummation of the proposed transaction the fair value so established shall be paid to each shareholder entitled to payment for the shareholder's shares upon receipt of such shareholder's share certificates.

[C54, 58, 62, 66, §528B.9; C71, 73, 75, 77, 79, 81, §524.1406]

90 Acts, ch 1205, §47; 95 Acts, ch 148, §114; 99 Acts, ch 162, §1; 99 Acts, ch 208, §59; 2000 Acts, ch 1211, §3; 2002 Acts, ch 1154, §116, 125; 2008 Acts, ch 1119, §11; 2010 Acts, ch 1138, §57; 2011 Acts, ch 34, §121

Subsection 3, paragraph a amended

## CHAPTER 533

### CREDIT UNIONS

Former ch 533 repealed by 2007 Acts, ch 174, §98

#### SUBCHAPTER I

#### ADMINISTRATION OF ACT

##### **533.111 Expenses of the credit union division.**

1. *a.* All expenses required in the discharge of the duties and responsibilities imposed upon the credit union division, the superintendent, and the review board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the department of commerce revolving fund created in section 546.12.

*b.* All fees imposed under this chapter are payable to the superintendent, who shall pay all fees and other moneys received to the treasurer of state within the time required by section 12.10. The treasurer of state shall deposit such funds in the department of commerce revolving fund created in section 546.12.

2. The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state, and each separate duty shall be fiscally self-sustaining.

3. The credit union division may expend additional funds, including funds for additional personnel, if the additional expenditures are actual expenses that exceed the funds budgeted for credit union examinations and directly result from examinations of state credit unions.

*a.* The amounts necessary to fund the excess examination expenses shall be collected from state credit unions being regulated, and the collections shall be treated as repayment receipts as defined in section 8.2.

*b.* The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed as provided in section 546.12, subsection 2, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

4. *a.* All fees and other moneys collected shall be deposited into the department of commerce revolving fund created in section 546.12 and expenses required to be paid under this section shall be paid from moneys in the department of commerce revolving fund and appropriated for those purposes.

*b.* Funds appropriated to the credit union division shall be subject at all times to the warrant of the director of the department of administrative services, drawn upon written requisition of the superintendent or a designated representative, for the payment of all salaries and other expenses necessary to carry out the duties of the credit union division.

5. The credit union division may accept reimbursement of expenses related to the examination of a state credit union from the national credit union administration or any other guarantor or insurance plan authorized by this chapter. These reimbursements shall be deposited into the department of commerce revolving fund created in section 546.12.

2007 Acts, ch 174, §11; 2009 Acts, ch 181, §104; 2011 Acts, ch 34, §122

2011 repeal of 2009 Acts, ch 181, §104, amendments to subsections 1, 3, 4, and 5 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Subsection 4, paragraph b amended

SUBCHAPTER II  
ORGANIZATION OF CREDIT UNIONS

**533.204 Election of board.**

1. At the organizational meeting, a board of directors of not less than nine members shall be elected to hold office for such terms as the bylaws provide and until successors are elected and qualified.

2. At each annual meeting, one member shall be elected to fill each position vacated by reason of an expiring term or other cause.

3. Pursuant to rules adopted by the superintendent, state credit unions may allow members to vote on the election of directors via electronic means including but not limited to the internet or telephone.

4. A record of the names and addresses of the directors, officers, and committee persons shall be filed with the superintendent within ten days following each election.

5. *a.* A state credit union wishing to maintain a board of directors of less than nine members may apply to the superintendent for permission to reduce the required number of directors. An application to reduce the required number of directors under this subsection must demonstrate both of the following:

(1) The application is necessitated by a hardship or other special circumstance.

(2) A lesser number of directors is in the best interest of the state credit union and its members.

*b.* In no event shall the superintendent allow a state credit union to maintain fewer than seven directors on a state credit union board.

2007 Acts, ch 174, §21; 2011 Acts, ch 34, §123

Subsection 5 amended

**533.205 Board of directors — duties.**

1. Within five days following the organizational meeting and each annual meeting, the directors shall elect the following officers from the membership of the board of directors:

*a.* A chairperson of the board.

*b.* A vice chairperson.

*c.* A secretary.

*d.* A chief financial officer whose title shall be designated by the board.

2. *a.* The board of directors shall appoint the following committees:

(1) A credit committee of not less than three members.

(2) An auditing committee of not less than three members.

*b.* The board may also appoint alternate members of the credit committee.

*c.* Only a member of the board or a member of the state credit union may be appointed to the credit committee or to the auditing committee.

*d.* The board may appoint an executive committee to act on the board's behalf.

3. The duties and responsibilities of a director and of the board of directors shall include, but are not limited to, all of the following:

*a.* General management of the affairs of the state credit union.

*b.* Setting the amount of the surety bond that shall be required of all officers and employees handling money.

*c.* Attendance at no less than seventy-five percent of the regular board meetings held during the calendar year.

*d.* Periodic review of the original records of the state credit union, or comprehensive summaries prepared by the officers of the state credit union, pertaining to loans, security interests, and investments.

*e.* Review of the adequacy of the state credit union's internal controls.

*f.* Periodic review of utilization of security measures.

*g.* Establishing education and training programs to ensure that the director possesses adequate knowledge to manage the affairs of the state credit union.

4. *a.* Directors of a state credit union shall discharge the duties of their position in good

faith and with that diligence, care, and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

b. The directors have a continuing responsibility to assure themselves that the state credit union is being managed according to law and that the practices and policies adopted by the board are being implemented.

5. a. The board of directors shall name or employ an individual who performs active executive or official duties for the state credit union as its chief executive officer.

b. The board shall fix the tenure and provide for the reasonable compensation of the chief executive officer.

c. The chief executive officer may be a member of the board of directors.

6. a. The chief executive officer or the chief executive officer's designee shall determine the compensation and tenure of employees of the state credit union.

b. An employee of the state credit union shall not be a member of the board of directors.

c. For purposes of this section, an "*employee of the state credit union*" means an individual employed by the state credit union other than the chief executive officer.

7. A state credit union shall not pay an overdraft of a director, officer, or employee of the state credit union on an account at the state credit union, unless the payment of funds is made in accordance with either of the following:

a. A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment.

b. A written, preauthorized transfer of collected funds from another account of the account holder at the state credit union.

8. A credit union director shall not receive compensation for service as a director. However, a director may be reimbursed for reasonable expenses directly related to such service.

2007 Acts, ch 174, §22; 2011 Acts, ch 34, §124

Subsection 2, paragraph d amended

### **533.207 Credit committee.**

1. The credit committee shall have responsibility for the general supervision of all loans to members.

2. Applications for loans shall be on a form approved by the credit committee.

a. All applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required.

b. Within the meaning of this section, an assignment of shares or deposits or the endorsement of a note may be deemed security.

3. At least a majority of the members of the credit committee shall review and act on all loan applications and may grant approval, or the credit committee, with the prior approval of the board of directors, may grant one or more loan officers the power to approve or reject loans subject to written conditions and regulations adopted by the credit committee.

4. The credit committee shall meet as often as may be necessary after due notice to each committee member.

2007 Acts, ch 174, §24; 2011 Acts, ch 34, §125

Subsection 4 amended

## SUBCHAPTER III

### CREDIT UNION OPERATIONS

#### **533.301 Powers.**

A state credit union shall have the power to do all of the following:

1. Receive payments for ownership shares, for other shares, or as deposits from any or all of the following:

a. Members of the state credit union.

b. Nonmembers as prescribed by rule where the state credit union is serving predominantly low-income members. Rules adopted allowing nonmember deposits in state

credit unions serving predominantly low-income members shall be designed solely to meet the needs of the low-income members.

- c. Other state credit unions.
- d. Federal, state, county, and city governments.
2. Make loans or leases to members.
3. Make loans to a cooperative society or other organization having membership in the state credit union.
4. Make deposits in state and national banks, state and federal savings banks or savings and loan associations, and state and federal credit unions, the accounts of which are insured by the federal deposit insurance corporation or the national credit union share insurance fund.
5. Make investments in any or all of the following:
  - a. Time deposits in state and national banks, state and federal savings banks or savings and loan associations, and state and federal credit unions, the deposits of which are insured by the federal deposit insurance corporation or the national credit union share insurance fund.
  - b. Obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by the United States government or any agency of the United States government, or any trust or trusts established for investing directly or collectively in the United States government or any agency of the United States government.
  - c. General obligations of this state and any subdivision of this state.
  - d. Purchase of notes of liquidating credit unions with the approval of the superintendent.
  - e. Shares and deposits in other credit unions.
  - f. Shares, stocks, loans, and other obligations or a combination of shares, stocks, loans, and other obligations of a credit union service organization, corporation, or association, provided the membership or ownership, as the case may be, of the credit union service organization, corporation, or association is primarily confined or restricted to credit unions or organizations of credit unions, and provided that the purpose of the credit union service organization, corporation, or association is primarily designed to provide services to credit unions, organizations of credit unions, or credit union members. However, the aggregate amount invested pursuant to this paragraph shall not exceed five percent of the assets of the credit union.
  - g. Obligations issued by federal land banks, federal intermediate credit banks, banks for cooperatives, or any of the federal farm credit banks.
  - h. Commercial paper issued by United States corporations as defined by rule.
  - i. Corporate bonds as defined by and subject to terms and conditions imposed by the superintendent, provided that the superintendent shall not approve investment in corporate bonds unless the bonds are rated in the two highest grades of corporate bonds by a nationally accepted rating agency.
  - j. Any permissible investment for federal credit unions, provided that this paragraph shall not permit a credit union to invest in a credit union service organization except as provided in paragraph "f".
6. Borrow money as provided in this chapter.
7. Assess penalties as may be provided by the bylaws.
8. Sue and be sued.
9. Make contracts.
10. Purchase, hold, and dispose of property necessary and incidental to its operation, except that any property acquired through foreclosure shall be disposed of within a period not to exceed ten years.
11. Exercise such incidental powers as may be necessary or requisite to enable the state credit union to carry on the business effectively for which it is incorporated.
12. Apply for share account and deposit account insurance that meets the requirements of this chapter, and take all actions necessary to maintain an insured status.
13. Serve a group of persons having an insufficient number of members to form or conduct the affairs of a separate credit union, upon the approval of the superintendent. The existence

of a common bond relationship between the group and the credit union affecting that service shall not be required.

14. Deposit with a credit union that has been in existence for not more than a year, an amount not to exceed twenty-five percent of the assets of the new credit union, but only one credit union may, at any time, make such a deposit.

15. Acquire the conditional sales contracts, promissory notes, or other similar instruments executed by its members, but the rate of interest existing on the instruments shall not exceed the highest rate charged by the acquiring credit union on its outstanding loans.

16. *a.* Sell, participate in, or discount the obligations of its members with or without recourse.

*b.* Purchase the obligations of credit union members, provided the obligations meet the requirements of this chapter.

17. Acquire and hold shares in a corporation engaged in providing and operating facilities through which a credit union and its members may engage, by means of either the direct transmission of electronic impulses to and from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union, in transactions in which such credit union is otherwise permitted to engage pursuant to applicable law, subject to the prior approval of the superintendent.

18. Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the state credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the state credit union.

*a.* Subject to the provisions of chapter 527, a state credit union may utilize, establish, or operate, alone or with one or more other credit unions, banks incorporated under chapter 524 or federal law, savings and loan associations incorporated under chapter 534 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the state credit union may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527.

*b.* This subsection shall not be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, and shall not be deemed to repeal, replace, or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any credit union.

19. Establish one or more state credit union offices other than its main office.

*a.* A state credit union may furnish at any of its offices all credit union services ordinarily furnished to the membership at its principal place of business.

*b.* The central executive and official business and recordkeeping functions of a state credit union shall be exercised at its principal place of business or at another state credit union office or a location authorized by the superintendent for these functions.

*c.* A state credit union shall file an informational statement in the form prescribed by the superintendent prior to opening a state credit union office.

*d.* A state credit union office shall not be opened without a certificate to establish a state credit union office issued by the superintendent.

*e.* The establishment of a state credit union office must be reasonably necessary for service to, and in the best interests of, the members of the state credit union, and shall not endanger the safety and soundness of the state credit union opening the office.

*f.* A state credit union may join with one or more credit unions in the operation of an office facility to meet the service needs of its members.

20. Contract with another credit union to furnish services which either could otherwise legally perform. Contracted services provided under this subsection are subject to regulation and examination like other services.

21. Purchase insurance or make the purchase of insurance available for members.

22. Charge fees and penalties and apply them to income.

23. *a.* (1) Act as agent of the federal government when requested by the secretary of the United States department of treasury.

(2) Perform such services as may be required in connection with the collection of taxes and other obligations due the United States and the lending, borrowing, and repayment of moneys by the United States.

(3) Act as a depository of public money when designated for that purpose.

b. (1) Act as agent of this state when requested by the treasurer of state.

(2) Perform such services as may be required in connection with the collection of taxes and other obligations due this state and the lending, borrowing, and repayment of moneys by this state.

(3) Act as a depository of public moneys when designated for that purpose.

24. Receive public funds pursuant to chapter 12C and pledge its assets to secure the deposit of public funds.

25. Engage in any activity authorized by the superintendent which would be permitted if the state credit union were federally chartered and which is consistent with state law.

26. To promote the public welfare, make donations for religious, charitable, scientific, educational, or community betterment purposes.

27. Set off a member's accounts against any of the member's debts or liabilities owed the state credit union pursuant to an agreement entered into between the member and the state credit union. The state credit union shall also have a lien on the shares and deposits of a member for any sum due to the state credit union from the member or for any loan endorsed by the member.

28. Sell, to persons in the field of membership, negotiable checks, including traveler's checks; money orders; and other similar money transfer instruments including international and domestic electronic fund transfers.

29. Cash checks and money orders, and receive international and domestic electronic fund transfers, for persons in the field of membership.

2007 Acts, ch 118, §1, 3; 2007 Acts, ch 174, §32; 2011 Acts, ch 25, §64

Subsection 1, unnumbered paragraph 1 amended

### **533.315 Loans.**

1. *General lending power.* A state credit union may loan to a member for a provident or productive purpose.

a. Loans are subject to the conditions contained in this section and in the bylaws.

b. A loan may be repaid by the borrower, in whole or in part, any day the office of the state credit union is open for business.

c. A loan shall be made pursuant to an application with supportive credit information.

d. The superintendent may adopt rules requiring periodic updating of credit or financial information for all loans or for classes of loans designated in the rules.

2. *Aggregate lending to one member.* A state credit union shall not lend in the aggregate to a member more than ten percent of its member savings.

3. *Lending to a credit union director.* A director of a state credit union may borrow from that state credit union under the provisions of this chapter, but the rates, terms, and conditions of a loan or line of credit either made to or endorsed or guaranteed by the director shall not be more favorable than the rates, terms, or conditions of comparable existing loans or lines of credit provided to other members. The aggregate amount of all director loans and lines of credit shall not exceed twenty-five percent of the assets of the state credit union.

4. *Loans on real property.*

a. A state credit union may make permanent loans, construction loans, combined construction and permanent loans, or second mortgage loans secured by liens on real property, as authorized by rules adopted by the superintendent. The rules shall contain provisions as necessary to ensure the safety and soundness of these loans, and to ensure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for a borrower's noncompliance with requirements of a loan agreement, or

provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

b. (1) A state credit union may include in the loan documents signed by the borrower a provision requiring the borrower to pay the state credit union each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the state credit union in order to better secure the loan. The state credit union shall be deemed to be acting in a fiduciary capacity with respect to these funds.

(2) A state credit union receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982, in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the state credit union pays to its members on ordinary savings deposits.

(3) A state credit union that maintains an escrow account in connection with any loan authorized by this subsection, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annual accounting of all transactions made with respect to the loan and escrow account.

c. A state credit union that obtains a report or opinion by an attorney or from another mortgage lender relating to defects in or liens or encumbrances on the title to real property, the unmarketability of the title to real property, or the invalidity or unenforceability of liens or encumbrances on real property, shall provide a copy of the report or opinion to the mortgagor and the mortgagor's attorney.

5. *Escrow reports.* A state credit union may act as an escrow agent with respect to real property that is mortgaged to the state credit union, and may receive funds and make disbursements from escrowed funds in that capacity. The state credit union shall be deemed to be acting in a fiduciary capacity with respect to escrowed funds. A state credit union that maintains an escrow account, whether or not a mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year. The summary shall be delivered or mailed not later than thirty days following the year to which the disclosure relates. The summary shall contain all of the following information:

a. The name and address of the mortgagee.

b. The name and address of the mortgagor.

c. A summary of escrow account activity during the year as follows:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(a) Payments against loan principal.

(b) Payments against interest.

(c) Payments against real estate taxes.

(d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) The balance of the escrow account at the end of the year.

d. A summary of loan principal for the year as follows:

(1) The amount of principal outstanding at the beginning of the year.

(2) The aggregate amount of payments against principal during the year.

(3) The amount of principal outstanding at the end of the year.

6. *Other loans.* Loans that are not secured by real property shall be subject to the following conditions:

a. Loans to any one member that in the aggregate exceed the unsecured loan limit established by the board of directors of a state credit union shall be secured by one or more cosigners or guarantors, or by a first lien on collateral having a value that is approximately

equal to the amount in excess of such unsecured loan limit. Every cosigner or guarantor shall furnish the state credit union with evidence of financial responsibility.

b. This subsection shall not be deemed to preclude a credit committee or loan officer from requiring security for any loan.

c. A state credit union may make loans according to any or all of the following:

(1) Loans insured under the provisions of 20 U.S.C. § 1071 – 1087 or similar state programs.

(2) Loans insured by the federal housing administration under 12 U.S.C. § 1703.

(3) Loans to families of low or moderate income as a part of programs authorized in chapter 16.

d. The restrictions and limitations contained in this subsection do not apply to loans made to a member credit union by a corporate central credit union.

7. *Loan renewals and extensions.* This section shall not prevent the renewal or extension of loans.

8. *Penalties.* The superintendent may impose a penalty on a state credit union for each loan made in violation of this section. If a state credit union, after notice in writing, and opportunity for hearing, fails to satisfactorily resolve the matter within sixty days from receipt of such notice, the superintendent may impose a penalty against such state credit union in an amount not to exceed one hundred dollars per day per violation for each day the violation remains unresolved.

9. *Consumer credit code.*

a. The provisions of the Iowa consumer credit code, chapter 537, shall apply to consumer loans made by a state credit union, and a provision of that chapter shall supersede any conflicting provision of this chapter with respect to a consumer loan.

b. Notwithstanding paragraph “a”, a state credit union may offer voluntary debt cancellation coverage, whether insurance or debt waiver, to members. The amount charged for the coverage shall be included in the amount financed, as defined in section 537.1301. However, the charge for such coverage may be excluded from the finance charge under the federal Truth in Lending Act as defined in section 537.1302.

10. *Early loan repayment.* If a member elects to repay a loan secured by a mortgage or deed of trust upon real property that is a single-family or a two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the state credit union shall be governed by section 535.9.

11. *Interest on prepayment.* Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, except that a state credit union may charge not to exceed six months’ advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. This subsection, however, does not authorize a state credit union to charge any advance interest or prepayment penalty where prohibited by section 535.9.

2007 Acts, ch 174, §46; 2011 Acts, ch 34, §126

Subsection 9, paragraph a amended

### **533.322 Preservation of records.**

1. The superintendent may adopt rules regarding the preservation of records and files of a state credit union or any other person supervised or regulated by the superintendent. A state credit union is not required to preserve its records for a period longer than seven years after the first day of January of the year following the time of the making or filing of such records. However, account records showing unpaid balances due to depositors shall not be destroyed.

2. A copy of an original may be kept in lieu of any original records.

a. For purposes of this section, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process that accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

b. A copy is deemed to be an original and shall be treated as an original record in a

judicial or administrative proceeding for purposes of admissibility in evidence. A facsimile, exemplification, or certified copy of any such copy reproduced from a film record is deemed to be a facsimile, exemplification, or certified copy of the original.

2007 Acts, ch 174, §53; 2011 Acts, ch 87, §3

Subsection 1 amended

#### **533.324 Preservation of records — statute of limitations.**

1. All causes of action, other than actions for relief on the grounds of fraud or mistake, against a state credit union based upon a claim or claims founded on a written contract, or a claim or claims inconsistent with an entry or entries in a state credit union record, made in the ordinary course of business, shall be deemed to have accrued, and shall accrue for the purpose of the statute of limitations one year after the breach or failure of performance of a written contract, or one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of six years from the date of such accrual.

2. In any cause or proceeding in which state credit union records or files may be called in question or be demanded of the state credit union, or any officer or employee of the state credit union, a showing that such records or files have been destroyed in accordance with the provisions of this chapter or rules adopted pursuant to this chapter shall be a sufficient excuse for the failure to produce them.

2007 Acts, ch 174, §55; 2011 Acts, ch 87, §4

Section amended

#### **533.329 Taxation.**

1. A state credit union shall be deemed an institution for savings and is subject to taxation only as to its real estate and moneys and credits. The shares shall not be taxed.

2. *a.* The moneys and credits tax on state credit unions is imposed at a rate of one-half cent on each dollar of the legal and special reserves that are required to be maintained by the state credit union under section 533.303, and shall be levied by the board of supervisors and placed upon the tax list and collected by the county treasurer. However, an exemption shall be given to each state credit union in the amount of forty thousand dollars.

*b.* The amount collected in each taxing district within a city shall be apportioned twenty percent to the county, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county and fifty percent to the general fund of the state.

*c.* The moneys and credits tax shall be collected at the location of the state credit union as shown in its articles of incorporation.

*d.* The moneys and credits tax imposed under this section shall be reduced by a tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

*e.* The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15.333.

*f.* The moneys and credits tax imposed under this section shall be reduced by a qualified expenditure tax credit authorized pursuant to section 15.393, subsection 2, paragraph “a”.

*g.* The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15.393, subsection 2, paragraph “b”.

*h.* The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

*i.* The moneys and credits tax imposed under this section shall be reduced by an Iowa fund of funds tax credit authorized pursuant to section 15E.66.

*j.* The moneys and credits tax imposed under this section shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

*k.* The moneys and credits tax imposed under this section shall be reduced by a redevelopment tax credit allowed under chapter 15, subchapter II, part 9.

l. The moneys and credits tax imposed under this section shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

2007 Acts, ch 162, §12, 13; 2007 Acts, ch 174, §60, 99; 2008 Acts, ch 1173, §12; 2008 Acts, ch 1191, §165; 2009 Acts, ch 179, §40; 2010 Acts, ch 1138, §14, 16, 24, 26; 2011 Acts, ch 130, §45, 47, 71

Paragraphs f and g of subsection 2 take effect May 17, 2007, and apply retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13

Tax credit certificates issued for future tax years for investments made on or before July 1, 2010, under subsection 2, former paragraph i are valid and may be claimed by a taxpayer after July 1, 2010, in the tax year stated on the certificate; 2010 Acts, ch 1138, §26

2010 amendment striking former paragraph k from subsection 2 applies retroactively to tax years beginning on or after January 1, 2010; 2010 Acts, ch 1138, §16

Subsection 2, paragraph l, applies retroactively to January 1, 2011, for tax years beginning and investments made on or after that date; 2011 Acts, ch 130, §47

Subsection 2, NEW paragraph l

## SUBCHAPTER IV

### MERGER, CONVERSION, AND DISSOLUTION OF CREDIT UNIONS

#### **533.404 Dissolution generally.**

The following shall apply to dissolution of a state credit union under this chapter, whether voluntary or involuntary:

1. Distribution of the assets of the state credit union shall be made in the following order:
  - a. The payment of costs and expense of the administrator of dissolution.
  - b. The payment of claims for public funds deposited pursuant to chapter 12C and the payment of claims which are given priority by applicable statutes. If the assets are insufficient for payment of the claims in full, priority shall be determined by the statutes or, in the absence of conflicting provisions, on a pro rata basis.
  - c. The payment of deposits, including accrued interest, up to the date of the special meeting of the members at which voluntary dissolution was authorized, or in the case of involuntary dissolution, the date of appointment of a receiver.
  - d. The pro rata apportionment of the balance among the members of record on the date of the special meeting of the members at which voluntary dissolution was authorized, or in the case of involuntary dissolution, the members of record on the date of appointment of a receiver.
2. All amounts due members who are unknown, or who are under a disability and no person is legally competent to receive the amounts, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state who shall hold the amounts in the manner prescribed by chapter 556. All amounts due creditors as described in section 490.1440 shall be transmitted to the treasurer of state in accordance with that section, shall be retained by the treasurer of state, and are subject to claim as provided for in that section.
3. The superintendent shall assume custody of the records of a state credit union dissolved pursuant to this chapter and shall retain the records which, in the superintendent's discretion, are deemed necessary, in accordance with the provisions of section 533.322. The superintendent may cause film, photographic, photostatic, or other copies of the records to be made and the superintendent shall retain the copies in lieu of the original records.
4. a. The dissolution of a state credit union shall not remove or impair any remedy available to or against such state credit union, its directors, officers, or members for any right or claim existing or any liability incurred prior to such dissolution if an action or other proceeding to enforce the right or claim is commenced within two years after the date of filing of a certificate or decree of dissolution with the county recorder in the county in which the state credit union has its principal place of business.
  - b. Any such action or proceeding by or against the state credit union may be prosecuted or defended by the state credit union in its corporate name.

c. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim.

2007 Acts, ch 174, §65; 2011 Acts, ch 34, §127

Subsection 2 amended

SUBCHAPTER V  
SUPERVISORY ACTIONS,  
LIMITATIONS, AND PENALTIES

**533.505 Subpoena — contempt.**

1. The superintendent or the superintendent’s designee may subpoena witnesses, compel their attendance, administer an oath, examine any person under oath, and require the production of any relevant record during the period of examination.

2. An examination may be conducted on any subject relating to the duties imposed upon or powers vested in the superintendent.

3. Whenever a person subpoenaed pursuant to subsection 1 fails to produce a record or to give testimony as required by the terms of the subpoena, the superintendent may apply to the district court of Polk county for the enforcement of the subpoena or the issuance of an order compelling compliance.

4. The refusal of any person to obey an order of the district court issued pursuant to subsection 3, without reasonable cause, shall be considered a contempt of court.

2007 Acts, ch 174, §72; 2011 Acts, ch 34, §128

Subsection 4 amended

CHAPTER 533A  
DEBT MANAGEMENT

**533A.14 Fees to state treasurer.**

All moneys received by the superintendent from fees, licenses, and examinations pursuant to this chapter shall be deposited by the superintendent with the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12.

[C71, 73, 75, 77, 79, 81, §533A.14]

2009 Acts, ch 181, §105

2011 repeal of 2009 Acts, ch 181, §105, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

CHAPTER 534  
SAVINGS AND LOAN ASSOCIATIONS

DIVISION II  
LOANS AND INVESTMENTS

**534.202 Powers with respect to loans.**

Every such association shall have the following general powers:

1. *Power to purchase and to lend upon loans.* The power to make loans shall include all of the following:

a. The power to purchase loans of any type that the association may make.

b. The power to make loans upon the security of loans of any type that the association may make.

c. The power to sell any loans of the type the association is authorized to make.

2. *Participation loans.* An association may participate with other lenders in the origination or purchase of an interest in loans of any type that such an association may otherwise make, provided that the other participants are instrumentalities of or corporations owned wholly or in part by the United States or this state, or are associations or corporations insured by the federal savings and loan insurance corporation or the federal deposit insurance corporation or are life insurance companies with assets in excess of one hundred million dollars, or are approved federal housing administration lenders or are service corporations in which the majority of the capital stock is owned by one or more insured institutions, such loans to be within or without the regular lending area of the association.

3. *Servicing loans.* To service mortgages and real estate contracts subject to such regulations and restrictions as may be prescribed by the superintendent.

[C73, §1185, 1186; C97, S13, §1898; C24, 27, 35, §9329; C39, §9329, 9340.09, 9340.14; C46, 50, 54, 58, §534.19, 534.33, 534.38; C62, 66, 71, 73, 75, 77, 79, 81, §534.19]

C85, §534.202

2011 Acts, ch 34, §129

Subsection 1 amended

### DIVISION III SAVINGS ACCOUNTS

#### **534.305 Redemption.**

When funds are on hand for the purpose, the association may redeem by lot or otherwise, as the board of directors determines, all or any part of any of its savings accounts on a dividend date by giving thirty days' notice by registered mail addressed to the account holders at their last addresses recorded on the books of the association. An association shall not redeem its share accounts when the association is in an impaired condition or when it has applications for withdrawal which have been on file more than thirty days and have not been reached for payment. The redemption price of a savings account shall be the full value of the account redeemed, as determined by the board of directors, but the redemption value shall not be less than the withdrawal value. If the notice of redemption has been given, and if on or before the redemption date the funds necessary for the redemption have been set aside for redemptions, dividends upon the accounts called for redemption shall cease to accrue from and after the dividend date specified as the redemption date, and rights with respect to those accounts terminate as of the redemption date, subject only to the right of the account holder of record to receive the redemption value without interest. Savings accounts which have been validly called for redemption must be tendered for payment within ten years from the date of redemption designated in the redemption notice, or they shall be canceled and paid to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12 and all claims of the account holders against the association are barred forever. Redemption shall not be made of any savings accounts which are held by a person who is a director and which are necessary to qualify the person to act as director.

[59 Acts, ch 338, §12; 61 Acts, ch 265, §7; C62, 66, 71, 73, 75, 77, 79, 81, §534.12]

83 Acts, ch 185, §51, 62; 83 Acts, ch 186, §10108, 10201, 10204

C85, §534.305

2009 Acts, ch 181, §106

2011 repeal of 2009 Acts, ch 181, §106, amendment to this section stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

DIVISION IV  
SUPERVISION

**534.408 Supervisory fees.**

1. A state association subject to examination, supervision, and regulation by the superintendent shall pay to the superintendent fees, established by the superintendent, based on the costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include but are not limited to costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

2. Failure to pay the amount of the fees to the superintendent within ten days after the date of billing shall subject the state association or any affiliate of a state association to an additional charge equal to five percent of the amount of the fees for each day the payment is delinquent.

3. All fees collected under this chapter shall be deposited with the treasurer of state in the department of commerce revolving fund created in section 546.12.

[C97, §1913; C24, 27, 31, 35, 39, §9380; C46, 50, 54, 58, §534.78; C62, 66, 71, 73, 75, 77, 79, 81, §534.61]

C85, §534.408

86 Acts, ch 1246, §619; 87 Acts, ch 234, §437; 88 Acts, ch 1158, §84; 90 Acts, ch 1247, §16; 91 Acts, ch 92, §15; 91 Acts, ch 260, §1245; 92 Acts, ch 1163, §104; 2007 Acts, ch 88, §36; 2009 Acts, ch 181, §107

2011 repeal of subsection 3 stricken pursuant to 2011 Acts, ch 127, §57, 89  
Section not amended; footnote revised

## CHAPTER 535

### MONEY AND INTEREST

**535.2 Rate of interest.**

1. Except as provided in subsection 2 hereof, the rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest at a rate not exceeding the rate permitted by subsection 3:

- a. Money due by express contract.
- b. Money after the same becomes due.
- c. Money loaned.
- d. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.
- e. Money due on the settlement of accounts from the day the balance is ascertained.
- f. Money due upon open accounts after six months from the date of the last item.
- g. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated.

2. a. The following persons may agree in writing to pay any rate of interest, and a person so agreeing in writing shall not plead or interpose the claim or defense of usury in any action or proceeding, and the person agreeing to receive the interest is not subject to any penalty or forfeiture for agreeing to receive or for receiving the interest:

- (1) A person borrowing money for the purpose of acquiring real property or refinancing a contract for deed.
- (2) A person borrowing money or obtaining credit in an amount which exceeds twenty-five thousand dollars, exclusive of interest, for the purpose of constructing improvements on real property, whether or not the real property is owned by the person.
- (3) A vendee under a contract for deed to real property.
- (4) A domestic or foreign corporation, and a real estate investment trust as defined in

section 856 of the Internal Revenue Code, and a person purchasing securities as defined in chapter 502 on credit from a broker or dealer registered or licensed under chapter 502 or under the Securities Exchange Act of 1934, 15 U.S.C., ch. 78A, as amended.

(5) A person borrowing money or obtaining credit for business or agricultural purposes, or a person borrowing money or obtaining credit in an amount which exceeds twenty-five thousand dollars for personal, family, or household purposes. As used in this paragraph, “*agricultural purpose*” means as defined in section 535.13, and “*business purpose*” includes but is not limited to a commercial, service, or industrial enterprise carried on for profit and an investment activity.

b. In determining exemptions under this subsection, the rules of construction stated in this paragraph apply:

(1) The purpose for which money is borrowed is the purpose to which a majority of the loan proceeds are applied or are designated in the agreement to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are applied for the same purposes and in the same proportion as the original principal of the loan that is refinanced or paid.

(3) If the lender releases the original borrower from all personal liability with respect to the loan, loan proceeds used to pay a prior loan by a different borrower are applied for the new borrower’s purposes in agreeing to pay the prior loan.

(4) If the lender releases the original borrower from all personal liability with respect to the loan, the assumption of a loan by a new borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) This paragraph does not modify or limit section 535.8, subsection 2, paragraph “c” or “e”.

(6) With respect to any transaction referred to in paragraph “a” of this subsection, this subsection supersedes any interest-rate or finance-charge limitations contained in the Code, including but not limited to this chapter and chapters 321, 322, 524, 533, 534, 536A, and 537.

3. a. (1) The maximum lawful rate of interest which may be provided for in any written agreement for the payment of interest entered into during any calendar month commencing on or after April 13, 1979, shall be two percentage points above the monthly average ten-year constant maturity interest rate of United States government notes and bonds as published by the board of governors of the federal reserve system for the calendar month second preceding the month during which the maximum rate based thereon will be effective, rounded to the nearest one-fourth of one percent per year.

(2) On or before the twentieth day of each month the superintendent of banking shall determine the maximum lawful rate of interest for the following calendar month as prescribed herein, and shall cause this rate to be published, as a notice in the Iowa administrative bulletin or as a legal notice in a newspaper of general circulation published in Polk county, prior to the first day of the following calendar month. This maximum lawful rate of interest shall be effective on the first day of the calendar month following publication. The determination of the maximum lawful rate of interest by the superintendent of banking shall be exempt from the provisions of chapter 17A.

b. Any rate of interest specified in any written agreement providing for the payment of interest shall, if such rate was lawful at the time the agreement was made, remain lawful during the entire term of the agreement, including any extensions or renewals thereof, for all money due or to become due thereunder including future advances, if any.

c. Any written agreement for the payment of interest made pursuant to a prior written agreement by a lender to lend money in the future, either to the other party to such prior written agreement or a third party beneficiary of such prior agreement, may provide for payment of interest at the lawful rate of interest at the time of the execution of the prior agreement regardless of the time at which the subsequent agreement is executed.

d. Any contract, note or other written agreement providing for the payment of a rate of interest permitted by this subsection which contains any provisions providing for an increase in the rate of interest prescribed therein shall, if such increase could be to a rate which would have been unlawful at the time the agreement was made, also provide for a reduction in the

rate of interest prescribed therein, to be determined in the same manner and with the same frequency as any increase so provided for.

4. *a.* Notwithstanding the provisions of subsection 3, with respect to any agreement which was executed prior to August 3, 1978, and which contained a provision for the adjustment of the rate of interest specified in that agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be nine cents on the hundred by the year, and any excess charge shall be a violation of section 535.4.

*b.* Notwithstanding the limitation contained in paragraph “a” of this subsection, with respect to a written agreement for the repayment of money loaned, which was executed prior to August 3, 1978 and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980 according to the terms of the agreement to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

*c.* Notwithstanding paragraph “a”, when a written agreement providing for the repayment of money loaned, and requiring the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement is extended, renewed, or otherwise amended by the parties on or after August 3, 1978, the parties may agree to the payment of interest from the effective date of the extension, renewal, or amendment, at a rate and in a manner that is lawful for a new agreement made on that date.

5. This section shall not apply to any loan which is subject to the provisions of section 636.46.

6. *a.* Notwithstanding the provisions of 1980 Iowa Acts, chapter 1156, with respect to any agreement which was executed on or after August 3, 1978, and prior to July 1, 1979, and which contained a provision for the adjustment of the rate of interest specified in the agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be that rate which is two and one-half percentage points above the rate initially to be paid under the agreement, provided that the greatest interest rate adjustment which may be made at any one time shall be one-half of one percent and an interest rate adjustment may not be made until at least one year has passed since the last interest rate adjustment, and any excess charge shall be a violation of section 535.4.

*b.* Notwithstanding the limitation contained in paragraph “a” of this subsection, with respect to a written agreement for the repayment of money loaned which was executed on or after August 3, 1978, and prior to July 1, 1979, and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980, according to the terms of the agreement to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

7. This section does not apply to a charge imposed for late payment of rent. However, in the case of a residential lease, a late payment fee shall not exceed ten dollars a day or forty dollars per month.

[C51, §945; R60, §1787; C73, §2077; C97, §3038; C24, 27, 31, 35, 39, §9404; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.2; 82 Acts, ch 1153, §4, 5]

93 Acts, ch 154, §5; 95 Acts, ch 125, §1; 2011 Acts, ch 25, §65

Life insurance policy loans; see §511.36

Subsection 3, paragraph a, unnumbered paragraphs 1 and 2 editorially designated as subparagraphs (1) and (2)

Subsection 6, paragraph a amended

## CHAPTER 535A

### MORTGAGE LOANS — RED-LINING

#### 535A.6 Action for damages.

1. Any person who has been aggrieved as a result of a violation of sections 535A.1 through 535A.3, this section, or sections 535A.7 through 535A.9 may bring an action in the district court of the county in which the violation occurred or in the county where the financial institution involved is located.

2. Upon a finding that a financial institution has committed a violation of either section 535A.2 or 535A.9, the court may award actual damages, court costs, and attorney fees.

[C79, 81, §535A.6]

85 Acts, ch 238, §2; 2010 Acts, ch 1114, §3; 2011 Acts, ch 25, §66

Subsection 1 amended

## CHAPTER 535B

### MORTGAGE BANKERS, MORTGAGE BROKERS, AND CLOSING AGENTS

#### 535B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Administrator*” means the superintendent of the division of banking of the department of commerce.

2. “*Closing agent*” means a person who is not a party to the real estate transaction, who provides real estate closing services.

3. “*Licensee*” means a person licensed under this chapter; however, any natural person who is acting solely as an employee or agent of a mortgage banker, mortgage broker, or closing agent licensed under this chapter need not be separately licensed under this chapter.

4. “*Mortgage banker*” means a person who does one or more of the following:

a. Makes at least four mortgage loans on residential real property located in this state in a calendar year.

b. Originates at least four mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.

c. Services at least four mortgage loans on residential real property located in this state. However, a natural person, who services less than fifteen mortgage loans on residential real estate within the state and who does not sell or transfer mortgage loans, is exempt from this paragraph if that person is otherwise exempt from the provisions of this chapter.

5. “*Mortgage broker*” means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year.

6. “*Mortgage loan*” means a loan of money secured by a lien on residential real property and includes a refinancing of a contract of sale, an assumption of a prior mortgage loan, and a refinancing of a prior mortgage loan.

7. “*Party to the real estate transaction*” means, with respect to a particular real estate transaction, a lender, seller, purchaser, or borrower.

8. “*Person*” means a natural person, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.

9. “*Natural person*” means an individual who is not an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any other group of individuals or business entities, however organized.

10. “*Registrant*” means a person registered under section 535B.3.

11. “*Real estate closing services*” means the administrative and clerical services required to carry out the conveyance or transfer of real estate or an interest in real estate located in this state to a purchaser or lender. “*Real estate closing services*” include but are not limited to preparing settlement statements, determining that all closing documents conform to the parties’ contract requirements, ascertaining that the lender’s instructions have been satisfied, conducting a closing conference, receiving and disbursing funds, and completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction. “*Real estate closing services*” do not include performing solely notary functions.

12. “*Residential real estate*” means the same as defined in section 535D.3.

13. “*Residential real property*” means real property, which is an owner-occupied single-family or two-family dwelling, located in this state, occupied or used or intended to be occupied or used for residential purposes, including an interest in any real property covered under chapter 499B.

14. “*Trust account*” means a checking account with a federally insured bank, savings and loan association, credit union, or savings bank, which is used exclusively for the deposit of funds transferred electronically or otherwise, cash, money orders, or negotiable instruments that are received by a closing agent to effect a real estate closing.

88 Acts, ch 1146, §1; 89 Acts, ch 133, §1 – 3; 91 Acts, ch 65, §1; 2005 Acts, ch 83, §1 – 3, 10; 2006 Acts, ch 1042, §12 – 14; 2009 Acts, ch 61, §26, 27, 39; 2010 Acts, ch 1111, §1, 13; 2011 Acts, ch 34, §130

2010 amendment to this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13

See Code editor’s note on simple harmonization

Section amended

### **535B.2 Exemptions.**

This chapter, except for sections 535B.3, 535B.11, 535B.12, and 535B.13, does not apply to any of the following:

1. A bank, bank holding company, savings bank, savings and loan association, or credit union organized under the laws of this state, another state, or the United States, or a subsidiary owned or controlled by such a bank, bank holding company, savings bank, savings and loan association, or credit union.

2. A loan company licensed under chapter 536 or 536A, except when acting as a closing agent.

3. An insurance company or a subsidiary or affiliate of an insurance company organized under the laws of this state, another state, or the United States, and subject to regulation by the commissioner of insurance.

4. Mortgage lenders or mortgage bankers maintaining an office in this state whose principal business in this state is conducted with or through mortgage lenders or mortgage bankers otherwise exempt under this section and which maintain a place of business in this state.

5. An individual who is employed by a person otherwise exempt under this section, or who, by contract, operates exclusively on behalf of a person otherwise exempt under this section to the extent that the individual is acting within the scope of the individual’s employment or exclusive contract with the exempt person and is acting within the scope of the exempt person’s charter, license, authority, approval, or certificate.

6. A real estate broker licensed under chapter 543B while engaged in practice as a real estate broker.

7. A nonprofit organization qualifying for tax-exempt status under the Internal Revenue Code as defined in section 422.3 which offers housing services to low and moderate income families.

8. An attorney licensed to practice law in this state or the attorney’s employees or agents acting under the attorney’s direction, in a transaction where the conduct of the attorney is regulated by the Iowa supreme court in its capacity as disciplinary authority over attorneys.

9. An officer or employee of the federal government, any state government, or a political subdivision of the state acting in an official capacity.

10. A qualified intermediary or an exchange accommodation titleholder facilitating an

exchange under section 1031 of the Internal Revenue Code whose role in the transaction is limited to acting in such a capacity.

88 Acts, ch 1146, §2; 89 Acts, ch 83, §76; 89 Acts, ch 133, §4, 5; 96 Acts, ch 1056, §21; 2005 Acts, ch 83, §4, 10; 2008 Acts, ch 1160, §15; 2010 Acts, ch 1111, §2, 13

2010 amendment to this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13  
Section amended

#### **535B.2A Closing agents affiliated with attorneys.**

1. A closing agent affiliated with an attorney is not exempt from licensure under this chapter if the closing agent engages in transactions not exempt under section 535B.2, subsection 8.

2. Licensure under, and compliance with the provisions of, this chapter shall not exempt any attorney from discipline by the Iowa supreme court in its capacity as regulatory authority over attorneys licensed to practice in this state, nor from discipline by the regulatory authorities over attorneys licensed in other jurisdictions.

3. If a complaint is filed with the administrator against a closing agent affiliated with an attorney licensed to practice in this state, the administrator shall promptly give notice of the complaint to the Iowa supreme court or its designee, and cooperate in any disciplinary investigation which the court initiates against the attorney. On request of the court, the administrator shall stay any pending disciplinary action to the extent that the court determines necessary to avoid prejudice to a disciplinary action against the attorney.

2010 Acts, ch 1111, §3, 13

2010 enactment of this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13  
NEW section

#### **535B.4 General licensing requirements.**

1. A person shall not act as a mortgage banker, mortgage broker, or closing agent in this state or use the title “*mortgage banker*” or “*mortgage broker*” without first obtaining a license from the administrator.

2. *a.* License applicants shall submit to the administrator an application on forms provided by the administrator. The forms shall include, at a minimum, all addresses at which business is to be conducted, the names and titles of each director and principal officers of the business, and a description of the activities of the applicant in such detail as the administrator may require.

*b.* The administrator may require applicants and licensees to be licensed through the nationwide mortgage licensing system and registry as defined in section 535D.3, and may participate in the nationwide mortgage licensing system and registry if this requirement is implemented. In the event the requirement is implemented, the administrator may establish by rule or order new requirements as necessary and appropriate, including but not limited to requirements that applicants, and officers, directors, and others in a position of authority in relation to the applicant, submit to fingerprinting and criminal history checks, and pay associated fees relating thereto.

3. The applicant shall also submit a recently prepared certified financial statement.

4. The applicant for an initial license shall submit a fee in the amount of five hundred dollars.

5. Licenses granted under this chapter are not assignable.

6. Licenses granted under this chapter expire on the next December 31 after their issuance.

7. Applications for renewals of licenses under this chapter must be filed with the administrator before December 1 of the year of expiration on forms prescribed by the administrator. A renewal application must be accompanied by a fee of two hundred dollars for a license to transact business solely as a mortgage broker, four hundred dollars for a license to transact business as a mortgage banker, and two hundred dollars for a license to transact business as a closing agent. The administrator may assess a late fee of ten dollars per day for applications or registrations accepted for processing after December 1.

8. A mortgage banker or mortgage broker licensee shall not conduct business under any other name than that given in the license. A fictitious name may be used, but a mortgage

banker or mortgage broker licensee shall conduct business only under one name at a time. However, the administrator may issue more than one license to the same person to conduct business under different names at the same time upon compliance for each such additional mortgage banker or mortgage broker license with all of the provisions of this chapter governing an original issuance of a license.

9. A licensee may not establish branch locations outside of the United States.

10. In addition to the application and renewal fees provided for in subsections 4 and 7, the administrator may assess application and renewal fees for each branch location of the licensee, sponsor fees, and change of sponsor fees.

88 Acts, ch 1146, §4; 89 Acts, ch 133, §7; 2006 Acts, ch 1042, §15, 16; 2007 Acts, ch 22, §95; 2008 Acts, ch 1160, §17, 18; 2009 Acts, ch 61, §28, 39; 2010 Acts, ch 1111, §4, 13; 2011 Acts, ch 102, §6

2010 amendments to subsections 1, 2, 7, and 8 take effect July 1, 2011; 2010 Acts, ch 1111, §13

See Code editor's note on simple harmonization

Subsections 1, 2, 7, and 8 amended

NEW subsection 9 and former subsection 9 renumbered as 10

### **535B.5 Granting and denial of license.**

1. Upon the filing of an application for a license, if the administrator finds that the financial responsibility, character, and general fitness of the applicant and of the members thereof if the applicant is a partnership, association, or other organization and of the officers, directors, and principal employees if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of this chapter, the administrator shall issue the applicant a license as a mortgage broker, mortgage banker, or closing agent. The administrator shall approve or deny an application for a license within ninety days after the filing of the application for a license.

2. If the administrator does not so find, the license shall not be issued, and the administrator shall notify the applicant in writing of the denial and the reasons for the denial.

88 Acts, ch 1146, §5; 2010 Acts, ch 1111, §5, 13

2010 amendment to subsection 1 takes effect July 1, 2011; 2010 Acts, ch 1111, §13

Subsection 1 amended

### **535B.6 Licensing of certain corporations.**

1. An applicant that is incorporated under the laws of another state in the United States must be authorized to do business in this state. Such a corporation shall file with the license application both of the following:

a. An irrevocable consent, duly acknowledged, that suits and actions may be commenced against that licensee in the courts of this state by service of process in the usual manner provided for by the statutes and court rules of this state.

b. Proof of authorization to do business in this state.

2. Businesses that are incorporated outside of the United States are not eligible for a license.

88 Acts, ch 1146, §6; 2011 Acts, ch 102, §7

Section amended

### **535B.8 Operating without a license.**

A person who, without first obtaining a license under this chapter, engages in the business or occupation of, or advertises or holds the person out as, or claims to be, or temporarily acts as, a mortgage banker, mortgage broker, or closing agent in this state is guilty of a class "D" felony and may be prosecuted by the attorney general or a county attorney.

88 Acts, ch 1146, §8; 2008 Acts, ch 1160, §21; 2009 Acts, ch 61, §31, 39; 2010 Acts, ch 1111, §6, 13

2010 amendment to this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13

Section amended

### **535B.9 Bonds required of license applicants.**

1. An applicant for a license shall file with the administrator a bond furnished by a surety company authorized to do business in this state, together with evidence of whether the applicant is seeking to transact business as a mortgage broker, mortgage banker, or closing

agent. Until such time as the superintendent pursuant to administrative rule determines a bond amount that reflects the dollar value of loans originated, the bond shall be in the amount of one hundred thousand dollars for applicants seeking to transact business as a mortgage broker or mortgage banker. For applicants seeking to transact business as a closing agent, the bond shall be in the amount of twenty-five thousand dollars, unless the administrator by rule establishes a higher bond amount. The bond shall be continuous in nature until canceled by the surety with not less than thirty days' notice in writing to the mortgage broker, mortgage banker, or closing agent and to the administrator indicating the surety's intention to cancel the bond on a specific date.

2. For applicants seeking to transact business as a mortgage broker or mortgage banker, the bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

3. For applicants seeking to transact business as a closing agent, the bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state all moneys that become due or owing to the state from the applicant by virtue of this chapter.

4. In lieu of filing a bond, the applicant may pledge an alternative form of collateral acceptable to the administrator, if the alternative collateral provides protection to the state and any aggrieved person that is equivalent to that provided by a bond.

5. A licensee may not act as a closing agent unless the bond requirements in this section are in place at the time of a real estate closing.

88 Acts, ch 1146, §9; 89 Acts, ch 133, §8; 2005 Acts, ch 83, §7, 10; 2006 Acts, ch 1042, §20; 2008 Acts, ch 1160, §22; 2009 Acts, ch 61, §32, 39; 2010 Acts, ch 1111, §7, 13

2010 amendment to this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13  
Section amended

#### **535B.13 Civil enforcement authority.**

1. If the administrator believes that a person has engaged in, or is about to engage in, an act or practice that constitutes or will constitute a violation of this chapter, the administrator may apply to the district court for an order enjoining such act or practice. Upon showing by the administrator that such person has engaged, or is about to engage, in any such act or practice, the district court shall grant an injunction.

2. The administrator may investigate or initiate a complaint against a person who is not licensed under this chapter to determine whether the person is violating this chapter.

3. In addition to or as an alternative to applying to the district court for an injunction, the administrator may issue an order to a person who is not licensed under this chapter to require compliance with this chapter, including to cease and desist from conducting business or from any harmful activities or violations of law or regulation; may impose a civil penalty against such person for any violation of this chapter in an amount up to five thousand dollars for each violation; may order the person to pay restitution; and may order the person to pay the costs for the investigation and prosecution of the enforcement action including attorney fees.

4. Before issuing an order under subsection 3, the administrator shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for in disciplinary proceedings involving a licensee under this chapter.

5. A person aggrieved by the imposition of a civil penalty under subsection 3 may seek judicial review pursuant to section 17A.19.

6. An action to enforce an order under this section may be joined with an action for an injunction.

7. This chapter does not limit the power of the attorney general to determine that any

other practice is unlawful under the Iowa consumer fraud Act contained in section 714.16, and to file an action under that section.

88 Acts, ch 1146, §13; 91 Acts, ch 65, §2; 2010 Acts, ch 1111, §8, 13

2010 amendment to this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13  
Section stricken and rewritten

#### **535B.14 Administrative authority.**

The administrator shall have broad administrative authority to administer, interpret, and enforce this chapter and to promulgate rules implementing this chapter, including rules providing the grounds for denial of a license based on information received as a result of a background check, character and fitness grounds, and any other grounds for which a licensee may be disciplined.

88 Acts, ch 1146, §14; 2007 Acts, ch 170, §5; 2009 Acts, ch 61, §34, 39; 2010 Acts, ch 1111, §9, 13

2010 amendment to this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13  
Section stricken and rewritten

**535B.17 Powers and duties of the administrator — waiver authority.** Repealed by 2010 Acts, ch 1111, §12, 13. See §535B.4.

2010 repeal of this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13

#### **535B.19 Trust account requirements for closing agents.**

A licensee acting as a closing agent shall comply with all of the following:

1. All moneys received for disbursement during a real estate closing shall be deposited in a trust account and, when deposited, the moneys shall be designated as trust funds or trust accounts or under some other appropriate name indicating that the moneys are not the moneys of the licensee.

2. All trust account moneys shall be deposited in a financial institution that is insured by the federal deposit insurance corporation or national credit union share insurance fund unless the transaction does not involve residential real estate and another financial institution has been designated in writing in the escrow instructions.

3. If the trust account earns interest and the interest earned is retained by any party other than the party to the real estate transaction who is the owner of the funds, the licensee shall disclose this fact in writing to the parties to the transaction.

4. A licensee shall enter into a written agreement to pay interest to a party to a transaction, or to a third party if requested by the parties to a transaction, if the client's trust funds can earn net interest. In determining whether a client can earn net interest on funds placed in trust, the licensee shall take into consideration all relevant factors including the following:

a. The amount of interest that the funds would earn during the period in which they are reasonably expected to be deposited.

b. The cost of establishing and administering an individual interest-bearing trust account in which the interest would be transmitted to the client, including any needed tax forms.

c. The capability of the financial institution to calculate and pay interest to individual clients through subaccounting or otherwise.

5. The licensee shall notify the administrator of the name of each financial institution in which a trust account is maintained and the name of the account on forms acceptable to the administrator. A licensee may maintain more than one trust account provided it advises the administrator of the multiple accounts.

6. A licensee shall only deposit trust funds in a trust account and shall not commingle the licensee's personal funds or other funds in the trust account with the exception that a licensee may deposit and keep a sum not to exceed one thousand dollars in the trust account from the licensee's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account or to advance funds to pay incidental fees as permitted in section 535B.20, subsection 2.

7. Moneys deposited in a trust account are not subject to execution or attachment or to any claim against the licensee.

8. A licensee shall not knowingly keep or cause to be kept any money in any bank, credit union, or other financial institution under any name designating the moneys as belonging to

a client of the licensee, unless the money was actually entrusted to the licensee for deposit in trust.

2010 Acts, ch 1111, §10, 13

2010 enactment of this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13  
NEW section

**535B.20 Disbursing from a trust account.**

A licensee acting as a closing agent shall not make, in a real estate closing, a disbursement from a trust account on behalf of another person, unless the following conditions are met:

1. The cash, funds, money orders, checks, or negotiable instruments necessary for the disbursement have been transferred electronically to or deposited into the trust account of the closing agent and are available for withdrawal and disbursement, or have been physically received by the agent prior to disbursement and are intended for deposit no later than the next banking day after the date of disbursement.

2. Nothing in this section prohibits a closing agent licensee from advancing funds not exceeding one thousand dollars from a trust account or otherwise on behalf of a party to a real estate closing for the purpose of paying incidental fees, such as conveyance and recording fees, in order to effect and close the sale, purchase, exchange, transfer, encumbrance, or lease of residential real property that is the subject of the real estate closing.

2010 Acts, ch 1111, §11, 13

2010 enactment of this section takes effect July 1, 2011; 2010 Acts, ch 1111, §13  
NEW section

## CHAPTER 535D

### MORTGAGE LICENSING ACT

Transition provisions relating to temporary  
licensure of certain persons registered under chapter 535B;  
2009 Acts, ch 61, §24

**535D.4 License and registration required.**

1. On or after January 1, 2010, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling or residential real estate located in this state without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

2. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license pursuant to this section, and registers with and maintains a valid unique identifier issued by the nationwide mortgage licensing system and registry.

3. An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

2009 Acts, ch 61, §4, 25; 2011 Acts, ch 102, §8

Subsection 1 amended

**535D.23 Reports of condition required — exceptions.**

Each mortgage loan originator licensee shall submit reports of condition to the nationwide mortgage licensing system and registry unless the mortgage loan originator's activity is included in a report submitted by the mortgage loan originator's employer in accordance with section 535B.11, subsection 3, section 535B.18, or section 536A.14, subsection 2. The

reports shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

2011 Acts, ch 102, §9

NEW section

## CHAPTER 536

### REGULATED LOANS

#### **536.19 Violations.**

Any person, partnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of section 536.1, 536.12, 536.13 or 536.14, which are not also violations of chapter 537, article 5, part 3, of the Iowa consumer credit code, shall be guilty of a serious misdemeanor. Violations of the Iowa consumer credit code, chapter 537, shall be subject to the penalties provided therein.

[C24, 27, 31, §9435; C35, §9438-f19; C39, §9438.19; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.19]

2003 Acts, ch 44, §114; 2008 Acts, ch 1032, §106; 2011 Acts, ch 25, §67

Section amended

## CHAPTER 537

### CONSUMER CREDIT CODE

The general assembly of the state of Iowa hereby declares and states that it does not want any of the provisions of Public Law No. 96 – 221 (94 Stat. 132), section 501, subsection (a), paragraph (1), to apply with respect to loans, mortgages, credit sales, and advances made in this state; and that it does not want any of the provisions of Public Law No. 96 – 221 (94 Stat. 132), Part B (section 511, subsections (a) and (b)), to apply with respect to loans made in this state; and that it does not want any of the provisions of any of the amendments contained in Public Law No. 96 – 221 (94 Stat. 132), sections 521, 522 and 523 to apply with respect to loans made in this state; and that it does not want any of the provisions of Public Law No. 96 – 221 (94 Stat. 132), section 524 to apply with respect to loans made in this state.

It is the intent of the general assembly of the state of Iowa in enacting this section to exercise all authority granted by Congress and to satisfy all requirements imposed by Congress in Public Law No. 96 – 221 (94 Stat. 132), section 501, subsection (b), paragraph (2), and section 512, and section 524, subsection (i), paragraph (3), and section 525, for the purpose of rendering the provisions of Public Law No. 96 – 221 (94 Stat. 132), Title V, inapplicable in this state;

80 Acts, ch 1156, §32

Court action required for termination of installment contracts during military service; §29A.102, 29A.105

Maximum rate of interest during military service on obligations or liabilities incurred prior to service;

§29A.103, 29A.104

Enforcement of federal consumer credit protection provisions for members of military; §535.18

### ARTICLE 3

#### REGULATION OF AGREEMENTS AND PRACTICES

#### PART 2

#### DISCLOSURE

##### **537.3203 Notice to consumer.**

The creditor shall give to the consumer a copy of any writing evidencing a consumer credit transaction, other than one pursuant to open end credit, if the writing requires or provides for signature of the consumer. The writing evidencing the consumer's obligation to pay under a consumer credit transaction, other than one pursuant to open end credit, shall contain a clear and conspicuous notice to the consumer that the consumer should not sign it before reading it, that the consumer is entitled to a copy of it, and, except in the case of a consumer lease, that the consumer is entitled to prepay the unpaid balance at any time with such penalty and minimum charges as the agreement and section 537.2510 may permit, and may be entitled to receive a refund of unearned charges in accordance with law. The following notices if clear and conspicuous comply with this section:

1. In all transactions to which this section applies:

##### NOTICE TO CONSUMER:

1. Do not sign this paper before you read it.
2. You are entitled to a copy of this paper.
3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.

2. In addition, in a transaction in which a minimum charge will be collected or retained, the notice to consumer shall state:

4. If you prepay the unpaid balance, you may have to pay a minimum charge not greater than seven dollars and fifty cents.

[C58, 62, 66, 71, 73, §322.3(6, b); C75, 77, 79, 81, §537.3203]  
2011 Acts, ch 25, §68  
Section amended

## CHAPTER 537A

### CONTRACTS

#### **537A.5 Indemnity agreements — construction contracts.**

1. As used in this section, “*construction contract*” means an agreement relating to the construction, alteration, improvement, development, demolition, excavation, rehabilitation, maintenance, or repair of buildings, water or sewage treatment plants, power plants, or any other improvements to real property in this state, including shafts, wells, and structures, whether on ground, above ground, or underground, and includes agreements for architectural services, design services, engineering services, construction services, construction management services, development services, maintenance services, material purchases, equipment rental, and labor. “*Construction contract*” includes all public, private, foreign, or domestic agreements as described in this subsection other than such public agreements relating to highways, roads, and streets.

2. Except as excluded under subsection 3, a provision in a construction contract that requires one party to the construction contract to indemnify, hold harmless, or defend any other party to the construction contract, including the indemnitee’s employees, consultants, agents, or others for whom the indemnitee is responsible, against liability, claims, damages, losses, or expenses, including attorney fees, to the extent caused by or resulting from the negligent act or omission of the indemnitee or of the indemnitee’s employees, consultants, agents, or others for whom the indemnitee is responsible, is void and unenforceable as contrary to public policy.

3. This section does not apply to the indemnification of a surety by a principal on any surety bond, an insurer’s obligation to its insureds under any insurance policy or agreement, a borrower’s obligations to its lender, or any obligation of strict liability otherwise imposed by law.

2011 Acts, ch 33, §1; 2011 Acts, ch 131, §99, 158  
NEW section

## CHAPTER 541A

### INDIVIDUAL DEVELOPMENT ACCOUNTS

#### **541A.3 Individual development accounts — state savings match and tax provisions.**

All of the following state savings match and tax provisions shall apply to an individual development account:

1. *a.* Payment by the state of a state savings match on amounts of up to two thousand dollars that an account holder deposits in the account holder’s account.

*b.* Moneys transferred to an individual development account from another individual development account and a state savings match received by the account holder in accordance with this section shall not be considered an account holder deposit for purposes of determining a state savings match.

*c.* Payment of a state savings match either shall be made directly to the account holder

or to an operating organization's central reserve account for later distribution to the account holder in the most appropriate manner as determined by the administrator.

d. Subject to the limitation in paragraph "a", the state savings match shall be equal to one hundred percent of the amount deposited by the account holder. However, the administrator may limit, reduce, delay, or otherwise revise state savings match payment provisions as necessary to restrict the payments to the funding available.

2. Income earned by an individual development account is not subject to state tax, in accordance with the provisions of section 422.7, subsection 28.

3. Amounts transferred between individual development accounts are not subject to state tax.

4. The administrator shall coordinate the filing of claims for a state savings match authorized under subsection 1, between account holders and operating organizations. Claims approved by the administrator may be paid to each account holder, for an aggregate amount for distribution to the holders of the accounts in a particular financial institution, or to an operating organization's central reserve account for later distribution to the account holders depending on the efficiency for issuing the state savings match payments. Claims shall be initially filed with the administrator on or before a date established by the administrator. Claims approved by the administrator shall be paid from the individual development account state savings match fund.

93 Acts, ch 97, §18; 96 Acts, ch 1106, §11; 98 Acts, ch 1218, §78, 84; 2002 Acts, ch 1175, §39, 40; 2003 Acts, ch 145, §286; 2006 Acts, ch 1016, §5, 6, 8; 2006 Acts, ch 1185, §123; 2008 Acts, ch 1178, §13, 17; 2009 Acts, ch 70, §3, 5; 2009 Acts, ch 133, §170

2008 amendment changing "savings refund" to "state match" is retroactively applicable to January 1, 2008, for the tax year commencing on January 1, 2008; 2008 Acts, ch 1178, §17

2009 amendment to subsection 1, paragraph a, by 2009 Acts, ch 70, §3, takes effect April 17, 2009, and applies retroactively to July 1, 2008; 2009 Acts, ch 70, §5

Individual disaster grants for unmet needs to provide the state match to certain account holders affected by natural disaster; 2009 Acts, ch 169, §4 - 6; 2009 Acts, ch 179, §175, 176, 179; 2011 Acts, ch 127, §53, 89

Section not amended; footnote revised

## CHAPTER 542

### PUBLIC ACCOUNTANTS

#### 542.3 Definitions.

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

1. a. "Attest" or "attest service" means providing any of the following services:

(1) An audit or other engagement to be performed in accordance with the statements on auditing standards.

(2) A review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.

(3) Any engagement to be performed in accordance with the statements on standards for attestation engagements.

(4) Any engagement to be performed in accordance with the standards of the public company accounting oversight board.

b. The standards specified in this subsection are those standards adopted by the board, by rule, by reference to the standards developed for general application by the American institute of certified public accountants, the public company accounting oversight board, or other recognized national accountancy organization.

2. "Board" means the Iowa accountancy examining board established under section 542.4 or its predecessor under prior law.

3. "Certificate" means a certificate as a certified public accountant issued under section 542.6 or 542.19, or a certificate issued under corresponding prior law.

4. "Certified public accountant" means a person licensed by the board who holds a certificate issued under this chapter or corresponding prior law.

5. “*Certified public accounting firm*” means a sole proprietorship, a corporation, a partnership, a limited liability company, or any other form of organization issued a permit to practice as a firm of certified public accountants under section 542.7.

6. “*Client*” means a person or entity that agrees with a licensee or licensee’s employer to receive a professional service.

7. “*Commission*” means a brokerage or other participation fee. “*Commission*” does not include a contingent fee.

8. “*Compilation*” means a service performed in accordance with statements on standards for accounting and review services and presented in the form of financial statements, which provides information that is the representation of management without undertaking to express any assurance on the statements.

9. “*Contingent fee*” means a fee established for the performance of a service pursuant to an arrangement under which a fee will not be charged unless a specified finding or result is attained, or under which the amount of the fee is otherwise dependent upon the finding or result of such service. “*Contingent fee*” does not mean a fee fixed by a court or other public authority, or a fee related to any tax matter which is based upon the results of a judicial proceeding or the findings of a governmental agency.

10. “*Home office*” is the location specified by the client as the address to which an attest or compilation service is directed, which may be a subunit or subsidiary or an entity or the principal office of an entity, as the board may further define by rule.

11. “*License*” means a certificate issued under section 542.6 or 542.19, a permit issued under section 542.7, or a license issued under section 542.8; or a certificate, permit, or license issued under corresponding prior law.

12. a. “*Licensed public accountant*” means a person licensed by the board who does not hold a certificate as a certified public accountant under this chapter, and who offers to perform or performs for the public any of the following services:

- (1) Records financial transactions in books of record.
- (2) Makes adjustments of financial transactions in books of record.
- (3) Makes trial balances from books of record.
- (4) Prepares internal verification and analysis of books or accounts of original entry.
- (5) Prepares financial statements, schedules, or reports.
- (6) Devises and installs systems or methods of bookkeeping, internal controls of financial data, or the recording of financial data.
- (7) Prepares compilations.

b. Nothing contained in this definition or elsewhere in this chapter shall be construed to permit a licensed public accountant to give an opinion attesting to the reliability of any representation embracing financial information.

13. “*Licensed public accounting firm*” means a sole proprietorship, a corporation, a partnership, a limited liability company, or any other form of organization issued a permit to practice as a firm of licensed public accountants under section 542.8.

14. “*Licensee*” means the holder of a license.

15. “*Manager*” means a manager of a limited liability company.

16. “*Member*” means a member of a limited liability company.

17. “*NASBA*” means the national association of state boards of accountancy.

18. “*Office*” means any Iowa workplace identified or advertised to the general public as a location where public accounting services are performed.

19. “*Peer review*” means a study, appraisal, or review of one or more aspects of the professional work of a licensee or firm that performs attest or compilation services, by a licensed person or persons who are not affiliated with the licensee or firm being reviewed. “*Peer review*” does not include a peer review conducted pursuant to chapter 272C in connection with a disciplinary investigation.

20. “*Peer review records*” means a file, report, or other information relating to the professional competence of an applicant in the possession of a peer review team, or information concerning the peer review developed by a peer review team in the possession of an applicant.

21. “Peer review team” means a person or organization participating in the peer review function, but does not include the board.

22. “Permit” means a permit to practice as either a certified public accounting firm issued under section 542.7 or licensed public accounting firm under section 542.8 or under corresponding provisions of prior law.

23. “Practice of public accounting” means the performance or the offering to perform, by a person holding oneself out to the public as a certified public accountant or a licensed public accountant, one or more kinds of professional services involving the use of accounting, attest, or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. However, with respect to licensed public accountants, the “practice of public accounting” shall not include attest or auditing services or the rendering of an opinion attesting to the reliability of any representation embracing financial information.

24. “Practice privilege” means an authorization to practice public accounting in Iowa or for clients with a home office in Iowa without licensure under this chapter, as provided in section 542.20.

25. “Principal place of business” means the primary location from which public accounting services are performed, as the board may further define by rule. A person or firm may only have one principal place of business at any one time.

26. “Report”, when used with reference to financial statements, means a report, opinion, or other form of a writing that states or implies assurance as to the reliability of any financial statements and that includes or is accompanied by a statement or implication that the person or firm issuing the report has special knowledge or competence in accounting or auditing. Such statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. “Report” includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply a positive assurance as to the reliability of the financial statements referred to or special knowledge or competence on the part of the person or firm issuing the language, and any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

27. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or Guam.

28. “Substantial equivalency” is a determination by the board that the education, examination, and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed, the education, examination, and experience requirements contained in this chapter or that an individual licensee’s education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in this chapter.

2001 Acts, ch 55, §3, 38; 2008 Acts, ch 1106, §1 – 4, 15; 2011 Acts, ch 127, §50, 89

Subsection 1, paragraph a, subparagraph (3) amended

## CHAPTER 543B

### REAL ESTATE BROKERS AND SALESPERSONS

This chapter not enacted as a part of this title;  
transferred from chapter 117 in Code 1993

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **543B.29 Revocation or suspension.**

1. A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

a. Fraud in procuring a license.

b. Having made a false statement of material fact on an application for a real estate broker's or salesperson's license, or having caused to be submitted, or having been a party to preparing or submitting any false application for such license.

c. Professional incompetency.

d. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

e. Habitual intoxication or addiction to the use of drugs.

f. Conviction of an offense included in section 543B.15, subsection 3. For purposes of this section, "*conviction*" means a conviction for an indictable offense and includes the court's acceptance of a guilty plea, a deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence.

(1) A licensed real estate broker or salesperson shall notify the commission of the licensee's conviction of an offense included in section 543B.15, subsection 3, paragraph "a", within ten days of the conviction. Notification of a conviction for an offense which is classified as a felony shall result in the immediate suspension of a license pending the outcome of a hearing conducted pursuant to section 543B.35 to determine the nature of the disciplinary action, if any, the commission will impose on the licensee. The hearing shall be conducted within thirty days of the licensee's notification to the commission, and the commission's decision shall be provided to the licensee no later than thirty days following the hearing. The failure of the licensee to notify the commission of the conviction within ten days of the date of the conviction is sufficient grounds for revocation of the license.

(2) The commission, when considering the revocation or suspension of a license pursuant to this paragraph "f", shall consider the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the conduct or conviction; the rehabilitation, treatment, or restitution performed by the licensee; and any other factors the commission deems relevant. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.

g. Fraud in representations as to skill or ability.

h. Use of untruthful or improbable statements in advertisements.

i. Willful or repeated violations of the provisions of this chapter.

j. Noncompliance with insurance requirements under section 543B.47.

k. Noncompliance with the trust account requirements under section 543B.46.

l. Revocation of any professional license held by the licensee in this or any other jurisdiction.

2. The revocation of a broker's license shall automatically suspend every license granted to any person by virtue of the person's employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. The new license shall be issued upon payment of a fee in an amount determined by the commission based

upon the administrative costs involved, if granted during the same license period in which the original license was granted.

3. A real estate broker or salesperson who is an owner or lessor of property or an employee of an owner or lessor may have the broker's or salesperson's license revoked or suspended for violations of this section or section 543B.34, except subsection 1, paragraphs "d", "e", "f", and "i", with respect to that property.

4. A real estate broker's or salesperson's license shall be revoked following three violations of this section or section 543B.34 within a five-year period.

[C31, 35, §1905-c43; C39, §1905.40; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.29; 81 Acts, ch 54, §16, 17]

83 Acts, ch 101, §14; 90 Acts, ch 1126, §1; 92 Acts, ch 1242, §20

C93, §543B.29

95 Acts, ch 64, §2, 3; 2008 Acts, ch 1099, §3; 2010 Acts, ch 1068, §4, 5; 2010 Acts, ch 1193, §62; 2011 Acts, ch 73, §1

Subsection 4 amended

### **543B.33 Salespersons — change of employment.**

When any real estate salesperson is discharged or terminates employment with the real estate broker by whom the salesperson is employed, the real estate broker shall immediately deliver or mail to the real estate commission the real estate salesperson's license on the reverse side of which the employing broker shall set out the date and cause of termination of employment. The real estate broker at the time of mailing the real estate salesperson's license to the commission shall address a communication to the last known residence address of the real estate salesperson stating that the license has been delivered or mailed to the commission. A copy of the communication to the real estate salesperson shall accompany the license when mailed or delivered to the commission. It is unlawful for any real estate salesperson to perform any of the acts contemplated by this chapter either directly or indirectly under authority of a license from and after the date of receipt of the license by the commission. The commission shall, upon presentation of evidence by the salesperson that the salesperson has been employed by another broker, issue another license for the balance of the current license period showing each change of employment. A fee as determined by the commission shall be charged for the issuance of the license. Not more than one license shall be issued to any real estate salesperson for the same period of time.

[C31, 35, §1905-c47; C39, §1905.44; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.33; 81 Acts, ch 54, §20]

C93, §543B.33

2011 Acts, ch 73, §2

Section amended

### **543B.34 Investigations by commission — licensing sanctions — civil penalty.**

1. The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee or other person assuming to act in the capacity of a real estate broker or real estate salesperson, except for those actions exempt pursuant to section 543B.7, is found to be guilty of any of the following:

- a. Making any substantial misrepresentation.
- b. Making any false promise of a character likely to influence, persuade or induce.
- c. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salespersons or advertising or otherwise.
- d. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.

e. Accepting a commission or valuable consideration as a real estate broker associate or salesperson for the performance of any of the acts specified in this chapter, from any person, except the broker associate's or salesperson's employer, who must be a licensed real estate broker. However, a broker associate or salesperson may, without violating this paragraph, accept a commission or valuable consideration from a corporation which is wholly owned, or owned with a spouse, by the broker associate or salesperson if the conditions described in paragraph "i" are met.

f. Representing or attempting to represent a real estate broker other than the licensee's employer, without the express knowledge and consent of the employer.

g. Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others.

h. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

i. (1) Paying a commission or other valuable consideration or any part of such commission or consideration for performing any of the acts specified in this chapter to a person who is not a licensed broker or salesperson under this chapter or who is not engaged in the real estate business in another state or foreign country, provided that the provisions of this section shall not be construed to prohibit the payment of earned commissions or consideration to any of the following:

(a) The estate or heirs of a deceased real estate licensee when such licensee had a valid real estate license in effect at the time the commission or consideration was earned.

(b) A citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Iowa licensee paying the commission or consideration obtains and maintains reasonable written evidence that the payee is a citizen of the other country, is not a resident of this country, and is in the business of brokering real estate in that other country.

(c) A corporation pursuant to subparagraph (2).

(2) A broker may pay a commission to a corporation which is wholly owned, or owned with a spouse, by a salesperson or broker associate employed by or otherwise associated with the broker, if all of the following conditions are met:

(a) The corporation does not engage in real estate transactions as a third-party agent or in any other activity requiring a license under this chapter.

(b) The employing broker is not relieved of any obligation to supervise the employed licensee or any other requirement of this chapter or the rules adopted pursuant to this chapter.

(c) The employed broker associate or salesperson is not relieved from any personal civil liability for any licensed activities by interposing the corporate form.

j. Failing, within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.

k. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

2. Any unlawful act or violation of any of the provisions of this chapter by any real estate broker associate or salesperson, employee, or partner or associate of a licensed real estate broker, is not cause for the revocation of the license of any real estate broker, unless the commission finds that the real estate broker had guilty knowledge of the unlawful act or violation.

3. If an investigation pursuant to this section reveals that an unlicensed person has assumed to act in the capacity of a real estate broker or real estate salesperson, the commission shall issue a cease and desist order, and shall impose a civil penalty of up to the greater of ten thousand dollars or ten percent of the real estate sale price.

[C31, 35, §1905-c48; C39, §1905.45; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.34; 81 Acts, ch 54, §21]

88 Acts, ch 1158, §23; 89 Acts, ch 29, §1; 89 Acts, ch 83, §24; 92 Acts, ch 1242, §21

C93, §543B.34  
 95 Acts, ch 170, §6; 99 Acts, ch 22, §1; 2004 Acts, ch 1005, §1, 2; 2005 Acts, ch 179, §72;  
 2011 Acts, ch 73, §3  
 Section editorially internally redesignated  
 Subsection 3 amended

SUBCHAPTER II  
 RELATIONSHIP BETWEEN LICENSEES  
 AND PARTIES TO TRANSACTIONS

**543B.56A Brokerage agreements — purpose — contents.**

1. The purpose of this section is to promote the protection of the public by establishing minimum standards reasonably expected by the public in reliance upon the professional work product of real estate licensees. The reliance of the public and business community on sound professional opinions and assistance imposes on real estate licensees certain obligations both to their clients and to the public. The purpose of this section is also to assist in ensuring that licensees' obligations are met including licensees' exercising sound independent business judgment, striving to continuously improve professional business skills and knowledge in the industry, promoting sound and informative real estate reporting, and exercising the highest fiduciary duties to clients and the public.

2. A brokerage agreement shall specify that the broker shall, at a minimum, do all of the following:

a. Accept delivery of and present to the client offers and counteroffers to buy, sell, rent, lease, or exchange the client's property or the property the client seeks to purchase or lease.

b. Assist the client in developing, communicating, negotiating, and presenting offers or counteroffers until a rental agreement, lease, exchange agreement, offer to buy or sell, or purchase agreement is signed and all contingencies are satisfied or waived and the transaction is completed.

c. Answer the client's questions relating to the brokerage agreements, listing agreements, offers, counteroffers, notices, and contingencies.

d. Provide prospective buyers access to listed properties.

2005 Acts, ch 40, §2; 2011 Acts, ch 73, §4  
 Section amended

**543B.61 Violations — real estate commission jurisdiction.**

1. Failure of a licensee to comply with sections 543B.57 through 543B.60 is prima facie evidence of a violation under section 543B.34, subsection 1, paragraph "d".

2. Failure of a licensee to act in accordance with the disclosures made pursuant to sections 543B.56 through 543B.58 is prima facie evidence of a violation under section 543B.34, subsection 1, paragraph "d".

3. Nothing in this subchapter shall affect the validity of title to real property transferred based solely on the reason that a licensee failed to conform to the provisions of this subchapter.

95 Acts, ch 17, §7

Section not amended; internal reference changes applied

CHAPTER 546  
 DEPARTMENT OF COMMERCE

**546.10 Professional licensing and regulation bureau — superintendent of banking.**

1. The professional licensing and regulation bureau of the banking division shall

administer and coordinate the licensing and regulation of several professions by bringing together the following licensing boards:

a. The engineering and land surveying examining board created pursuant to chapter 542B.

b. The Iowa accountancy examining board created pursuant to chapter 542.

c. The real estate commission created pursuant to chapter 543B.

d. The architectural examining board created pursuant to chapter 544A.

e. The landscape architectural examining board created pursuant to chapter 544B.

f. The real estate appraiser examining board created pursuant to section 543D.4.

g. The interior design examining board created pursuant to chapter 544C.

2. The bureau is headed by the administrator of professional licensing and regulation who shall be the superintendent of banking. The administrator shall appoint and supervise staff and shall coordinate activities for the licensing boards within the bureau.

3. The licensing and regulation examining boards included in the bureau pursuant to subsection 1 retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters which shall be handled by the administrator. Each licensing board shall adopt rules pursuant to chapter 17A. Decisions by a licensing board are final agency actions for purposes of chapter 17A.

Notwithstanding subsection 5, eighty-five percent of the funds received annually resulting from an increase in licensing fees implemented on or after April 1, 2002, by a licensing board or commission listed in subsection 1, is appropriated to the professional licensing and regulation bureau to be allocated to the board or commission for the fiscal year beginning July 1, 2002, and succeeding fiscal years, for purposes related to the duties of the board or commission, including but not limited to additional full-time equivalent positions. The director of the department of administrative services shall draw warrants upon the treasurer of state from the funds appropriated as provided in this section and shall make the funds available to the professional licensing and regulation bureau on a monthly basis during each fiscal year.

4. The professional licensing and regulation bureau of the banking division of the department of commerce may expend additional funds, including funds for additional personnel, if those additional expenditures are directly the cause of actual examination expenses exceeding funds budgeted for examinations. Before the bureau expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the bureau and the bureau does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management, the bureau may expend and encumber funds for excess examination expenses. The amounts necessary to fund the examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2, subsection 8.

5. Fees collected under chapters 542, 542B, 543B, 543D, 544A, 544B, and 544C shall be paid to the treasurer of state and credited to the general fund of the state. All expenses required in the discharge of the duties and responsibilities imposed upon the professional licensing and regulation bureau of the banking division of the department of commerce, the administrator, and the licensing boards by the laws of this state shall be paid from moneys appropriated by the general assembly for those purposes. All fees deposited into the general fund of the state, as provided in this subsection, shall be subject to the requirements of section 8.60.

6. The licensing boards included in the bureau pursuant to subsection 1 may refuse to issue or renew a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked or suspended or a licensee may otherwise be disciplined, or upon any other grounds set out in the chapter governing the respective board.

7. The licensing boards included in the bureau pursuant to subsection 1 may suspend, revoke, or refuse to issue or renew a license, or may discipline a licensee based upon a

suspension, revocation, or other disciplinary action taken by a licensing authority in this or another state, territory, or country. For purposes of this subsection, “disciplinary action” includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

8. Notwithstanding any other provision of law to the contrary, the licensing boards included within the bureau pursuant to subsection 1 may by rule establish the conditions under which an individual licensed in a different jurisdiction may be issued a reciprocal or comity license, if, in the board’s discretion, the applicant’s qualifications for licensure are substantially equivalent to those required of applicants for initial licensure in this state.

9. Notwithstanding section 272C.6, the licensing boards included within the bureau pursuant to subsection 1 may by rule establish the conditions under which the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information, as the board in its sole discretion believes would aid the investigation or resolution of the matter.

10. Notwithstanding section 17A.6, subsection 2, the licensing boards included within the bureau pursuant to subsection 1 may adopt standards by reference to another publication without providing a copy of the publication to the administrative rules coordinator if the publication containing the standards is readily accessible on the internet at no cost and the internet site at which the publication may be found is included in the administrative rules that adopt the standard.

11. Renewal periods for all licenses and certificates of the licensing boards included within the bureau pursuant to subsection 1 may be annual or multiyear, as provided by rule.

12. A quorum of a licensing board included within the bureau pursuant to subsection 1 shall be a majority of the members of the board and action may be taken upon a majority vote of board members present at a meeting who are not disqualified.

86 Acts, ch 1245, §710; 88 Acts, ch 1274, §41; 90 Acts, ch 1247, §18; 90 Acts, ch 1261, §42; 91 Acts, ch 260, §1246; 93 Acts, ch 131, §24; 94 Acts, ch 1107, §94, 95; 94 Acts, ch 1187, §22; 2001 Acts, ch 55, §33, 34, 38; 2002 Acts, 2nd Ex, ch 1003, §33, 35; 2003 Acts, ch 145, §286; 2005 Acts, ch 19, §115; 2006 Acts, ch 1030, §66; 2006 Acts, ch 1177, §52; 2007 Acts, ch 170, §7; 2010 Acts, ch 1055, §3; 2011 Acts, ch 34, §131

Confirmation, see §2.32  
Subsection 10 amended

### **546.12 Department of commerce revolving fund.**

1. A department of commerce revolving fund is created in the state treasury. The fund shall consist of moneys collected by the banking division; credit union division; utilities division, including moneys collected on behalf of the office of consumer advocate established in section 475A.3; and the insurance division of the department; and deposited into an account for that division or office within the fund on a monthly basis. Except as otherwise provided by statute, all costs for operating the office of consumer advocate and the banking division, the credit union division, the utilities division, and the insurance division of the department shall be paid from the division’s accounts within the fund, subject to appropriation by the general assembly. The insurance division shall administer the fund and all other divisions shall work with the insurance division to make sure the fund is properly accounted and reported to the department of management and the department of administrative services. The divisions shall provide quarterly reports to the department of management and the legislative services agency on revenues billed and collected and expenditures from the fund in a format as determined by the department of management in consultation with the legislative services agency.

2. To meet cash flow needs for the office of consumer advocate and the banking division, credit union division, utilities division, or the insurance division of the department, the administrative head of that division or office may temporarily use funds from the general fund of the state to pay expenses in excess of moneys available in the revolving fund for that division or office if those additional expenditures are fully reimbursable and the division

or office reimburses the general fund of the state and ensures all moneys are repaid in full by the close of the fiscal year. Notwithstanding any provision to the contrary, the divisions shall, to the fullest extent possible, make an estimate of billings and make such billings as early as possible in each fiscal year, so that the need for the use of general fund moneys is minimized to the lowest extent possible. Periodic billings shall be deemed sufficient to satisfy this requirement. Because any general fund moneys used shall be fully reimbursed, such temporary use of funds from the general fund of the state shall not constitute an appropriation for purposes of calculating the state general fund expenditure limitation pursuant to section 8.54.

3. Section 8.33 does not apply to any moneys credited or appropriated to the revolving fund from any other fund.

4. The establishment of the revolving fund pursuant to this section shall not be interpreted in any manner to compromise or impact the accountability of, or limit authority with respect to, an agency or entity under state law. Any provision applicable to, or responsibility of, a division or office collecting moneys for deposit into the fund established pursuant to this section shall not be altered or impacted by the existence of the fund and shall remain applicable to the same extent as if the division or office were receiving moneys pursuant to a general fund appropriation. The divisions of the department of commerce shall comply with directions by the governor to executive branch departments regarding restrictions on out-of-state travel, hiring justifications, association memberships, equipment purchases, consulting contracts, and any other expenditure efficiencies that the governor deems appropriate.

2009 Acts, ch 181, §108; 2011 Acts, ch 127, §51, 89

2011 repeal of this section and related amendments enacted by 2009 Acts, ch 181, §43-108, stricken pursuant to 2011 Acts, ch 127, §57, 89

Partial item veto applied  
Section amended

## CHAPTER 546B

### VETERANS BENEFITS APPEAL SERVICES — ADVERTISING PRACTICES

#### 546B.1 Definitions.

As used in this chapter:

1. *a.* “Advertising” or “advertisement” means any of the following:

(1) Any written or printed communication made for the purpose of soliciting, describing, or promoting veterans benefits appeal services, including but not limited to a brochure, letter, pamphlet, newspaper, telephone listing, periodical, or other writing.

(2) Any directory listing caused or permitted by a person to be made available which indicates that veterans benefits appeal services are being offered.

(3) Any radio, television, computer network, or similar airwave or electronic transmission which solicits or promotes a person offering veterans benefits appeal services.

*b.* “Advertising” or “advertisement” does not include any of the following:

(1) Any printing or writing used on buildings, uniforms, or badges, where the purpose of the writing is for identification.

(2) Any printing or writing in a memorandum or other communication used in the ordinary course of business where the sole purpose of the writing is other than the solicitation or promotion of veterans benefits appeal services.

2. “Veteran” means as defined in section 35.1.

3. “Veterans benefits appeal services” means services which a veteran might reasonably require in order to appeal a denial of federal or state veterans benefits, including but not limited to denials of disability, limited-income, home loan, insurance, education and training, burial and memorial, and dependent and survivor benefits.

2011 Acts, ch 49, §1

NEW section

**546B.2 Advertising disclosure requirements — civil penalties.**

1. A person advertising services to represent or assist veterans in appealing a denial of veterans benefits shall conspicuously disclose in the advertisement, in similar type size or voice-over, that appeal services are also offered at no cost by county commission of veteran affairs offices as maintained pursuant to section 35B.6.

2. A person who fails to comply with the provisions of this section is subject to a civil penalty not to exceed one thousand dollars for each violation. Civil penalties shall be assessed by the district court in an action initiated by the attorney general. For the purposes of computing the amount of each civil penalty, each day of a continuing violation constitutes a separate violation. Additionally, the attorney general may accept a civil penalty as determined by the attorney general in settlement of an investigation of a violation of this section regardless of whether an action has been filed pursuant to this section. Any civil penalty recovered shall be deposited in the veterans trust fund created in section 35A.13.

2011 Acts, ch 49, §2

NEW section

**546B.3 Nonapplicability.**

This chapter shall not apply to the owner or personnel of any medium in which an advertisement appears or through which an advertisement is disseminated.

2011 Acts, ch 49, §3

NEW section

## CHAPTER 554

### UNIFORM COMMERCIAL CODE

Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service; §29A.103, 29A.104

#### ARTICLE 4

#### BANK DEPOSITS AND COLLECTIONS

#### PART 4

#### RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

**554.4406 Customer's duty to discover and report unauthorized signature or alteration.**

1. A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information, if the item is described by item number, amount, and date of payment.

2. If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

3. If a bank sends or makes available a statement of account or items pursuant to subsection 1, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not

authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

4. If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection 3, the customer is precluded from asserting against the bank:

a. the customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

b. the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding sixty days, in which to examine the item or statement of account and notify the bank.

5. If subsection 4 applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection 3 and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection 4 does not apply.

6. Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subsection 1) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 554.4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

[C66, 71, 73, 75, 77, 79, 81, §554.4406]

94 Acts, ch 1167, §111, 122; 2011 Acts, ch 87, §5

Subsection 2 amended

## CHAPTER 558

### CONVEYANCES

#### **558.66 Updating county administrative records.**

1. Upon the receipt of an instrument that satisfies the requirements of this section and the payment of the applicable fees authorized in section 331.507, subsection 2, the auditor shall enter the updated or corrected real estate ownership information in the transfer books and index required by section 558.60.

2. In the case of an instrument filed with the recorder that satisfies the requirements of this section, the recorder shall collect the applicable fees authorized under section 331.507, subsection 2, and section 331.604 and pay such fees to the treasurer as provided in section 331.902, subsection 3.

3. Each of the following instruments shall be accepted by the recorder for the purpose of updating the county transfer books and index if a conveyance has not occurred:

a. A certificate issued by the clerk of the district court or clerk of the supreme court indicating that the title to real estate has been finally established in any named person by judgment or decree or by will.

b. An affidavit of or on behalf of a surviving joint tenant or a person who owns the remainder interest. The affidavit shall include substantially the following:

(1) The name of the affiant.

(2) The name of the surviving joint tenant or owner of the remainder interest, as applicable, whose name the county records should reflect ownership of title.

(3) The name of the deceased joint tenant or life tenant and such person's date of death.

(4) The legal description of the real estate located in the county.

(5) The description and date of filing and recording of the conveyance instrument by which the surviving joint tenant or owner of the remainder interest acquired title.

(6) The document reference number of the instrument establishing title, if applicable.

(7) A request that the auditor enter the information on the transfer books and index pursuant to subsection 1.

c. An affidavit by or for a person, other than an individual, following a merger, consolidation, name change, or change of fiduciary. The affidavit shall include substantially the following, as applicable:

(1) The former name of the person.

(2) The new name of the person.

(3) The legal description of the real estate located in the county.

(4) A description of the merger, consolidation, name change, or change of fiduciary.

(5) A request that the auditor enter the information on the transfer books and index pursuant to subsection 1.

d. Articles of merger, consolidation, or name change as required by another provision of law if the legal description of the real estate is attached thereto.

4. An instrument recorded pursuant to this section is not a muniment of title.

[C97, §2931; C24, 27, 31, 35, 39, §10125; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.66]

85 Acts, ch 159, §9; 86 Acts, ch 1079, §4; 90 Acts, ch 1035, §1; 91 Acts, ch 86, §1; 93 Acts, ch 109, §14; 2000 Acts, ch 1058, §56; 2006 Acts, ch 1129, §3; 2009 Acts, ch 27, §35; 2011 Acts, ch 21, §1

Title established or changed — certificate; §602.8102(10)  
Section stricken and rewritten

### **558.69 Reporting of private burial sites, wells, disposal sites, underground storage tanks, hazardous waste, and private sewage disposal systems — liability.**

1. With each declaration of value submitted to the county recorder under chapter 428A, there shall be submitted a groundwater hazard statement stating all of the following:

a. Whether any known private burial site is situated on the property, and if a known private burial site is situated on the property, the statement shall state the approximate location of the site.

b. That no known wells are situated on the property, or if known wells are situated on the property, the statement must state the approximate location of each known well and its status with respect to section 455B.190 or 460.302.

c. That no known disposal site for solid waste, as defined in section 455B.301, which has been deemed to be potentially hazardous by the department of natural resources, exists on the property, or if such a known disposal site does exist, the location of the site on the property.

d. That no known underground storage tank, as defined in section 455B.471, subsection 11, exists on the property, or if a known underground storage tank does exist, the type and size of the tank, and any known substance in the tank.

e. That no known hazardous waste as defined in section 455B.411, subsection 3, exists on the property, or if known hazardous waste does exist, that the waste is being managed in accordance with rules adopted by the department of natural resources.

f. That no known private sewage disposal system exists on the property or, if such private sewage disposal system exists, that the system has been inspected pursuant to section 455B.172, subsection 11, or that the property is not subject to inspection due to its exclusion from a regulated transfer pursuant to section 455B.172, subsection 11, paragraph "a".

2. The groundwater hazard statement shall be signed by at least one of the sellers or their agents.

3. The county recorder shall refuse to record any deed, instrument, or writing for which a

declaration of value is required under chapter 428A unless the groundwater hazard statement required by this section has been submitted to the county recorder.

4. A buyer of property shall be provided with a copy of the submitted groundwater hazard statement by the seller.

5. The land application of sludges or soils resulting from the remediation of underground storage tank releases accomplished in compliance with department of natural resources rules without a permit is not required to be reported as the disposal of solid waste or hazardous waste.

6. The director of the department of natural resources shall prescribe the form of the groundwater hazard statement.

7. The county recorder shall transmit the groundwater hazard statements to the department of natural resources at times and in a manner directed by the director of the department.

8. The owner of the property is responsible for the accuracy of the information submitted on the groundwater hazard statement. The owner's agent shall not be liable for the accuracy of information provided by the owner of the property. The provisions of this subsection do not limit liability which may be imposed under a contract or under any other law.

87 Acts, ch 225, §307; 88 Acts, ch 1169, §16, 17; 90 Acts, ch 1235, §42; 99 Acts, ch 140, §1; 2006 Acts, ch 1014, §9; 2010 Acts, ch 1120, §6; 2011 Acts, ch 9, §8

Subsection 1, paragraph e amended

## CHAPTER 558A

### REAL ESTATE DISCLOSURES

#### **558A.4 Required information.**

1. *a.* The disclosure statement shall include information relating to the condition and important characteristics of the property and structures located on the property, including significant defects in the structural integrity of the structure, as provided in rules which shall be adopted by the real estate commission pursuant to section 543B.9. The rules may require the disclosure to include information relating to the property's zoning classification; the condition of plumbing, heating, or electrical systems; or the presence of pests.

*b.* The disclosure statement may include a report or written opinion prepared by a person qualified to make judgment based on education or experience, as provided by rules adopted by the commission, including but not limited to a land surveyor licensed pursuant to chapter 542B, a geologist, a structural pest control operator licensed pursuant to section 206.6, or a building contractor. The report or opinion on a matter within the scope of the person's practice, profession, or expertise shall satisfy the requirements of this section or rules adopted by the commission regarding that matter required to be disclosed. If the report or opinion is in response to a request made for purposes of satisfying the disclosure statement, the report or opinion shall indicate which part of the disclosure statement the report or opinion satisfies.

2. *a.* A transferor subject to the requirements of section 558.70 shall recommend in writing that the transferee obtain an independent home inspection report to provide full and complete information as required to be disclosed under this section and under rules adopted by the real estate commission pursuant to section 543B.9.

*b.* A transferor subject to section 558.70 shall provide the real estate disclosure statement required by this chapter at least seven days before the real estate installment sales contract is executed by all parties to the contract.

93 Acts, ch 30, §6; 96 Acts, ch 1204, §11; 2002 Acts, ch 1136, §4, 6; 2008 Acts, ch 1110, §1; 2011 Acts, ch 25, §143

Code editor directive applied

## CHAPTER 561

### HOMESTEAD

#### **561.13 Conveyance or encumbrance.**

1. A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument, except as provided in subsection 3. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer.

2. If a spouse who holds only homestead rights and surviving spouse's statutory share in the homestead specifically relinquishes homestead rights in an instrument, including a power of attorney constituting the other spouse as the husband's or wife's attorney in fact, as provided in section 597.5, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

3. A conveyance or encumbrance or a contract to convey or encumber the homestead is not invalid under subsection 1 if any of the following apply:

a. The nonsigning spouse's interest is terminated by a decree of dissolution of marriage or other order of the court.

b. The nonsigning spouse's right of recovery is barred by section 614.15.

c. The encumbrance is a purchase money mortgage as defined in section 654.12B.

d. A court sitting in equity enters a decree holding that invalidating the conveyance or encumbrance or a contract to convey or encumber the homestead would, directly or indirectly, unjustly enrich the nonsigning spouse.

4. For the purposes of this section, "nonsigning spouse" means a spouse who has not executed a conveyance or encumbrance or a contract to convey or encumber the homestead, the same or a like instrument, or a power of attorney for the execution of the same or a like instrument.

[C51, §1247; R60, §2279; C73, §1990; C97, §2974; C24, 27, 31, 35, 39, §10147; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.13; 81 Acts, ch 181, §1]

91 Acts, ch 106, §1; 2007 Acts, ch 68, §1, 2; 2011 Acts, ch 11, §1

Section amended

## CHAPTER 568

### ISLANDS AND ABANDONED RIVER CHANNELS

#### **568.16 Purchase money refunded.**

If the grantee of the state, or the grantee's successors, administrators, or assigns, shall be deprived of the land conveyed by the state under this chapter by the final decree of a court of record for the reason that the conveyance by the state did not pass title to the land described, because title to the land had previously for any reason been vested in others, then the money paid by the state for the land shall be refunded by the state to the person or persons entitled to the refund, provided the grantee, or the grantee's successors, administrators, or assigns, shall file a certified copy of the transcript of the final decree with the executive council within one year from the date of the issuance of such decree, and shall also file satisfactory proof with the executive council that the action over the title to the land was commenced within ten years from the date of the issuance of patent or deed by the state. The amount of money to be

refunded under the provisions of this section shall be authorized and paid by the executive council as an expense from the appropriations addressed in section 7D.29.

[S13, §2900-a13; C24, 27, 31, 35, 39, §10236; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.16]

2003 Acts, ch 145, §286; 2011 Acts, ch 131, §37, 158

Section amended

## CHAPTER 572

### MECHANIC'S LIEN

#### **572.13 Liability of owner to original contractor.**

1. An owner of a building, land, or improvement upon which a mechanic's lien of a subcontractor may be filed, is not required to pay the original contractor for compensation for work done or material furnished for the building, land, or improvement until the expiration of ninety days after the completion of the building or improvement unless the original contractor furnishes to the owner one of the following:

a. Receipts and waivers of claims for mechanics' liens, signed by all persons who furnished material or performed labor for the building, land, or improvement.

b. A good and sufficient bond to be approved by the owner, conditioned that the owner shall be held harmless from any loss which the owner may sustain by reason of the filing of mechanics' liens by subcontractors.

2. a. An original contractor who enters into a contract for an owner-occupied dwelling and who has contracted or will contract with a subcontractor to provide labor or furnish material for the dwelling shall include the following notice in any written contract with the owner and shall provide the owner with a copy of the written contract:

Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the owner.

b. If no written contract is entered into between the original contractor and the dwelling owner, the original contractor shall, within ten days of commencement of work on the dwelling, provide written notice to the dwelling owner stating the name and address of all subcontractors that the contractor intends to use for the construction and, that the subcontractors or suppliers may have lien rights in the event they are not paid for their labor or material used on this site; and the notice shall be updated as additional subcontractors and suppliers are used from the names disclosed on earlier notices.

c. An original contractor who fails to provide notice under this section is not entitled to the lien and remedy provided by this chapter.

[R60, §1847; C73, §2131; C97, §3093; S13, §3093; C24, 27, 31, 35, 39, §10282; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.13]

87 Acts, ch 79, §5; 2007 Acts, ch 83, §8, 9; 2011 Acts, ch 25, §69

Subsection 2 amended

## CHAPTER 579A

### CUSTOM CATTLE FEEDLOT LIEN

#### **579A.2 Establishment of lien — priority.**

1. A custom cattle feedlot lien is created. The lien is an agricultural lien as provided in section 554.9302.

2. A custom cattle feedlot operator shall have a lien upon the cattle and the identifiable cash proceeds from the sale of the cattle for the amount of the contract price for the feed and care of the cattle at the custom cattle feedlot pursuant to a written or oral agreement by the custom cattle feedlot operator and the person who owns the cattle, which may be enforced as provided in section 579A.3. The custom cattle feedlot operator is a secured party and the owner of the cattle is a debtor for purposes of chapter 554, article 9.

3. A custom cattle feedlot lien becomes effective at the time the cattle arrive at the custom cattle feedlot. In order to perfect the lien, the custom cattle feedlot operator must file a financing statement in the office of the secretary of state as provided in section 554.9308 within twenty days after the cattle arrive at the custom cattle feedlot.

a. The financing statement shall substantially meet the requirements of section 554.9502, subsection 1, and include all applicable information described in section 554.9516.

b. The lien terminates one year after the cattle have left the custom cattle feedlot. The lien may be terminated by the custom cattle feedlot operator who files a termination statement as provided in chapter 554, article 9.

4. Filing a financing statement as provided in this section substantially satisfies all requirements for perfection of an agricultural lien as provided in chapter 554, article 9.

5. a. A custom cattle feedlot lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the cattle, including a lien or security interest that was perfected prior to the perfection of the custom cattle feedlot lien.

b. Notwithstanding paragraph “a”, a custom cattle feedlot lien shall not be superior to a court-ordered lien provided in section 717.4 or a veterinarian’s lien created under chapter 581, if such lien is perfected as an agricultural lien as provided in chapter 554, article 9.

c. A custom cattle feedlot lien that is effective but not perfected under this section has priority as provided in section 554.9322.

95 Acts, ch 59, §3; 99 Acts, ch 169, §9 – 11, 22, 24; 2001 Acts, ch 25, §3; 2005 Acts, ch 136, §38; 2005 Acts, ch 179, §74; 2011 Acts, ch 81, §2

Subsection 5 amended

## CHAPTER 579B

### COMMODITY PRODUCTION CONTRACT LIEN

Alternative lien procedure for cattle; see chapter 579A

#### **579B.4 Perfecting the lien — filing requirements.**

1. A commodity production contract lien becomes effective and is perfected as follows:

a. For a lien arising out of producing livestock or raw milk, the lien becomes effective the day that the livestock first arrives at the contract livestock facility. In order to perfect the lien, the contract producer must file a financing statement in the office of the secretary of state as provided in section 554.9308. Unless the production contract provides for continuous arrival, the contract producer must file the financing statement for the livestock within forty-five days after the livestock’s arrival. If the production contract provides for continuous arrival, the contract producer must file the financing statement for the livestock within one hundred eighty days after the livestock’s arrival. The lien terminates one year after the livestock is no longer under the authority of the contract producer. For purposes of this section, livestock is no longer under the authority of the contract producer when the livestock leaves the contract livestock facility. Section 554.9515 shall not apply to a financing statement perfecting the

lien. The lien may be terminated by the contract producer who files a termination statement as provided in chapter 554, article 9.

b. For a lien arising out of producing a crop, the lien becomes effective the day that the crop is first planted. In order to perfect the lien, the contract producer must file a financing statement in the office of the secretary of state as provided in section 554.9308. The contract producer must file a financing statement for the crop within forty-five days after the crop is first planted. The lien terminates one year after the crop is no longer under the authority of the contract producer. For purposes of this section, a crop is no longer under the authority of the contract producer when the crop or a warehouse receipt issued by a warehouse operator licensed under chapter 203C for grain from the crop is no longer under the custody or control of the contract producer. The lien may be terminated by the contract producer who files a termination statement as provided in chapter 554, article 9.

2. The financing statement shall substantially meet the requirements of section 554.9502, subsection 1, and include all applicable information described in section 554.9516.

3. Filing a financing statement as provided in this section satisfies all requirements for perfection of an agricultural lien as provided in chapter 554, article 9.

4. a. (1) A commodity production contract lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the commodity, including a lien or security interest that was perfected prior to the perfection of the commodity production contract lien under this chapter.

(2) Notwithstanding subparagraph (1), a commodity production contract lien shall not be superior to a court-ordered lien provided in section 717.4 or a veterinarian's lien created under chapter 581, if such lien is perfected as an agricultural lien.

b. A commodity production contract lien that is effective but not perfected under this section has priority as provided in section 554.9322.

99 Acts, ch 169, §17, 22, 24; 2000 Acts, ch 1154, §35; 2001 Acts, ch 25, §11; 2005 Acts, ch 136, §39; 2005 Acts, ch 179, §75; 2011 Acts, ch 81, §3

Subsection 4, paragraph a amended

## CHAPTER 581

### VETERINARIAN'S LIEN

#### 581.2 Priority.

Except as provided in this section, section 554.9322 shall govern the priority of a veterinarian's lien that is effective or perfected as provided in section 581.3.

1. A veterinarian's lien that is effective but not perfected under section 581.3 shall have priority as provided in section 554.9322.

2. a. A veterinarian's lien that is perfected under section 581.3 shall have priority over any conflicting security interest or lien in livestock treated by a veterinarian, regardless of when such security interest or lien is perfected.

b. Notwithstanding paragraph "a", a veterinarian's lien shall not be superior to a court-ordered lien provided in section 717.4, if such lien is perfected as an agricultural lien.

[C35, §10347-f2; C39, §10347.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §581.2]

2003 Acts, ch 82, §16; 2011 Acts, ch 81, §4

Subsection 2 amended

## CHAPTER 582

### HOSPITAL LIEN

#### 582.1 Definitions.

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

1. “*Health plan*” means an individual or group plan that provides, or pays the costs of, medical care as that term is defined in the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 and regulations promulgated thereunder.
2. “*Hospital*” means a public or private institution licensed pursuant to chapter 135B.
3. “*Provider agreement*” means a contract, understanding, or arrangement made by an association, corporation, county, municipal corporation, or other institution maintaining a hospital in the state, with any health plan or other entity for the provision or payment of health care services.

2007 Acts, ch 154, §1; 2011 Acts, ch 34, §132

NEW unnumbered paragraph 1

## CHAPTER 598

### DISSOLUTION OF MARRIAGE AND DOMESTIC RELATIONS

#### 598.41D Assignment of visitation or physical care parenting time — parent serving active duty — family member.

1. Notwithstanding any provision to the contrary, a parent who has been granted court-ordered visitation with the parent’s minor child may file an application for modification of a decree or a petition for modification of an order regarding child visitation, prior to or during the time the parent is serving active duty in the military service of the United States, to temporarily assign that parent’s visitation to a family member of the minor child, as specified by the parent. The application or petition shall be accompanied by an affidavit from the family member indicating the family member’s knowledge of the application or petition and willingness to exercise the parent’s visitation during the parent’s absence. The application or petition shall also request any change in the visitation schedule necessitated by the assignment.

2. Notwithstanding any provision to the contrary, a parent who has been granted court-ordered physical care or joint physical care of the parent’s minor child may file an application for modification of a decree or a petition for modification of an order regarding child custody, prior to or during the time the parent is serving active duty in the military service of the United States, to temporarily assign the parent’s physical care parenting time to a family member of the minor child, as specified by the parent. The application or petition shall be accompanied by an affidavit from the family member indicating the family member’s knowledge of the application or petition and willingness to exercise the parent’s physical care parenting time during the parent’s absence. The application or petition shall also request any change in the physical care parenting time schedule necessitated by the assignment.

3. *a.* If the active duty of a parent affects the parent’s ability or anticipated ability to appear at a regularly scheduled hearing, the court shall provide for an expedited hearing in matters instituted under this section.

*b.* If the active duty or anticipated active duty of a parent prevents the parent from appearing in person at a hearing, the court shall provide, upon reasonable advance notice, for the parent to present testimony and evidence by electronic means in matters instituted under this section. For the purposes of this paragraph, “*electronic means*” includes communication by telephone, video teleconference, or the internet.

4. *a.* The court may grant the parent’s request for temporary assignment of visitation

or physical care parenting time and any change in the visitation or physical care parenting time schedule requested if the court finds that such assignment of visitation or physical care parenting time is in the best interest of the child.

b. In determining the best interest of the child, the court shall ensure all of the following:

(1) That the specified family member is not a sex offender as defined in section 692A.101.

(2) That the specified family member does not have a history of domestic abuse, as defined in section 236.2. In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to commencement of an action pursuant to section 236.3, the issuance of a protective order against the individual or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of an individual in contempt pursuant to section 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of an individual following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

(3) That the specified family member does not have a record of founded child or dependent adult abuse.

(4) That the specified family member has an established relationship with the child and assigning visitation or physical care parenting time to the specified family member will provide the child the opportunity to maintain an ongoing family relationship that is important to the child.

(5) That the specified family member demonstrates an ability to personally and financially support the child and will support the child's relationship with both of the child's parents during the assigned visitation or physical care parenting time.

5. An order granting assignment of visitation or physical care parenting time under this section does not create separate rights to visitation or physical care parenting time for a person other than the parent. An order granting assignment of visitation or physical care parenting time under this section does not grant any custodial or parental rights to any person who is not the parent of the child.

6. An order granted under this section may temporarily assign visitation or physical care parenting time that is equal to or less than the visitation or physical care parenting time awarded to the parent whose visitation or physical care parenting time is assigned.

7. The parent whose visitation or physical care parenting time is temporarily assigned shall provide a copy of the order granting assignment of visitation or physical care parenting time to the school and school district of the child to whom the order applies.

8. An order granting temporary assignment of visitation or physical care parenting time pursuant to this section shall terminate upon notification of the court by the parent or automatically upon the parent's completion of active duty, whichever occurs first.

9. After a parent completes active duty, if an application for modification of a decree or a petition for modification of an order is filed, the parent's absence due to active duty or the assignment of visitation or physical care parenting time does not constitute a substantial change in circumstances, and the court shall not consider a parent's absence due to that active duty or the assignment of visitation or physical care parenting time in making a determination regarding the best interest of the child relative to such an application or petition filed after a parent completes active duty.

10. As used in this section, "*active duty*" means active military duty pursuant to orders issued under Tit. 10 of the United States Code. However, this section shall not apply to active guard and reserve duty or similar full-time military duty performed by a parent when the child remains in actual custody of the parent.

11. As used in this section, "*parenting time*" means actual time spent with the child as specified in a decree or order, but does not include any other element of legal custody, physical care, or joint physical care.

2010 Acts, ch 1168, §2, 3; 2011 Acts, ch 42, §1, 2

Section amended

## CHAPTER 600

## ADOPTION

**600.8 Placement investigations and reports.**

1. *a.* A preplacement investigation shall be directed to and a report of this investigation shall answer the following:

(1) Whether the home of the prospective adoption petitioner is a suitable one for the placement of a minor person to be adopted.

(2) How the prospective adoption petitioner's emotional maturity, finances, health, relationships, and any other relevant factor may affect the petitioner's ability to accept, care, and provide a minor person to be adopted with an adequate environment as that person matures.

(3) Whether the prospective adoption petitioner has been convicted of a crime under a law of any state or has a record of founded child abuse.

*b.* A postplacement investigation and a report of this investigation shall:

(1) Verify the allegations of the adoption petition and its attachments and of the report of expenditures required under section 600.9.

(2) Evaluate the progress of the placement of the minor person to be adopted.

(3) Determine whether adoption by the adoption petitioner may be in the best interests of the minor person to be adopted.

*c.* A background information investigation and a report of the investigation shall be made by the agency, the person making an independent placement, or an investigator. The background information investigation and report shall not disclose the identity of the biological parents of the minor person to be adopted. The report shall be completed and filed with the court prior to the holding of the adoption hearing prescribed in section 600.12. The report shall be in substantial conformance with the prescribed medical and social history forms designed by the department pursuant to section 600A.4, subsection 2, paragraph "f". A copy of the background information investigation report shall be furnished to the adoption petitioners within thirty days after the filing of the adoption petition. Any person, including a juvenile court, who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of a background information investigation by disclosing any relevant background information, whether contained in sealed records or not.

2. *a.* A preplacement investigation and report of the investigation shall be completed and the prospective adoption petitioner approved for a placement by the person making the investigation prior to any agency or independent placement of a minor person in the petitioner's home in anticipation of an ensuing adoption. A report of a preplacement investigation that has approved a prospective adoption petitioner for a placement shall not authorize placement of a minor person with that petitioner after one year from the date of the report's issuance. However, if the prospective adoption petitioner is a relative within the fourth degree of consanguinity who has assumed custody of a minor person to be adopted, a preplacement investigation of this petitioner and a report of the investigation may be completed at a time established by the juvenile court or court or may be waived as provided in subsection 12.

*b.* (1) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph "a", subparagraph (3), and an evaluation shall not be performed under subparagraph (2), if the petitioner has been convicted of any of the following felony offenses:

(a) Within the five-year period preceding the petition date, a drug-related offense.

(b) Child endangerment or neglect or abandonment of a dependent person.

(c) Domestic abuse.

(d) A crime against a child, including but not limited to sexual exploitation of a minor.

(e) A forcible felony.

(2) The person making the investigation shall not approve a prospective adoption

petitioner pursuant to subsection 1, paragraph “a”, subparagraph (3), unless an evaluation has been made which considers the nature and seriousness of the crime or founded abuse in relation to the adoption, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

c. If the person making the investigation does not approve a prospective adoption petitioner under paragraph “a” of this subsection, the person investigated may appeal the disapproval as a contested case to the director of human services. Judicial review of any adverse decision by the director may be sought pursuant to chapter 17A.

3. The department, an agency or an investigator shall conduct all investigations and reports required under subsection 2 of this section.

4. A postplacement investigation and the report of the investigation shall be completed and filed with the juvenile court or court prior to the holding of the adoption hearing prescribed in section 600.12. Upon the filing of an adoption petition pursuant to section 600.5, the juvenile court or court shall immediately appoint the department, an agency, or an investigator to conduct and complete the postplacement report. Any person who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of the postplacement investigation by disclosing any relevant information requested, whether contained in sealed records or not.

5. Any person conducting an investigation under subsection 1, paragraph “c”, subsection 3, or subsection 4, may, in the investigation or subsequent report, include, utilize, or rely upon any reports, studies, or examinations to the extent they are relevant.

6. Any person conducting an investigation under subsection 1, paragraph “c”, subsection 3, or subsection 4, may charge a fee which does not exceed the reasonable cost of the services rendered and which is based on a sliding scale schedule relating to the investigated person’s ability to pay.

7. Any investigation or report required under this section shall not apply when the person to be adopted is an adult or when the prospective adoption petitioner or adoption petitioner is a stepparent of the person to be adopted. However, in the case of a stepparent adoption, the juvenile court or court, upon the request of an interested person or on its own motion stating the reasons therefor of record, may order an investigation or report pursuant to this section. Additionally, if an adoption petitioner discloses a criminal conviction or deferred judgment for an offense other than a simple misdemeanor or founded child abuse report pursuant to section 600.5, the petitioner shall notify the court of the inclusion of this information in the petition prior to the final adoption hearing, and the court shall make a specific ruling regarding whether to waive any investigation or report required under subsection 1.

8. Any person designated to make an investigation and report under this section may request an agency or state agency, within or outside this state, to conduct a portion of the investigation or the report, as may be appropriate, and to file a supplemental report of such investigation or report with the juvenile court or court. In the case of the adoption of a minor person by a person domiciled or residing in any other jurisdiction of the United States, any investigation or report required under this section which has been conducted pursuant to the standards of that other jurisdiction shall be recognized in this state.

9. The department may investigate, on its own initiative or on order of the juvenile court, any placement made or adoption petition filed under this chapter or chapter 600A and may report its resulting recommendation to the juvenile court.

10. The department or an agency or investigator may conduct any investigations required for an interstate or interagency placement. Any interstate investigations or placements shall follow the procedures and regulations under the interstate compact on the placement of children. Such investigations and placements shall be in compliance with the laws of the states involved.

11. Any person who assists in or impedes the placement or adoption of a minor person in violation of the provisions of this section shall be, upon conviction, guilty of a simple misdemeanor.

12. Any investigation and report required under subsection 1 may be waived by the juvenile court or court if the adoption petitioner is related within the fourth degree of consanguinity to the person to be adopted. However, if an adoption petitioner discloses a criminal conviction or deferred judgment for an offense other than a simple misdemeanor or founded child abuse report pursuant to section 600.5, the petitioner shall notify the court of the inclusion of this information in the petition prior to the final adoption hearing, and the court shall make a specific ruling regarding whether to waive any investigation or report required under subsection 1.

[C27, 31, 35, §10501-b2; C39, §10501.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.2; C77, 79, 81, §600.8]

83 Acts, ch 96, §157, 159; 87 Acts, ch 153, §18, 19; 88 Acts, ch 1134, §101; 94 Acts, ch 1046, §13; 98 Acts, ch 1190, §30; 99 Acts, ch 138, §1, 2; 2000 Acts, ch 1145, §10, 11; 2001 Acts, ch 24, §67, 68, 74; 2006 Acts, ch 1029, §2, 3; 2011 Acts, ch 98, §5

Subsection 9 amended

### **600.11 Notice of adoption hearing.**

1. The juvenile court or court shall set the time and place of the adoption hearing prescribed in section 600.12 upon application of the petitioner. The juvenile court or court may continue the adoption hearing if the notice prescribed in subsections 2 and 3 is given, except that such notice shall only be given at least ten days prior to the date which has been set for the continuation of the adoption hearing.

2. *a.* At least twenty days before the adoption hearing, a copy of the petition and its attachments and a notice of the adoption hearing shall be given by the adoption petitioner to:

(1) A guardian, guardian ad litem if appointed for the adoption proceedings, and custodian of, and a person in a parent-child relationship with the person to be adopted. This subparagraph does not require notice to be given to a person whose parental rights have been terminated with regard to the person to be adopted.

(2) The person to be adopted who is an adult.

(3) Any person who is designated to make an investigation and report under section 600.8.

(4) Any other person who is required to consent under section 600.7.

(5) A person who has been granted visitation rights with the child to be adopted pursuant to section 600C.1.

(6) A person who is ordered to pay support or a postsecondary education subsidy pursuant to section 598.21F, or chapter 234, 252A, 252C, 252F, 598, 600B, or any other chapter of the Code, for a person eighteen years of age or older who is being adopted by a stepparent, and the support order or order requires payment of support or postsecondary education subsidy for any period of time after the child reaches eighteen years of age.

*b.* Nothing in this subsection shall require the petitioner to give notice to self or to petitioner's spouse. A duplicate copy of the petition and its attachments shall be mailed to the department by the clerk of court at the time the petition is filed.

3. A notice of the adoption hearing shall state the time, place, and purpose of the hearing and shall be served in accordance with rule of civil procedure 1.305. Proof of the giving of notice shall be filed with the juvenile court or court prior to the adoption hearing. Acceptance of service by the party being given notice shall satisfy the requirements of this subsection.

[C27, 31, 35, §10501-b4; C39, §10501.4; C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.4; C77, 79, 81, §600.11]

94 Acts, ch 1174, §8, 22; 2000 Acts, ch 1145, §14; 2002 Acts, ch 1018, §20; 2005 Acts, ch 69, §54; 2007 Acts, ch 218, §207; 2011 Acts, ch 34, §133

Subsection 2 amended

## CHAPTER 600A

## TERMINATION OF PARENTAL RIGHTS

Proceedings prior to January 1, 1977; see §600.25

**600A.8 Grounds for termination.**

The juvenile court shall base its findings and order under section 600A.9 on clear and convincing proof. The following shall be, either separately or jointly, grounds for ordering termination of parental rights:

1. A parent has signed a release of custody pursuant to section 600A.4 and the release has not been revoked.

2. A parent has petitioned for the parent's termination of parental rights pursuant to section 600A.5.

3. The parent has abandoned the child. For the purposes of this subsection, a parent is deemed to have abandoned a child as follows:

a. (1) If the child is less than six months of age when the termination hearing is held, a parent is deemed to have abandoned the child unless the parent does all of the following:

(a) Demonstrates a willingness to assume custody of the child rather than merely objecting to the termination of parental rights.

(b) Takes prompt action to establish a parental relationship with the child.

(c) Demonstrates, through actions, a commitment to the child.

(2) In determining whether the requirements of this paragraph are met, the court may consider all of the following:

(a) The fitness and ability of the parent in personally assuming custody of the child, including a personal and financial commitment which is timely demonstrated.

(b) Whether efforts made by the parent in personally assuming custody of the child are substantial enough to evince a settled purpose to personally assume all parental duties.

(c) With regard to a putative father, whether the putative father publicly acknowledged paternity or held himself out to be the father of the child during the six continuing months immediately prior to the termination proceeding.

(d) With regard to a putative father, whether the putative father paid a fair and reasonable sum, in accordance with the putative father's means, for medical, hospital, and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child, or whether the putative father demonstrated emotional support as evidenced by the putative father's conduct toward the mother.

(e) Any measures taken by the parent to establish legal responsibility for the child.

(f) Any other factors evincing a commitment to the child.

b. If the child is six months of age or older when the termination hearing is held, a parent is deemed to have abandoned the child unless the parent maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of a reasonable amount, according to the parent's means, and as demonstrated by any of the following:

(1) Visiting the child at least monthly when physically and financially able to do so and when not prevented from doing so by the person having lawful custody of the child.

(2) Regular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child or when prevented from visiting the child by the person having lawful custody of the child.

(3) Openly living with the child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself or herself out to be the parent of the child.

c. The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph "a" or "b" manifesting such intent, does not preclude a determination that the parent has abandoned the child. In making a determination, the court shall not require a showing of diligent efforts by any person to encourage the parent to perform the acts specified in paragraph "a" or "b". In making a determination regarding a putative father, the court may consider the conduct of the putative father toward the child's

mother during the pregnancy. Demonstration of a commitment to the child is not met by the putative father marrying the mother of the child after adoption of the child.

4. A parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has failed to do so without good cause.

5. A parent does not object to the termination after having been given proper notice and the opportunity to object.

6. A parent does not object to the termination although every reasonable effort has been made to identify, locate and give notice to that parent as required in section 600A.6.

7. An adoptive parent requests termination of parental rights and the parent-child relationship based upon a showing that the adoption was fraudulently induced in accordance with the procedures set out in section 600A.9, subsection 3.

8. Both of the following circumstances apply to a parent:

a. The parent has been determined to be a chronic substance abuser as defined in section 125.2 and the parent has committed a second or subsequent domestic abuse assault pursuant to section 708.2A.

b. The parent has abducted the child, has improperly removed the child from the physical custody of the person entitled to custody without the consent of that person, or has improperly retained the child after a visit or other temporary relinquishment of physical custody.

9. The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

10. The parent has been convicted of a felony offense that is a sex offense against a minor as defined in section 692A.101, the parent is divorced from or was never married to the minor's other parent, and the parent is serving a minimum sentence of confinement of at least five years for that offense.

[C66, 71, 73, 75, §232.41; C77, 79, 81, §600A.8]

92 Acts, ch 1192, §2, 5; 95 Acts, ch 182, §26; 97 Acts, ch 161, §2; 97 Acts, ch 209, §27, 30; 2004 Acts, ch 1010, §1, 2; 2005 Acts, ch 69, §55; 2006 Acts, ch 1182, §63; 2009 Acts, ch 119, §43

For future amendment to subsection 8, paragraph a, effective July 1, 2012, see 2011 Acts, ch 121, §59, 62  
Section not amended; footnote added

## CHAPTER 600B

### PATERNITY AND OBLIGATION FOR SUPPORT

See also chapters 252A – 252K

#### **600B.41A Actions to overcome paternity — applicability — conditions.**

1. Paternity which is legally established may be overcome as provided in this section if subsequent blood or genetic testing indicates that the previously established father of a child is not the biological father of the child. Unless otherwise provided in this section, this section applies to the overcoming of paternity which has been established according to any of the means provided in section 252A.3, subsection 10, by operation of law when the established father and the mother of the child are or were married to each other, or as determined by a court of this state under any other applicable chapter.

2. This section does not apply to any of the following:

a. A paternity determination made in or by a foreign jurisdiction or a paternity determination which has been made in or by a foreign jurisdiction and registered in this state in accordance with section 252A.18 or chapter 252K.

b. A paternity determination based upon a court or administrative order if the order was entered based upon blood or genetic test results which demonstrate that the alleged father was not excluded and that the probability of the alleged father's paternity was ninety-five percent or higher, unless the tests were conducted prior to July 1, 1992.

3. Establishment of paternity may be overcome under this section if all of the following conditions are met:

a. The action to overcome paternity is filed with the court prior to the child reaching majority.

(1) A petition to overcome paternity may be filed only by the mother of the child, the established father of the child, the child, or the legal representative of any of these parties.

(2) If paternity was established by court or administrative order, a petition to overcome paternity shall be filed in the county in which the order is filed.

(3) In all other determinations of paternity, a petition to overcome paternity shall be filed in an appropriate county in accordance with the rules of civil procedure.

b. The petition contains, at a minimum, all of the following:

(1) The legal name, age, and domicile, if any, of the child.

(2) The names, residences, and domicile of the following:

(a) Living parents of the child.

(b) Guardian of the child.

(c) Custodian of the child.

(d) Guardian ad litem of the child.

(e) Petitioner.

(f) Person standing in the place of the parents of the child.

(3) A plain statement that the petitioner believes that the established father is not the biological father of the child, any reasons for this belief, and that the petitioner wishes to have the paternity determination set aside.

(4) A plain statement explaining why the petitioner does not know any of the information required under subparagraphs (1) and (2).

c. Notice of the action to overcome paternity is served on any parent of the child not initiating the action and any assignee of the support obligation, in accordance with the rules of civil procedure and in accordance with the following:

(1) If enforcement services are being provided by the child support recovery unit pursuant to chapter 252B, notice shall also be served on the child support recovery unit.

(2) The responding party shall have twenty days from the date of the service of the notice to file a written response with the court.

d. A guardian ad litem is appointed for the child.

e. Blood or genetic testing is conducted in accordance with section 600B.41 or chapter 252F.

(1) Unless otherwise specified pursuant to subsection 2 or 9, blood or genetic testing shall be conducted in an action to overcome the establishment of paternity.

(2) Unless otherwise specified in this section, section 600B.41 applies to blood or genetic tests conducted as the result of an action brought to overcome paternity.

(3) The court may order additional testing to be conducted by the expert or an independent expert in order to confirm a test upon which an expert concludes that the established father is not the biological father of the child.

f. The court finds all of the following:

(1) That the conclusion of the expert as disclosed by the evidence based upon blood or genetic testing demonstrates that the established father is not the biological father of the child.

(2) If paternity was established pursuant to section 252A.3A, the signed affidavit was based on fraud, duress, or material mistake of fact, as shown by the petitioner.

4. If the court finds that the establishment of paternity is overcome, in accordance with all of the conditions prescribed, the court shall enter an order which provides all of the following:

a. That the established father is relieved of any and all future support obligations owed on behalf of the child from the date that the order determining that the established father is not the biological father is filed.

b. That any unpaid support due prior to the date the order determining that the established father is not the biological father is filed, is satisfied.

5. An action brought under this section shall be heard and decided by the court, and shall not be subject to a jury trial.

6. *a.* If the court determines that test results conducted in accordance with section 600B.41 or chapter 252F exclude the established father as the biological father, the court may dismiss the action to overcome paternity and preserve the paternity determination only if all of the following apply:

(1) The established father requests that paternity be preserved and that the parent-child relationship, as defined in section 600A.2, be continued.

(2) The court finds that it is in the best interest of the child to preserve paternity. In determining the best interest of the child, the court shall consider all of the following:

(a) The age of the child.

(b) The length of time since the establishment of paternity.

(c) The previous relationship between the child and the established father, including but not limited to the duration and frequency of any time periods during which the child and established father resided in the same household or engaged in a parent-child relationship as defined in section 600A.2.

(d) The possibility that the child could benefit by establishing the child's actual paternity.

(e) Additional factors which the court determines are relevant to the individual situation.

(3) The biological father is a party to the action and does not object to termination of the biological father's parental rights, or the established father petitions the court for termination of the biological father's parental rights and the court grants the petition pursuant to chapter 600A.

*b.* If the court dismisses the action to overcome paternity and preserves the paternity determination under this subsection, the court shall enter an order establishing that the parent-child relationship exists between the established father and the child, and including establishment of a support obligation pursuant to section 598.21B and provision of custody and visitation pursuant to section 598.41.

7. *a.* For any order entered under this section on or before May 21, 1997, in which the court's determination excludes the established father as the biological father but dismisses the action to overcome paternity and preserves paternity, the established father may petition the court to issue an order which provides all of the following:

(1) That the parental rights of the established father are terminated.

(2) That the established father is relieved of any and all future support obligations owed on behalf of the child from the date the order under this subsection is filed.

*b.* The established father may proceed pro se under this subsection. The supreme court shall prescribe standard forms for use under this subsection and shall distribute the forms to the clerks of the district court.

*c.* If a petition is filed pursuant to this section and notice is served on any parent of the child not filing the petition and any assignee of the support obligation, the court shall grant the petition.

8. The costs of testing, the fee of the guardian ad litem, and all court costs shall be paid by the person bringing the action to overcome paternity.

9. This section shall not be construed as a basis for termination of an adoption decree or for discharging the obligation of an adoptive father to an adoptive child pursuant to section 600B.5.

10. Unless specifically addressed in an order entered pursuant to this section, provisions previously established by the court order regarding custody or visitation of the child are unaffected by an action brought under this section.

11. Participation of the child support recovery unit created in section 252B.2 in an action brought under this section shall be limited as follows:

*a.* The unit shall only participate in actions if services are being provided by the unit pursuant to chapter 252B.

*b.* When services are being provided by the unit under chapter 252B, the unit may enter an administrative order for blood and genetic tests pursuant to chapter 252F.

*c.* The unit is not responsible for or required to provide for or assist in obtaining blood or genetic tests in any case in which services are not being provided by the unit.

*d.* The unit is not responsible for the costs of blood or genetic testing conducted pursuant to an action brought under this section.

e. Pursuant to section 252B.7, subsection 4, an attorney employed by the unit represents the state in any action under this section. The unit's attorney is not the legal representative of the mother, the established father, or the child in any action brought under this section.

94 Acts, ch 1171, §48, 52; 97 Acts, ch 175, §212 – 216, 218, 219, 221; 98 Acts, ch 1074, §32; 2005 Acts, ch 69, §57

Section not amended; internal reference change applied

## CHAPTER 600C

### GRANDPARENT VISITATION

#### **600C.1 Grandparent and great-grandparent visitation.**

1. The grandparent or great-grandparent of a minor child may petition the court for grandchild or great-grandchild visitation when the parent of the minor child, who is the child of the grandparent or the grandchild of the great-grandparent, is deceased.

2. The court shall consider a fit parent's objections to granting visitation under this section. A rebuttable presumption arises that a fit parent's decision to deny visitation to a grandparent or great-grandparent is in the best interest of a minor child.

3. The court may grant visitation to the grandparent or great-grandparent under this section if the court finds all of the following by clear and convincing evidence:

a. It is in the best interest of the child to grant such visitation.

b. The grandparent or great-grandparent has established a substantial relationship with the child prior to the filing of the petition.

c. That the presumption that the parent who is being asked to temporarily relinquish care, custody, and control of the child to provide visitation is fit to make the decision regarding visitation is overcome by demonstrating one of the following:

(1) The parent is unfit to make such decision.

(2) The parent's judgment has been impaired and the relative benefit to the child of granting visitation greatly outweighs any effect on the parent-child relationship. Impaired judgment of a parent may be evidenced by any of, but not limited to, the following:

(a) Neglect of the child.

(b) Abuse of the child.

(c) Violence toward the child.

(d) Indifference or absence of feeling toward the child.

(e) Demonstrated unwillingness and inability to promote the emotional and physical well-being of the child.

(f) Drug abuse.

(g) A diagnosis of mental illness.

4. In determining the best interest of the child, the court shall consider all of the following:

a. The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, compared to the child's relationship with the grandparent or great-grandparent.

b. The geographical location of the grandparent's or great-grandparent's residence and the distance between the grandparent's or great-grandparent's residence and the child's residence.

c. The child's and parent's available time, including but not limited to the parent's employment schedule, the child's school schedule, the amount of time that will be available for the child to spend with siblings, and the child's and the parent's holiday and vacation schedules.

d. The age of the child.

e. If the court has interviewed the child in chambers as provided in this section regarding the wishes and concerns of the child as to visitation by the grandparent or great-grandparent

or as to a specific visitation schedule, the wishes and concerns of the child, as expressed to the court.

f. The health and safety of the child.

g. The mental and physical health of all parties.

h. Whether the grandparent or great-grandparent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether the grandparent or great-grandparent previously has been convicted of or pleaded guilty to a crime involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; and whether there is reason to believe that the grandparent or great-grandparent has acted in a manner resulting in a child having ever been found to be an abused child or a neglected child.

i. The wishes and concerns of the child's parent, as expressed by the parent to the court.

j. Any other factor in the best interest of the child.

5. For the purposes of this section, "*substantial relationship*" includes but is not limited to any of the following:

a. The child has lived with the grandparent or great-grandparent for at least six months.

b. The grandparent or great-grandparent has voluntarily and in good faith supported the child financially in whole or in part for a period of not less than six months.

c. The grandparent or great-grandparent has had frequent visitation including occasional overnight visitation with the child for a period of not less than one year.

6. If the court interviews any child concerning the child's wishes and concerns regarding parenting time or visitation, the interview shall be conducted in chambers, and only the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of the parent shall be permitted to be present in the chambers during the interview. A person shall not obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the wishes and concerns of the child regarding parenting time or visitation.

7. For the purposes of this section, "*court*" means the district court or the juvenile court if that court currently has jurisdiction over the child in a pending action. If an action is not pending, the district court has jurisdiction.

8. Notwithstanding any provision of this chapter to the contrary, venue for any action to establish, enforce, or modify visitation under this section shall be in the county where the child resides if no final custody order determination relating to the grandchild or great-grandchild has been entered by any other court. If a final custody order has been entered by any other court, venue shall be located exclusively in the county where the most recent final custody order was entered. If any other custodial proceeding is pending when an action to establish, enforce, or modify visitation under this section is filed, venue shall be located exclusively in the county where the pending custodial proceeding was filed.

9. Notice of any proceeding to establish, enforce, or modify visitation under this section shall be personally served upon the parent of the child whose interests are affected by a proceeding brought pursuant to this section and all grandparents or great-grandparents who have previously obtained a final order or commenced a proceeding under this section.

10. The court shall not enter any temporary order to establish, enforce, or modify visitation under this section.

11. An action brought under this section is subject to chapter 598B, and in an action brought to establish, enforce, or modify visitation under this section, each party shall submit in its first pleading or in an attached affidavit all information required by section 598B.209.

12. A grandparent or great-grandparent shall not petition for visitation under this section more than once every two years absent a showing of good cause.

13. The court shall not issue an order restricting the movement of the child if such restriction is solely for the purpose of allowing the grandparent or great-grandparent the opportunity to exercise the grandparent's or great-grandparent's visitation under this section.

2007 Acts, ch 218, §206; 2010 Acts, ch 1193, §130; 2011 Acts, ch 34, §134

Subsection 5 amended

## CHAPTER 602

### JUDICIAL BRANCH

Iowa District Court, ch 602, Code 1983, repealed by  
83 Acts, ch 186, §10201, 10203  
Gradual implementation and transition provisions, see article 11 of  
this chapter

#### ARTICLE 1

### JUDICIAL BRANCH

#### PART 3

### BUDGETING AND FUNDING

#### **602.1304 Revenues — enhanced court collections fund.**

1. Except as provided in article 8 and subsection 2 of this section, all fees and other revenues collected by judicial officers and court employees shall be paid into the general fund of the state.

2. *a.* The enhanced court collections fund is created in the state treasury under the authority of the supreme court. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund, unless and to the extent the total amount of moneys deposited into the fund in a fiscal year would exceed the maximum annual deposit amount established for the collections fund by the general assembly. The initial maximum annual deposit amount for a fiscal year is four million dollars. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the collections fund shall remain in the collections fund and any interest and earnings shall be in addition to the maximum annual deposit amount.

*b.* For each fiscal year, a judicial collection estimate for that fiscal year shall be equally and proportionally divided into a quarterly amount. The judicial collection estimate shall be calculated by using the state revenue estimating conference estimate made by December 15 pursuant to section 8.22A, subsection 3, of the total amount of fines, fees, civil penalties, costs, surcharges, and other revenues collected by judicial officers and court employees for deposit into the general fund of the state. The revenue estimating conference estimate shall be reduced by the maximum amounts allocated to the Iowa prison infrastructure fund pursuant to section 602.8108A, the court technology and modernization fund pursuant to section 602.8108, subsection 7, and the road use tax fund pursuant to section 602.8108, subsection 8, and the remainder shall be the judicial collection estimate. In each quarter of a fiscal year, after revenues collected by judicial officers and court employees equal to that quarterly amount are deposited into the general fund of the state, after the required amount is deposited during the quarter into the Iowa prison infrastructure fund pursuant to section 602.8108A, into the court technology and modernization fund pursuant to section 602.8108, subsection 7, and into the road use tax fund pursuant to section 602.8108, subsection 8, the director of the department of administrative services shall deposit the remaining revenues for that quarter into the enhanced court collections fund in lieu of the general fund. However, after total deposits into the collections fund for the fiscal year are equal to the maximum deposit amount established for the collections fund, remaining revenues for that fiscal year shall be deposited into the general fund. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a lesser amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of the department of administrative services shall recalculate the judicial collection estimate accordingly. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a greater amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of the department of

administrative services shall recalculate the judicial collection estimate accordingly but only to the extent that the greater amount is due to an increase in the fines, fees, civil penalties, costs, surcharges, or other revenues allowed by law to be collected by judicial officers and court employees.

c. Moneys in the collections fund shall be used by the judicial branch for the Iowa court information system; records management equipment, services, and projects; other technological improvements; electronic legal research equipment, systems, and projects; and the study, development, and implementation of other innovations and projects that would improve the administration of justice. The moneys in the collection fund may also be used for capital improvements necessitated by the installation of or connection with the Iowa court information system, the Iowa communications network, and other technological improvements approved by the judicial branch.

83 Acts, ch 186, §1304, 10201; 95 Acts, ch 207, §24; 96 Acts, ch 1034, §55; 96 Acts, ch 1216, §29; 97 Acts, ch 205, §23; 98 Acts, ch 1047, §47; 2003 Acts, ch 145, §286; 2005 Acts, ch 165, §3; 2005 Acts, ch 179, §137; 2006 Acts, ch 1030, §74; 2006 Acts, ch 1166, §4; 2007 Acts, ch 215, §64

Use of enhanced court collections funds; reporting; 2009 Acts, ch 172, §1; 2010 Acts, ch 1185, §1; 2011 Acts, ch 135, §1, 7  
Section not amended; footnote revised

## ARTICLE 2

### DISCIPLINE AND REMOVAL OF JUDICIAL OFFICERS

#### PART 3

#### APPOINTMENTS — DELAY

##### **602.2301 Judicial officer appointment — delay.**

1. Notwithstanding section 46.12, the chief justice may order the state commissioner of elections to delay, for budgetary reasons, the sending of a notification to the proper judicial nominating commission that a vacancy in the supreme court, court of appeals, or district court has occurred or will occur.

2. Notwithstanding sections 602.6304, 602.7103B, and 633.20B, the chief justice may order any county magistrate appointing commission to delay, for budgetary reasons, publicizing the notice of a vacancy for a district associate judgeship, associate juvenile judgeship, or associate probate judgeship.

3. Notwithstanding section 602.6403, subsection 3, if a magistrate position is vacant due to a death, resignation, retirement, an increase in the number of positions authorized, or to the removal of a magistrate, the chief justice may order any county magistrate appointing commission to delay, for budgetary reasons, the appointment of a magistrate to serve the remainder of an unexpired term.

4. Any delay authorized by the chief justice pursuant to this section shall not exceed one year in duration, and not more than eight delays authorized by the chief justice shall be in effect at any one time.

2011 Acts, ch 78, §2

NEW section

ARTICLE 4  
SUPREME COURT

PART 2  
RULES OF PROCEDURE

**602.4201 Rules governing actions and proceedings.**

1. The supreme court may prescribe all rules of pleading, practice, evidence, and procedure, and the forms of process, writs, and notices, for all proceedings in all courts of this state, for the purposes of simplifying the proceedings and promoting the speedy determination of litigation upon its merits.

2. Rules of appellate procedure relating to appeals to and review by the supreme court, discretionary review by the courts of small claims actions, review by the supreme court by writ of certiorari to inferior courts, appeal to or review by the court of appeals of a matter transferred to that court by the supreme court, and further review by the supreme court of decisions of the court of appeals, shall be known as “Rules of Appellate Procedure”, and shall be published as provided in section 2B.5.

3. The following rules are subject to section 602.4202:

- a. Rules of civil procedure.
- b. Rules of criminal procedure.
- c. Rules of evidence.
- d. Rules of appellate procedure 6.101 through 6.105, 6.601 through 6.603, and 6.907.
- e. Rules of probate procedure.
- f. Juvenile procedure.
- g. Involuntary hospitalization of mentally ill.
- h. Involuntary commitment or treatment of substance abusers.

83 Acts, ch 186, §5201, 10201; 92 Acts, ch 1163, §110; 98 Acts, ch 1115, §8, 21; 2009 Acts, ch 41, §165

For future amendment to subsection 3, paragraph h, effective July 1, 2012, see 2011 Acts, ch 121, §60, 62  
Section not amended; footnote added

ARTICLE 6  
DISTRICT COURT

PART 1  
GENERAL PROVISIONS

**602.6113 Apportionment of certain judicial officers — substantial disparity.**

Notwithstanding section 602.6201, 602.6301, 602.6304, 602.7103B, or 633.20B, if a vacancy occurs in the office of a district judge, district associate judge, associate juvenile judge, or associate probate judge, and the chief justice of the supreme court makes a finding that a substantial disparity exists in the allocation of such judgeships and judicial workload between judicial election districts, the chief justice may apportion the vacant office from the judicial election district where the vacancy occurs to another judicial election district based upon the substantial disparity finding. However, such a judgeship shall not be apportioned pursuant to this section unless a majority of the judicial council approves the apportionment. This section does not apply to a district associate judge office authorized by section 602.6302 or 602.6307.

2011 Acts, ch 78, §3

NEW section

PART 3  
DISTRICT ASSOCIATE JUDGES

**602.6305 Term, retention, qualifications.**

1. District associate judges shall serve initial terms and shall stand for retention in office within the judicial election districts of their residences at the judicial election under sections 46.16 through 46.24.

2. A person does not qualify for appointment to the office of district associate judge unless the person is at the time of appointment a resident of the judicial election district in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for district associate judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A district associate judge must be a resident of the judicial election district in which the office is held during the entire term of office. A district associate judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

4. District associate judges shall qualify for office as provided in chapter 63 for district judges.

83 Acts, ch 186, §7305, 10201; 86 Acts, ch 1015, §5; 89 Acts, ch 114, §2; 89 Acts, ch 212, §2; 89 Acts, ch 296, §83; 2003 Acts, ch 151, §42; 2004 Acts, ch 1101, §83, 99, 102; 2011 Acts, ch 78, §4

Subsections 2 and 3 amended

PART 4  
MAGISTRATES

**602.6404 Qualifications.**

1. A magistrate shall be a resident of the county of appointment or a resident of a county contiguous to the county of appointment during the magistrate's term of office. A magistrate shall serve within the judicial district in which appointed, as directed by the chief judge, provided that the chief judge may assign a magistrate to hold court outside of the county of appointment for the orderly administration of justice. A magistrate is subject to reassignment under section 602.6108.

2. A person is not qualified for appointment as a magistrate unless the person files a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission. A person is not qualified for appointment as a magistrate if at the time of appointment the person has reached age seventy-two.

3. A magistrate shall be an attorney licensed to practice law in this state. However, a magistrate not admitted to the practice of law in this state and who is holding office on April 1, 2009, shall be eligible to be reappointed as a magistrate in the same county for a term commencing August 1, 2009, and subsequent successive terms.

83 Acts, ch 186, §7404, 10201; 87 Acts, ch 115, §76; 89 Acts, ch 114, §5; 89 Acts, ch 212, §5; 96 Acts, ch 1153, §6; 2009 Acts, ch 179, §145; 2011 Acts, ch 78, §5

Subsection 1 amended

ARTICLE 8  
CLERK OF DISTRICT COURT

**602.8105 Fees for civil cases and other services — collection and disposition.**

1. The clerk of the district court shall collect the following fees:
  - a. Except as otherwise provided in this subsection, for filing and docketing a petition, one hundred eighty-five dollars. In counties having a population of ninety-eight thousand or over, an additional five dollars shall be charged and collected to be known as the journal publication fee and used for the purposes provided for in section 618.13.
  - b. For filing and docketing a petition pursuant to chapter 598 other than a dissolution of marriage petition, one hundred dollars.
  - c. For filing and docketing an application for modification of a dissolution decree to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of modification, one hundred dollars.
  - d. For entering a final decree of dissolution of marriage, fifty dollars. It is the intent of the general assembly that the funds generated from the dissolution fees be appropriated and used for sexual assault and domestic violence centers.
  - e. For filing and docketing a petition for adoption pursuant to chapter 600, one hundred dollars. For multiple adoption petitions filed at the same time by the same petitioner under section 600.3, the filing fee and any court costs for any petition filed in addition to the first petition filed are waived.
  - f. For filing and docketing a small claims action, the amounts specified in section 631.6.
  - g. For an appeal from a judgment in small claims or for filing and docketing a writ of error, one hundred eighty-five dollars.
  - h. For a motion to show cause in a civil case, fifty dollars.
  - i. For filing and docketing a transcript of the judgment in a civil case, fifty dollars.
  - j. For filing a tribal judgment, one hundred dollars.
2. The clerk of the district court shall collect the following fees for miscellaneous services:
  - a. For filing, entering, and endorsing a mechanic's lien, fifty dollars, and if a suit is brought, the fee is taxable as other costs in the action.
  - b. For filing and entering any other statutory lien, fifty dollars.
  - c. For a certificate and seal, twenty dollars. However, there shall be no charge for a certificate and seal to an application to procure a pension, bounty, or back pay for a member of the armed services or other person.
  - d. For certifying a change in title of real estate, fifty dollars.
  - e. For filing a praecipe to issue execution under chapter 626, twenty-five dollars. The fee shall be recoverable by the creditor from the debtor against whom the execution is issued. A fee payable by a political subdivision of the state under this paragraph shall be collected by the clerk of the district court as provided in section 602.8109. However, the fee shall be waived and shall not be collected from a political subdivision of the state if a county attorney or county attorney's designee is collecting a delinquent judgment pursuant to section 602.8107, subsection 4.
  - f. For filing a praecipe to issue execution under chapter 654, fifty dollars.
  - g. For filing a confession of judgment under chapter 676, fifty dollars if the judgment is five thousand dollars or less, and one hundred dollars if the judgment exceeds five thousand dollars.
  - h. For filing a lis pendens, fifty dollars.
  - i. For applicable convictions under section 692A.110 prior to July 1, 2009, a civil penalty of two hundred dollars, and for applicable convictions under section 692A.110 on or after July 1, 2009, a civil penalty of two hundred fifty dollars.
  - j. Other fees provided by law.
3. The clerk of the district court shall pay to the treasurer of state all fees which have come into the clerk's possession and which are unclaimed pursuant to section 556.8 accompanied

by a form prescribed by the treasurer. Claims for payment of the moneys must be filed pursuant to chapter 556.

4. The clerk of the district court shall collect a civil penalty assessed against a retailer pursuant to section 126.23B. Any moneys collected from the civil penalty shall be distributed to the city or county that brought the enforcement action for a violation of section 126.23A.

83 Acts, ch 186, §9105, 10201; 83 Acts, ch 204, §14; 85 Acts, ch 175, §11; 85 Acts, ch 195, §54; 85 Acts, ch 197, §20 – 23; 86 Acts, ch 1011, §1; 86 Acts, ch 1238, §24; 87 Acts, ch 98, §5; 87 Acts, ch 234, §312; 88 Acts, ch 1258, §1; 89 Acts, ch 83, §81; 89 Acts, ch 207, §1; 89 Acts, ch 287, §7; 91 Acts, ch 48, §1; 91 Acts, ch 116, §11 – 13; 91 Acts, ch 218, §21 – 24; 91 Acts, ch 219, §15, 16; 92 Acts, ch 1240, §20; 94 Acts, ch 1074, §5; 95 Acts, ch 91, §4; 95 Acts, ch 124, §23, 26; 2000 Acts, ch 1188, §3; 2002 Acts, ch 1126, §1; 2003 Acts, ch 44, §102; 2004 Acts, ch 1127, §2; 2005 Acts, ch 15, §5, 14; 2005 Acts, ch 171, §5; 2006 Acts, ch 1052, §1; 2006 Acts, ch 1144, §7, 8; 2007 Acts, ch 71, §3; 2007 Acts, ch 196, §8; 2009 Acts, ch 119, §44; 2009 Acts, ch 179, §54 – 60, 72; 2010 Acts, ch 1159, §9; 2011 Acts, ch 34, §135

Subsection 2, paragraph e amended

### **602.8108 Distribution of court revenue.**

1. The clerk of the district court shall establish an account and deposit in this account all revenue and other receipts. Not later than the fifteenth day of each month, the clerk shall distribute all revenues received during the preceding calendar month. Each distribution shall be accompanied by a statement disclosing the total amount of revenue received during the accounting period and any adjustments of gross revenue figures that are necessary to reflect changes in the balance of the account, including but not limited to reductions resulting from the dishonor of checks previously accepted by the clerk.

2. Except as otherwise provided, the clerk of the district court shall report and submit to the state court administrator, not later than the fifteenth day of each month, the fines and fees received during the preceding calendar month. Except as provided in subsections 3, 4, 5, 7, 8, 9, and 10, the state court administrator shall deposit the amounts received with the treasurer of state for deposit in the general fund of the state. The state court administrator shall report to the legislative services agency within thirty days of the beginning of each fiscal quarter the amount received during the previous quarter in the account established under this section.

3. The clerk of the district court shall remit to the state court administrator, not later than the fifteenth day of each month, ninety-five percent of all moneys collected from the criminal penalty surcharge provided in section 911.1 during the preceding calendar month. The clerk shall remit the remainder to the county treasurer of the county that was the plaintiff in the action or to the city that was the plaintiff in the action. Of the amount received from the clerk, the state court administrator shall allocate seventeen percent to be deposited in the victim compensation fund established in section 915.94, and eighty-three percent to be deposited in the general fund.

4. The clerk of the district court shall remit all moneys collected from the drug abuse resistance education surcharge provided in section 911.2 to the state court administrator for deposit in the general fund of the state and the amount deposited is appropriated to the governor's office of drug control policy for use by the drug abuse resistance education program and other programs directed for a similar purpose.

5. The clerk of the district court shall remit all moneys collected from the assessment of the law enforcement initiative surcharge provided in section 911.3 to the state court administrator no later than the fifteenth day of each month for deposit in the general fund of the state.

6. The clerk of the district court shall remit all moneys collected from the county enforcement surcharge pursuant to section 911.4 to the county where the citation was issued for deposit in the county general fund no later than the fifteenth day of each month.

7. A court technology and modernization fund is established as a separate fund in the state treasury. The state court administrator shall allocate one million dollars of the moneys received under subsection 2 to be deposited in the fund, which shall be administered by the supreme court and shall be used to enhance the ability of the judicial branch to process cases more quickly and efficiently, to electronically transmit information to state government, local

governments, law enforcement agencies, and the public, and to improve public access to the court system.

8. The state court administrator shall allocate all of the fines and fees attributable to commercial vehicle violation citations issued by motor vehicle division personnel of the state department of transportation to the treasurer of state for deposit in the road use tax fund.

9. The state court administrator shall allocate fifty percent of all of the fines attributable to littering citations issued pursuant to sections 321.369, 321.370, and 461A.43 to the treasurer of state for deposit in the general fund of the state and such moneys are appropriated to the state department of transportation for purposes of the cleanup of litter and illegally discarded solid waste.

10. The clerk of the district court shall remit to the treasurer of state, not later than the fifteenth day of each month, all moneys collected from the sex offender civil penalty provided in section 692A.110 during the preceding calendar month. Of the amount received from the clerk, the treasurer of state shall allocate ten percent to be deposited in the court technology and modernization fund established in subsection 7. The treasurer of state shall deposit the remainder into the sex offender registry fund established in section 692A.119.

83 Acts, ch 186, §9108, 10201; 91 Acts, ch 116, §15; 94 Acts, ch 1074, §7; 96 Acts, ch 1216, §31; 96 Acts, ch 1218, §38, 39, 71; 98 Acts, ch 1047, §61; 98 Acts, ch 1090, §73, 84; 98 Acts, ch 1212, §8; 2000 Acts, ch 1222, §15; 2001 Acts, ch 168, §3; 2001 Acts, ch 182, §10; 2002 Acts, ch 1175, §44; 2003 Acts, ch 35, §45, 49; 2004 Acts, ch 1111, §3; 2004 Acts, ch 1119, §5; 2005 Acts, ch 3, §103; 2005 Acts, ch 143, §1, 2; 2005 Acts, ch 165, §5, 6; 2005 Acts, ch 179, §138; 2006 Acts, ch 1030, §76; 2006 Acts, ch 1087, §2, 3; 2006 Acts, ch 1166, §6 – 8; 2006 Acts, ch 1182, §64; 2007 Acts, ch 215, §65; 2009 Acts, ch 119, §46, 47

Use of court technology and modernization fund; reporting; 2009 Acts, ch 172, §1; 2010 Acts, ch 1185, §1; 2011 Acts, ch 135, §1, 7  
Section not amended; footnotes revised

#### **602.8109 Settlement of accounts of cities and counties.**

1. A city or a county shall pay court costs and other fees payable to the clerk of the district court for services rendered upon receipt of a statement from the clerk disclosing the amount due.

2. The clerk of the district court shall deliver a statement to the county auditor no later than the fifteenth day of each month disclosing all of the following:

a. The specific amounts of statutory fees and costs that are payable by the county to the clerk for services rendered by the clerk or other state officers or employees during the preceding month in connection with each civil or criminal action, and the total of all of these fees and costs.

b. Any amounts collected by the clerk of the district court during the preceding month as costs in an action when these amounts are payable by law to the county as reimbursement for costs incurred by the county in connection with a civil or criminal action, and the total of all of these amounts.

3. If the amount owed by the county under subsection 2, paragraph “a” for a calendar month is greater than the amount due to the county under subsection 2, paragraph “b” for that month, the county shall remit the difference to the clerk of the district court no later than the last day of the month in which the statement under subsection 2 is received.

4. If the amount due to the county under subsection 2, paragraph “b” for a calendar month is greater than the amount owed by the county under subsection 2, paragraph “a” for that month, the clerk of the district court shall remit the difference to the county treasurer no later than the last day of the month in which the statement under subsection 2 is delivered.

5. The clerk of the district court shall deliver a statement to the city clerk no later than the fifteenth day of each month disclosing all of the following:

a. The specific amounts of statutory fees and costs that are payable by the city to the clerk of the district court for services rendered by the clerk or other state officers or employees during the preceding month in connection with each civil or criminal action, and the total of all such fees and costs.

b. Any amounts collected by the clerk of the district court during the preceding month as costs in an action when such amounts are payable by law to the city as reimbursement for

costs incurred by the city in connection with a civil or criminal action, and the total of all such amounts.

6. If the amount owed by the city under subsection 5, paragraph “a”, for a calendar month is greater than the amount due to the city under subsection 5, paragraph “b”, for that month, the city shall remit the difference to the clerk of the district court no later than the last day of the month in which the statement under subsection 5 is received.

7. If the amount due the city under subsection 5, paragraph “b”, for a calendar month is greater than the amount owed by the city under subsection 5, paragraph “a”, for that month, the clerk of the district court shall remit the difference to the city clerk no later than the last day of the month in which the statement under subsection 5 is delivered.

8. Amounts not paid as required under subsection 3, 4, 6, or 7 shall bear interest for each day of delinquency at the rate in effect as of the day of delinquency for time deposits of public funds for eighty-nine days, as established under section 12C.6.

83 Acts, ch 186, §9109, 10201; 2007 Acts, ch 196, §12 – 14; 2011 Acts, ch 34, §136  
Subsection 6 amended

## ARTICLE 9

### JUDICIAL RETIREMENT

#### PART 1

#### JUDICIAL RETIREMENT SYSTEM

##### **602.9111 Investment of fund.**

1. So much of the judicial retirement fund as may not be necessary to be kept on hand for the making of disbursements under this article shall be invested by the treasurer of state in any investments authorized for the Iowa public employees’ retirement system in section 97B.7A and subject to the requirements of chapters 12F and 12H, and the earnings therefrom shall be credited to the fund. The treasurer of state may execute contracts and agreements with investment advisors, consultants, and investment management and benefit consultant firms in the administration of the judicial retirement fund.

2. Investment management expenses shall be charged to the investment income of the fund and there is appropriated from the fund an amount required for the investment management expenses. The court administrator shall report the investment management expenses for the fiscal year as a percent of the market value of the system.

3. For purposes of this section, investment management expenses are limited to the following:

a. Fees for investment advisors, consultants, and investment management and benefit consultant firms hired by the treasurer of state in administering the fund.

b. Fees and costs for safekeeping fund assets.

c. Costs for performance and compliance monitoring, and accounting for fund investments.

d. Any other costs necessary to prudently invest or protect the assets of the fund.

4. The state court administrator and the treasurer of state, and their employees, are not personally liable for claims based upon an act or omission of the person performed in the discharge of the person’s duties concerning the judicial retirement fund, except for acts or omissions which involve malicious or wanton misconduct.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.11]

83 Acts, ch 186, §10202(2)

CS83, §602.9111

84 Acts, ch 1180, §10; 96 Acts, ch 1187, §109; 2001 Acts, ch 68, §18, 24; 2007 Acts, ch 39, §13; 2011 Acts, ch 82, §13

Subsection 1 amended

PART 2  
IOWA SENIOR JUDGE ACT

**602.9203 Senior judgeship requirements — appointment and term.**

1. A supreme court judge, court of appeals judge, district judge, district associate judge, full-time associate juvenile judge, or full-time associate probate judge, who qualifies under subsection 2 may become a senior judge by filing with the clerk of the supreme court a written election in the form specified by the supreme court. The election shall be filed within six months of the date of retirement.

2. A judicial officer referred to in subsection 1 may be appointed, at the discretion of the supreme court, for a two-year term as a senior judge if the judicial officer meets all of the following requirements:

a. Retires from office on or after July 1, 1977, whether or not the judicial officer is of mandatory retirement age.

b. Meets the minimum requirements for entitlement to an annuity as specified in section 602.9106. However, a judge who elects to retire prior to attaining the age of sixty-five and who has not had twenty years of consecutive service, may serve as a senior judge, but shall not be paid an annuity pursuant to section 602.9204 until attaining age sixty-five.

c. Agrees in writing on a form prescribed by the supreme court to be available as long as the judicial officer is a senior judge to perform judicial duties as assigned by the supreme court for an aggregate period of thirteen weeks out of each successive twelve-month period.

d. Submits evidence to the satisfaction of the supreme court that as of the date of retirement the judicial officer does not suffer from a permanent physical or mental disability which would substantially interfere with the performance of duties agreed to under paragraph “c” of this subsection.

e. Submits evidence to the satisfaction of the supreme court that since the date of retirement the judicial officer has not engaged in the practice of law.

3. The clerk of the supreme court shall maintain a book entitled “Roster of Senior Judges”, and shall enter in the book the name of each judicial officer who files a timely election under subsection 1 and qualifies under subsection 2. A person shall be a senior judge upon entry of the person’s name in the roster of senior judges and until the person becomes a retired senior judge as provided in section 602.9207, or until the person’s name is stricken from the roster of senior judges as provided in section 602.9208, or until the person dies.

4. The supreme court shall cause each senior judge on the roster to actually perform judicial duties during each successive twelve-month period.

5. a. A senior judge may be reappointed to additional two-year terms, at the discretion of the supreme court, if the judicial officer meets the requirements of subsection 2.

b. A senior judge may be reappointed to a one-year term upon attaining seventy-eight years of age and to a succeeding one-year term, at the discretion of the supreme court, if the judicial officer meets the requirements of subsection 2.

[C81, §605A.23]

83 Acts, ch 186, §10202(2)

CS83, §602.9203

85 Acts, ch 94, §1, 2; 89 Acts, ch 162, §1; 95 Acts, ch 145, § 1, 2; 2002 Acts, ch 1135, §57; 2006 Acts, ch 1091, §22; 2008 Acts, ch 1191, §150; 2011 Acts, ch 78, §6 – 8

Subsection 1 amended

Subsection 2, paragraph c amended

Subsection 5, paragraph b amended

## ARTICLE 10

## ATTORNEYS AND COUNSELORS

See also Iowa Ct.R., ch 31 – 45

**602.10133 Costs and expenses.**

The court costs incident to such proceedings and the reasonable expense of the judges in attending the hearing after being approved by the supreme court shall be paid as an expense authorized by the executive council from the appropriations addressed in section 7D.29.

[C27, 31, 35, §10934-b9; C39, §10934.9; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.35]  
83 Acts, ch 186, §10202(2)

CS83, §602.10133

2011 Acts, ch 131, §38, 158

Section amended

## CHAPTER 617

## COMMENCING ACTIONS

For Iowa court rules concerning commencement of actions,  
see R.C.P. 1.301 – 1.315

**617.3 Foreign corporations or nonresidents contracting or committing torts in Iowa.**

1. If the action is against any corporation or person owning or operating any railway or canal, steamboat or other rivercraft, or any telegraph, telephone, stage, coach, or carline, or against any express company, or against any foreign corporation, service may be made upon any general agent of such corporation, company, or person, wherever found, or upon any station, ticket, or other agent, or person transacting the business thereof or selling tickets therefor in the county where the action is brought; if there is no such agent in said county, then service may be had upon any such agent or person transacting said business in any other county.

2. If a foreign corporation makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such foreign corporation commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such foreign corporation for the purpose of service of process or original notice on such foreign corporation under this section, and, if the corporation does not have a registered agent or agents in the state of Iowa, shall be deemed to constitute the appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. If a nonresident person makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such person commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such person for the purpose of service of process or original notice on such person under this section, and shall be deemed to constitute the appointment of the secretary of state of the state of Iowa to be the true and lawful attorney of such person upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. The term “*nonresident person*” shall include any person who was, at the time of the contract or tort, a resident of the state of Iowa but who removed from the state before the commencement of such action or proceedings and ceased to be a resident of Iowa or, a resident who has remained continuously absent from the state for at least a period of six months following commission of the tort. The making of the contract or the committing of the tort shall be deemed to be the agreement of such corporation or such person that any process or original notice so served shall be of the same legal force and effect as if served personally upon such defendant within the state of Iowa. The term “*resident of Iowa*” shall include any Iowa corporation, any foreign corporation holding a certificate of

authority to transact business in Iowa, any individual residing in Iowa, and any partnership or association one or more of whose members is a resident of Iowa.

3. Service of such process or original notice shall be made by filing duplicate copies of said process or original notice with said secretary of state, together with a fee of ten dollars, and by mailing to the defendant and to each of them if more than one, by registered or certified mail, a notification of said filing with the secretary of state, the same to be so mailed within ten days after such filing with the secretary of state. Such notification shall be mailed to each foreign corporation at the address of its principal office in the state or country under the laws of which it is incorporated and to each such nonresident person at an address in the state of residence. The defendant shall have sixty days from the date of such filing with the secretary of state within which to appear. Proof of service shall be made by filing in court the duplicate copy of the process or original notice with the secretary of state's certificate of filing, and the affidavit of the plaintiff or the plaintiff's attorney of compliance herewith.

4. The secretary of state shall keep a record of all processes or original notices so served upon the secretary of state, recording therein the time of service and the secretary of state's actions with reference thereto, and the secretary of state shall promptly return one of said duplicate copies to the plaintiff or the plaintiff's attorney, with a certificate showing the time of filing thereof in the secretary of state's office.

5. The original notice of suit filed with the secretary of state shall be in form and substance the same as provided in rule of civil procedure 1.1901, form 3, Iowa court rules.

6. The notification of filing shall be in substantially the following form, to wit:

To ..... (Here insert the name of each defendant with proper address.) You will take notice that an original notice of suit or process against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa by filing a copy of said notice or process on the ..... day of ..... (month), ..... (year), with the secretary of state of the state of Iowa.

Dated at ....., Iowa, this ..... day of ..... (month), ..... (year)

.....

Plaintiff

By

.....

Attorney for Plaintiff

7. Actions against foreign corporations or nonresident persons as contemplated by this law may be brought in the county of which plaintiff is a resident, or in the county in which any part of the contract is or was to be performed or in which any part of the tort was committed.

[C51, §1727; R60, §2825; C73, §2611; C97, §3529; S13, §3529; C24, 27, 31, 35, 39, §11072; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.3; 81 Acts, ch 21, §20]

83 Acts, ch 101, §123; 2000 Acts, ch 1058, §56; 2002 Acts, ch 1119, §106; 2007 Acts, ch 126, §101; 2011 Acts, ch 25, §70

Subsection 3 amended

## CHAPTER 622

### EVIDENCE

For Iowa court rules concerning depositions,  
see R.C.P. 1.701 – 1.717

For Iowa court rules concerning perpetuation of testimony,  
see R.C.P. 1.721 – 1.728

Presumption of death of person missing in action, §633.517

#### **622.10 Communications in professional confidence — exceptions — required consent to release of medical records after commencement of legal action — application to court.**

1. A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

2. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician assistants, advanced registered nurse practitioners, or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.

3. *a.* In a civil action in which the condition of the plaintiff in whose favor the prohibition is made is an element or factor of the claim or defense of the adverse party or of any party claiming through or under the adverse party, the adverse party shall make a written request for records relating to the condition alleged upon the plaintiff's attorney for a legally sufficient patient's waiver under federal and state law. Upon receipt of a written request, the plaintiff shall execute a legally sufficient patient's waiver and release it to the adverse party making the request within sixty days of receipt of the written request. The patient's waiver may require a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to do all of the following:

(1) Provide a complete copy of the patient's records including but not limited to any reports or diagnostic imaging relating to the condition alleged.

(2) Consult with the attorney for the adverse party prior to providing testimony regarding the plaintiff's medical history and the condition alleged and opinions regarding health etiology and prognosis for the condition alleged subject to the limitations in paragraphs "c" and "e".

*b.* If a plaintiff fails to sign a waiver within the prescribed time period, the court may order disclosure or compliance. The failure of a party to comply with the court's order may be grounds for dismissal of the action or any other relief authorized under the rules of civil procedure.

*c.* Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records, provides information during consultation, or otherwise responds in good faith to a request pursuant to paragraph "a" shall be immune with respect to all civil or criminal penalties, claims, or actions of any kind with respect to this section.

*d.* Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records or consults with the attorney for any party shall be entitled to charge a reasonable fee for production of the records, diagnostic imaging, and consultation. Any party seeking consultation shall be responsible for payment of all charges. The fees for copies of any records shall be as specified in subsection 6.

*e.* Defendant's counsel shall provide a written notice to plaintiff's attorney in a manner

consistent with the Iowa rules of civil procedure providing for notice of deposition at least ten days prior to any meeting with plaintiff's physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional. Plaintiff's attorney has the right to be present at all such meetings, or participate in telephonic communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional and attorney for the defendant. Prior to scheduling any meeting or engaging in any communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional, attorney for the defendant shall confer with plaintiff's attorney to determine a mutually convenient date and time for such meeting or telephonic communication. Plaintiff's attorney may seek a protective order structuring all communication by making application to the court at any time.

f. The provisions of this subsection do not apply to actions or claims brought pursuant to chapter 85, 85A, or 85B.

4. a. Except as otherwise provided in this subsection, the confidentiality privilege under this section shall be absolute with regard to a criminal action and this section shall not be construed to authorize or require the disclosure of any privileged records to a defendant in a criminal action unless either of the following occur:

(1) The privilege holder voluntarily waives the confidentiality privilege.

(2) (a) The defendant seeking access to privileged records under this section files a motion demonstrating in good faith a reasonable probability that the information sought is likely to contain exculpatory information that is not available from any other source and for which there is a compelling need for the defendant to present a defense in the case. Such a motion shall be filed not later than forty days after arraignment under seal of the court. Failure of the defendant to timely file such a motion constitutes a waiver of the right to seek access to privileged records under this section, but the court, for good cause shown, may grant relief from such waiver.

(b) Upon a showing of a reasonable probability that the privileged records sought may likely contain exculpatory information that is not available from any other source, the court shall conduct an in camera review of such records to determine whether exculpatory information is contained in such records.

(c) If exculpatory information is contained in such records, the court shall balance the need to disclose such information against the privacy interest of the privilege holder.

(d) Upon the court's determination, in writing, that the privileged information sought is exculpatory and that there is a compelling need for such information that outweighs the privacy interests of the privilege holder, the court shall issue an order allowing the disclosure of only those portions of the records that contain the exculpatory information. The court's order shall also prohibit any further dissemination of the information to any person, other than the defendant, the defendant's attorney, and the prosecutor, unless otherwise authorized by the court.

b. Privileged information obtained by any means other than as provided in paragraph "a" shall not be admissible in any criminal action.

5. If an adverse party desires the oral deposition, either discovery or evidentiary, of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional or desires to call a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional as a witness at the trial of the action, the adverse party shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant permission unless the court finds that the evidence sought does not relate to the condition alleged. At the request of any party or at the request of the deponent, the court shall fix a reasonable fee to be paid to a physician or surgeon, physician assistant,

advanced registered nurse practitioner, or mental health professional by the party taking the deposition or calling the witness.

6. At any time, upon a written request from a patient, a patient's legal representative or attorney, or an adverse party pursuant to subsection 3, any provider shall provide copies of the requested records or images to the requester within thirty days of receipt of the written request. The written request shall be accompanied by a legally sufficient patient's waiver unless the request is made by the patient or the patient's legal representative or attorney.

a. The fee charged for the cost of producing the requested records or images shall be based upon the actual cost of production. If the written request and accompanying patient's waiver, if required, authorizes the release of all of the patient's records for the requested time period, including records relating to the patient's mental health, substance abuse, and acquired immune deficiency syndrome-related conditions, the amount charged shall not exceed the rates established by the workers' compensation commissioner for copies of records in workers' compensation cases. If requested, the provider shall include an affidavit certifying that the records or images produced are true and accurate copies of the originals for an additional fee not to exceed ten dollars.

b. A patient or a patient's legal representative or a patient's attorney is entitled to one copy free of charge of the patient's complete billing statement, subject only to a charge for the actual costs of postage or delivery charges incurred in providing the statement. If requested, the provider or custodian of the record shall include an affidavit certifying the billing statements produced to be true and accurate copies of the originals for an additional fee not to exceed ten dollars.

c. Fees charged pursuant to this subsection are not subject to a sales or use tax. A provider providing the records or images may require payment in advance if an itemized statement demanding such is provided to the requesting party within fifteen days of the request. Upon a timely request for payment in advance, the time for providing the records or images shall be extended until the greater of thirty days from the date of the original request or ten days from the receipt of payment.

d. If a provider does not provide to the requester all records or images encompassed by the request or does not allow a patient access to all of the patient's medical records encompassed by the patient's request to examine the patient's records, the provider shall give written notice to the requester or the patient that providing the requested records or images would be a violation of the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

e. As used in this subsection:

(1) "Records" and "images" include electronic media and data containing a patient's health or billing information and "copies" includes patient records or images provided in electronic form, regardless of the form of the originals. If consented to by the requesting party, records and images produced pursuant to this subsection may be produced on electronic media.

(2) "Provider" means any physician or surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, hospital, nursing home, or other person, entity, facility, or organization that furnishes, bills, or is paid for health care in the normal course of business.

7. For the purposes of this section, "mental health professional" means a psychologist licensed under chapter 154B, a registered nurse licensed under chapter 152, a social worker licensed under chapter 154C, a marital and family therapist licensed under chapter 154D, a mental health counselor licensed under chapter 154D, or an individual holding at least a master's degree in a related field as deemed appropriate by the board of behavioral science.

8. A qualified school guidance counselor, who is licensed by the board of educational examiners under chapter 272 and who obtains information by reason of the counselor's employment as a qualified school guidance counselor, shall not be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school

guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

[C51, §2393, 2394; R60, §3985, 3986; C73, §3643; C97, §4608; S13, §4608; C24, 27, 31, 35, 39, §11263; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.10; 82 Acts, ch 1242, §1]

88 Acts, ch 1134, §107; 88 Acts, ch 1262, §10; 91 Acts, ch 229, §11; 97 Acts, ch 197, §8, 16; 2007 Acts, ch 10, §179; 2008 Acts, ch 1031, §67; 2008 Acts, ch 1191, §81 – 83; 2011 Acts, ch 8, §2, 3

Wounds and burn injuries connected to criminal offenses; §147.112 and 147.113A

Disclosures of mental health and psychological information, see chapter 228

NEW subsection 4 and former subsections 4 – 7 renumbered as 5 – 8

### 622.62 Ordinances of city.

1. The printed copies of a city code and of supplements to it which are purported or proved to have been compiled pursuant to section 380.8 shall be admitted in the courts of this state as presumptive evidence of the ordinances contained therein. When properly pleaded, the courts of this state shall take judicial notice of ordinances contained in a city code or city code supplement.

2. The printed copies of an ordinance of any city which has not been compiled in a city code or a supplement pursuant to section 380.8 but which has been published by authority of the city, or transcripts of any ordinance, act, or proceeding thereof recorded in any book, or entries on any minutes or journals kept under direction of the city, and certified by the city clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes, or journals would be received, and with the same effect. The clerk shall furnish such transcripts, and be entitled to charge therefor at the rate that the clerk of the district court is entitled to charge for transcripts of records from that court.

3. The actions of any court of this state in taking judicial notice of the existence and content of a city ordinance in any proceeding which was commenced between the first day of July, 1973, and April 17, 1976, shall be conclusively presumed to be lawful, and to the extent required by this section, this section is retroactive.

[R60, §1076; C73, §3720; C97, §4653; C24, 27, 31, 35, 39, §11315; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.62]

2011 Acts, ch 25, §71

Subsection 3 amended

## CHAPTER 624

### TRIAL AND JUDGMENT

For Iowa court rules concerning trials,  
see R.C.P. 1.901 – 1.947

For Iowa court rules concerning judgments generally,  
see R.C.P. 1.951 – 1.962

For Iowa court rules concerning defaults and judgments thereon,  
see R.C.P. 1.971 – 1.977

For Iowa court rules concerning summary judgments,  
see R.C.P. 1.981 – 1.983

For Iowa court rules concerning proceedings after judgment,  
see R.C.P. 1.1001 – 1.1020

For Iowa court rules concerning declaratory judgments,  
see R.C.P. 1.1101 – 1.1109

### 624.23 Liens of judgments — real estate — homesteads — support judgments.

1. Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment.

2. *a.* Judgment liens described in subsection 1 do not attach to real estate of the defendant, occupied as a homestead pursuant to chapter 561, except as provided in section 561.21 or if the real estate claimed as a homestead exceeds the limitations prescribed in sections 561.1 through 561.3.

b. A claim of lien against real estate claimed as a homestead is barred unless execution is levied within thirty days of the time the defendant, the defendant's agent, or a person with an interest in the real estate has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits derived from the lien as to the real estate alleged to be or to have been a homestead shall be forfeited unless the owner of the judgment levies execution against that real estate within thirty days from the date of service of the demand. The demand shall contain an affidavit setting forth facts indicating why the judgment is not believed to be a lien against the real estate. A warranty of title by a former occupying homeowner in a conveyance for value constitutes a claim of exemption against all judgments against the current homeowner or the current homeowner's spouse not specifically exempted in the conveyance. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure or in a manner provided in section 654.4A, subsections 1 through 3. A copy of the written demand and proof of service of the written demand shall be filed in the court file of the case in which the judgment giving rise to the alleged lien was entered.

c. A party serving a written demand under this subsection may obtain an immediate court order releasing the claimed lien by posting with the clerk of court a cash bond in an amount of at least one hundred twenty-five percent of the outstanding balance owed on the judgment. The court may order that in lieu of posting the bond with the clerk of court, the bond may be deposited in either the trust account of an attorney licensed to practice law in this state or in a federally insured depository institution, along with the restriction that the bond not be disbursed except as the court may direct. A copy of the court order shall be served along with a written demand under this subsection. Thereafter, any execution on the judgment shall be against the bond, subject to all claims and defenses which the moving party had against the execution against the real estate, including but not limited to a lack of equity in the property to support the lien in its proper priority. The bond shall be released upon demand of its principal or surety if no execution is ordered on the judgment within thirty days of completion of service of the written demand under this subsection.

3. Judgment liens described in subsection 1 shall not attach to subsequently acquired real estate owned by the defendant if the personal liability of the defendant on the judgment has been discharged under the bankruptcy laws of the United States.

4. a. In addition to other provisions relating to the attachment of liens, full faith and credit shall be afforded to liens arising for overdue support due on support judgments entered by a court or administrative agency of another state on real estate in this state owned by the obligor, for the period of ten years from the date of the judgment. Notwithstanding any other provisions of law, including but not limited to the formatting of forms or requirement of signatures, the lien attaches on the date that a notice of interstate lien promulgated by the United States secretary of health and human services is filed with the clerk of district court in the county where the real estate is located.

b. The lien shall apply only prospectively as of the date of attachment to all real estate the obligor may subsequently acquire and does not retroactively apply to the chain of title for any real estate that the obligor had disposed of prior to the date of attachment.

5. A judgment lien attaching to the real estate of a city may be discharged at any time by the city filing with the clerk of the district court in which the judgment was entered a bond in the amount for which the judgment was entered, including court costs and accruing interest, with surety or sureties to be approved by the clerk, conditioned for the payment of the judgment amount, interest, and court costs. If the real estate is located in a county other than that in which the judgment was entered, the clerk of the district court in which the judgment was entered shall certify to the clerk of the district court of the county in which the real estate is located that the bond has been filed.

6. A judgment against a city shall not give rise to a lien attaching to the streets, alleys, or utility easements of a city or attaching to the real estate of a city which is used by the city for transportation, health, safety, or utility purposes.

7. If a case file has been sealed by the court, or if by law the court records in a case are not available to the general public, any judgments entered in the case shall not become a lien on real property until either the identity of the judgment creditor becomes public record, or

until the judgment creditor, in a public document in the case in which judgment is entered, designates an agent and office, consistent with the requirements of section 490.501, on which process on the judgment creditor may be served. Service may be made on the agent in the same manner as service may be made on a corporate agent pursuant to section 490.504. An agent who has resigned without designating a successor agent and office and who is otherwise unavailable for service may be served in the manner provided in section 490.504, subsection 2, at the agent's office of record.

[C51, §2485, 2489; R60, §4105, 4109; C73, §2882; C97, §3801; C24, 27, 31, 35, 39, §11602; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.23; 82 Acts, ch 1002, §1 – 3]

85 Acts, ch 100, §8; 86 Acts, ch 1014, §1; 89 Acts, ch 102, §8; 97 Acts, ch 175, §202; 2002 Acts, ch 1089, §1; 2006 Acts, ch 1132, §4, 16; 2010 Acts, ch 1021, §1; 2011 Acts, ch 6, §1

Judgment lien for alcoholic beverage violations, §123.113

Special limitations on judgments, chapter 615

Subsection 7 applies to judgments entered on or after July 1, 2007; 2006 Acts, ch 1132, §16

Subsection 2, paragraph c amended

### **624.37 Satisfaction of judgment — penalty.**

1. When the amount due upon judgment is paid off, or satisfied in full, the party entitled to the proceeds thereof, or those acting for that party, must acknowledge satisfaction of the judgment by the execution of an instrument referring to it, duly acknowledged or notarized in the manner prescribed in chapter 9E, and filed in the office of the clerk in every county wherein the judgment is a lien. A failure to acknowledge satisfaction of the judgment in such manner within thirty days after having been requested to do so in a writing containing a draft release of the judgment shall subject the delinquent party to a penalty of four hundred dollars to be recovered by a motion filed in the court that rendered the original judgment requesting that the payor of the judgment, if different from the judgment debtor, be subrogated to the rights of the judgment creditor, that the court determine the amount currently owed on the judgment, or any other relief as may be necessary to accomplish payment and satisfaction of the judgment. If the motion relates to a lien of judgment as to specific property, the motion may be filed by a person with an interest in the property.

2. Upon the filing of an affidavit to the motion that a judgment creditor cannot be located or is unresponsive to requests to accept payment within the thirty-day period described in subsection 1, and upon court order, payment upon a judgment may be made to the treasurer of state as provided in chapter 556 and the treasurer's receipt for the funds is conclusive proof of payment on the judgment.

[C97, §3804; C24, 27, 31, 35, 39, §11621; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.37]

90 Acts, ch 1030, §1; 99 Acts, ch 144, §10; 2011 Acts, ch 6, §2

Section amended

## **CHAPTER 626D**

### **RECOGNITION AND ENFORCEMENT OF TRIBAL COURT CIVIL JUDGMENTS**

#### **626D.5 Recognition and enforcement of tribal judgments.**

1. Unless objected to pursuant to section 626D.4, a tribal judgment shall be recognized and enforced by the courts of this state to the same extent and with the same effect as any judgment, order, or decree of a court of this state.

2. If no objections are timely filed, the clerk shall issue a certification that no objections were timely filed and the tribal judgment shall be enforceable in the same manner as if issued by a valid court of this state.

3. A tribal judgment shall not be recognized and enforced if the objecting party demonstrates by a preponderance of the evidence at least one of the following:

a. The tribal court did not have personal or subject matter jurisdiction.

- b. A party was not afforded due process.
- 4. The court may decline to recognize and enforce a tribal judgment on equitable grounds for any of the following reasons:
  - a. The tribal judgment was obtained by extrinsic fraud.
  - b. The tribal judgment conflicts with another filed judgment that is entitled to recognition in this state.
  - c. The tribal judgment is inconsistent with the parties' contractual choice of forum provided the contractual choice of forum issue was timely raised in the tribal court.
  - d. The tribal court does not recognize and enforce judgments of the courts of this state under standards similar to those provided in this chapter.
  - e. The cause of action or defense upon which the tribal judgment is based is repugnant to the fundamental public policy of the United States or this state.

2007 Acts, ch 192, §8; 2011 Acts, ch 34, §137

Subsection 4 amended

## CHAPTER 631

### SMALL CLAIMS

#### **631.1 Small claims — jurisdiction.**

1. The following actions or claims are small claims and shall be commenced, heard and determined as provided in this chapter:

A civil action for a money judgment where the amount in controversy is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002, exclusive of interest and costs.

2. The district court sitting in small claims shall have concurrent jurisdiction of an action for forcible entry and detainer which is based on those grounds set forth in section 648.1, subsections 1, 2, 3 and 5. When commenced under this chapter, the action shall be a small claim for the purposes of this chapter.

3. The district court sitting in small claims has concurrent jurisdiction of an action of replevin if the value of the property claimed is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002. When commenced under this chapter, the action is a small claim for the purposes of this chapter.

4. The district court sitting in small claims has concurrent jurisdiction of motions and orders relating to executions against personal property, including garnishments, where the value of the property or garnisheed money involved is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002.

5. The district court sitting in small claims has concurrent jurisdiction of an action for abandonment of a manufactured or mobile home or personal property pursuant to section 555B.3, if no money judgment in excess of four thousand dollars is sought for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002. If commenced under this chapter, the action is a small claim for the purposes of this chapter.

6. The district court sitting in small claims has concurrent jurisdiction of an action to challenge a mechanic's lien pursuant to sections 572.24 and 572.32.

7. The district court sitting in small claims has concurrent jurisdiction of an action for the collection of taxes brought by a county treasurer pursuant to sections 445.3 and 445.4 where the amount in controversy is five thousand dollars or less for actions commenced on or after July 1, 2003, exclusive of interest and costs.

8. The district court sitting in small claims has concurrent jurisdiction of motions and orders relating to releases of judgments in whole or in part including motions and orders

under section 624.23, subsection 2, paragraph “c” and section 624.37, where the amount owing on the judgment, including interests and costs, is five thousand dollars or less.

[C73, 75, 77, 79, 81, §631.1]

83 Acts, ch 63, §1, 5; 86 Acts, ch 1077, §1; 90 Acts, ch 1038, §1; 93 Acts, ch 154, §18; 94 Acts, ch 1117, §1; 95 Acts, ch 49, §23; 99 Acts, ch 79, §5; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1087, §1, 2; 2003 Acts, ch 178, §20; 2011 Acts, ch 6, §3

Jurisdictional amount to revert to \$4,000 if a proper court declares the \$5,000 amount unconstitutional; 2002 Acts, ch 1087, §3  
NEW subsection 8

### **631.17 Prohibited practices.**

1. The district court, after due notice and hearing, may bar a person from appearing on the person’s own behalf in any court governed by this chapter on a cause of action purchased by or assigned for collection to that person for any of the following:

a. Falsely holding oneself out as an attorney at law.

b. Repeatedly filing claims for costs allowed under section 625.22 which have been found by the court to have been exaggerated or without merit.

c. A pattern of conduct in violation of chapter 537, article 7.

2. A person barred pursuant to subsection 1 shall not derive any benefit, directly or indirectly, from any case brought pursuant to this chapter within the purview of the order of bar issued by the district court.

3. The district court shall dismiss any pending case based on a cause of action purchased or assigned for collection brought on the person’s own behalf by a person barred pursuant to subsection 1, and shall assess the costs against that person.

4. The district court shall dismiss any case subsequently brought directly or indirectly by a person subject to a bar pursuant to subsection 1 in violation of that subsection and shall assess all costs to that person, and the court shall assess a further civil fine of one hundred dollars against that person for each such case dismissed.

5. The district court shall retain jurisdiction over a person barred pursuant to subsection 1 and may punish violations of the court’s order of bar as a matter of criminal contempt.

86 Acts, ch 1238, §25; 87 Acts, ch 98, §6; 2011 Acts, ch 25, §72

Subsection 1, paragraph c amended

## **CHAPTER 633**

### **PROBATE CODE**

#### **DIVISION I**

#### **INTRODUCTION AND DEFINITIONS**

#### **PART 2**

#### **DEFINITIONS AND USE OF TERMS**

### **633.3 Definitions and use of terms.**

When used in this probate code, unless otherwise required by the context, or another division of this probate code, the following words and phrases shall be construed as follows:

1. *Administrator* — any person appointed by the court to administer an intestate estate.

2. *Bequeath* — includes the word “*devise*” when used as a verb.

3. *Bequest* — includes the word “*devise*” when used as a noun.

4. *Charges* — includes costs of administration, funeral expenses, cost of monument, and federal and state estate taxes.

5. *Child* — includes an adopted child but does not include a grandchild or other more

remote descendants, nor, except as provided in sections 633.221 and 633.222, a biological child.

6. *Clerk* — “*Clerk of the District Court*” in the county in which the matter is pending and includes the term “*Clerk of the Probate Court*”.

7. *Conservator* — a person appointed by the court to have the custody and control of the property of a ward under the provisions of this probate code.

8. *Costs of administration* — includes court costs, fiduciary’s fees, attorney fees, all appraisers’ fees, premiums on corporate surety bonds, statutory allowance for support of surviving spouse and children, cost of continuation of abstracts of title, recording fees, transfer fees, transfer taxes, agents’ fees allowed by order of court, interest expense, including, but not limited to, interest payable on extension of federal estate tax, and all other fees and expenses allowed by order of court in connection with the administration of the estate. Court costs shall include expenses of selling property.

9. *Court* — the Iowa district court sitting in probate and includes any Iowa district judge.

10. *Debts* — includes liabilities of the decedent which survive, whether arising in contract, tort or otherwise.

11. *Devise* — when used as a noun, includes testamentary disposition of property, both real and personal.

12. *Devise* — when used as a verb, to dispose of property, both real and personal, by a will.

13. *Devisee* — includes legatee.

14. *Distributee* — a person entitled to any property of the decedent under the decedent’s will or under the statutes of intestate succession.

15. *Estate* — the real and personal property of either a decedent or a ward, and may also refer to the real and personal property of a trust described in section 633.10.

16. *Executor* — means any person appointed by the court to administer the estate of a testate decedent.

17. *Fiduciary* — includes personal representative, executor, administrator, guardian, conservator, and the trustee of any trust described in section 633.10.

18. *Full age* — the state of legal majority attained through arriving at the age of eighteen years or through having married, even though such marriage is terminated by divorce.

19. *Functional limitations* — means the behavior or condition of a person which impairs the person’s ability to care for the person’s personal safety or to attend to or provide for necessities for the person.

20. *Guardian* — the person appointed by the court to have the custody of the person of the ward under the provisions of this probate code.

21. *Guardian of the property* — at the election of the person appointed by the court to have the custody and care of the property of a ward, the term “*guardian of the property*” may be used, which term shall be synonymous with the term “*conservator*”.

22. *Heir* — any person, except the surviving spouse, who is entitled to property of a decedent under the statutes of intestate succession.

23. *Incompetent* — means the condition of any person who has been adjudicated by a court to meet at least one of the following conditions:

a. To have a decision-making capacity which is so impaired that the person is unable to care for the person’s personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

b. To have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person’s financial affairs.

c. To have a decision-making capacity which is so impaired that both paragraphs “a” and “b” are applicable to the person.

24. *Issue* — for the purposes of intestate succession, includes all lawful lineal descendants of a person, whether biological or adopted, except those who are the lineal descendants of the person’s living descendants.

25. *Legacy* — a testamentary disposition of personal property.

26. *Legatee* — a person entitled to personal property under a will.

27. *Letters* — includes letters testamentary, letters of administration, letters of guardianship, letters of conservatorship, and letters of trusteeship.

28. *Minor* — a person who is not of full age.

29. *Person* — includes natural persons and corporations.

30. *Personal representative* — includes executor and administrator.

31. *Property* — includes both real and personal property.

32. *Surviving spouse* — the surviving wife or husband, as the case may be.

33. *Temporary administrator* — any person appointed by the court to care for an estate pending the probating of a proposed will, or to handle any special matter designated by the court.

34. *Trustee* — the person or persons serving as trustee of a trust described in section 633.10.

35. *Trusts* — includes only those trusts described in section 633.10.

36. *Will* — includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will.

[C51, §1286; R60, §2318; C73, §2336; C97, §3280; C24, 27, 31, 35, 39, §11860; C46, 50, 54, 58, 62, §633.15; C66, 71, 73, 75, 77, 79, 81, §633.3]

94 Acts, ch 1046, §26; 97 Acts, ch 178, §1, 2; 2005 Acts, ch 38, §2 – 5, 51; 2006 Acts, ch 1010, §154; 2008 Acts, ch 1119, §14; 2011 Acts, ch 34, §138

Subsection 4 amended

## DIVISION IV

### INTESTATE SUCCESSION

#### PART 1

#### RULES OF INHERITANCE

##### **633.220A Posthumous child.**

1. For the purposes of rules relating to intestate succession, a child of an intestate conceived and born after the intestate's death or born as the result of the implantation of an embryo after the death of the intestate is deemed a child of the intestate as if the child had been born during the lifetime of the intestate and had survived the intestate, if all of the following conditions are met:

a. A genetic parent-child relationship between the child and the intestate is established.

b. The intestate, in a signed writing, authorized the intestate's surviving spouse to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth.

c. The child is born within two years of the death of the intestate.

2. Any heir of the intestate whose interest in the intestate's estate would be reduced by the birth of a child born as provided in subsection 1 shall have one year from the birth of the child within which to bring an action challenging the child's right to inherit under this chapter.

3. For the purposes of this section, "*genetic material*" means sperm, eggs, or embryos.

2011 Acts, ch 18, §2

NEW section

PART 2  
PROCEDURE FOR OPENING ADMINISTRATION  
OF INTESTATE ESTATES

**633.231 Notice in intestate estates — medical assistance claims.**

1. Upon opening administration of an intestate estate, the administrator shall, in accordance with section 633.410, provide by electronic transmission on a form approved by the department of human services to the entity designated by the department of human services, a notice of opening administration of the estate and of the appointment of the administrator, which shall include a notice to file claims with the clerk or to provide electronic notification to the administrator that the department has no claim within six months from the date of sending this notice, or thereafter be forever barred.

2. The notice shall be in substantially the following form:

NOTICE OF OPENING ADMINISTRATION  
OF ESTATE, OF APPOINTMENT OF  
ADMINISTRATOR, AND NOTICE  
TO CREDITOR

In the District Court of Iowa  
In and for ..... County.  
In the Estate of ....., Deceased  
Probate No. ....

To the Department of Human Services Who May Be Interested  
in the Estate of ....., Deceased, who died on or about  
..... (date):

You are hereby notified that on the ..... day  
of ..... (month), ..... (year), an intestate estate was opened  
in the above-named court and that ..... was appointed  
administrator of the estate.

You are further notified that the birthdate of the deceased  
is ..... and the deceased's social security number  
is .....-.....-..... The name of the spouse  
is ..... The birthdate of the spouse is ..... and the  
spouse's social security number is .....-.....-....., and that  
the spouse of the deceased is alive as of the date of this notice, or  
deceased as of ..... (date).

You are further notified that the deceased was/was not a disabled  
or a blind child of the medical assistance recipient by the name of  
....., who had a birthdate of ..... and a social security  
number of .....-.....-....., and the medical assistance debt  
of that medical assistance recipient was waived pursuant to section  
249A.5, subsection 2, paragraph "a", subparagraph (1), and is now  
collectible from this estate pursuant to section 249A.5, subsection  
2, paragraph "b".

Notice is hereby given that if the department of human services  
has a claim against the estate for the deceased person or persons  
named in this notice, the claim shall be filed with the clerk of the  
above-named district court, as provided by law, duly authenticated,  
for allowance within six months from the date of sending this notice  
and, unless otherwise allowed or paid, the claim is thereafter forever  
barred. If the department does not have a claim, the department  
shall return the notice to the administrator with notification stating  
the department does not have a claim within six months from the  
date of sending this notice.

Dated this ..... day of ..... (month), ..... (year)

.....  
Administrator of estate

.....  
Address

.....  
Attorney for administrator

.....  
Address

2001 Acts, ch 109, §1; 2002 Acts, ch 1119, §97; 2007 Acts, ch 134, §11; 2010 Acts, ch 1137, §4; 2011 Acts, ch 34, §139

Subsection 2 amended

DIVISION VI

WILLS

PART 1

GENERAL PROVISIONS RELATING TO WILLS

**633.267 Children born or adopted after execution of will.**

1. If a testator fails to provide in the testator’s will for any child of the testator born to or adopted by the testator after the execution of the testator’s last will, such child, whether born before or after the testator’s death, shall receive a share in the estate of the testator equal in value to that which the child would have received under section 633.219, after taking into account the spouse’s intestate share under section 633.211 or section 633.212, whichever section or sections are applicable, if the testator had died intestate, unless it appears from the will that such omission was intentional.

2. a. For the purposes of this section, a child born after the testator’s death includes a child of the testator conceived and born after the testator’s death, or a child born as the result of the implantation of an embryo after the testator’s death, if all of the following conditions are met:

(1) A genetic parent-child relationship between the child and the testator is established.

(2) The testator, in a signed writing, authorized the testator’s surviving spouse to use the deceased parent’s genetic material to initiate the posthumous procedure that resulted in the child’s birth or the testator by specific reference to the genetic material, bequeathed the genetic material to the other parent in a valid will.

(3) The child is born within two years of the death of the testator.

b. Any child of the testator whose share of the estate would be reduced by the birth of a child born as provided in paragraph “a” shall have one year from the birth of the child within which to bring an action challenging the child’s right to a share of the estate under this section.

c. For the purposes of this subsection, “genetic material” means sperm, eggs, or embryos.

[C51, §1284, 1285; R60, §2316, 2317; C73, §2334, 2335; C97, §3279; S13, §3279; C24, 27, 31, 35, 39, §11858; C46, 50, 54, 58, 62, §633.13; C66, 71, 73, 75, 77, 79, 81, §633.267]

88 Acts, ch 1064, §6; 2008 Acts, ch 1119, §17, 39; 2011 Acts, ch 18, §3

2008 amendments to this section apply to estates of decedents dying on or after July 1, 2008; 2008 Acts, ch 1119, §39  
Section amended

PART 2  
EXECUTION AND REVOCATION

**633.279 Signed and witnessed.**

1. *Formal execution.* All wills and codicils, except as provided in section 633.283, to be valid, must be in writing, signed by the testator, or by some person in the testator's presence and by the testator's express direction writing the testator's name thereto, and declared by the testator to be the testator's will, and witnessed, at the testator's request, by two competent persons who signed as witnesses in the presence of the testator and in the presence of each other; provided, however, that the validity of the execution of any will or instrument which was executed prior to January 1, 1964, shall be determined by the law in effect immediately prior to said date.

2. *Self-proved will.*

a. An attested will may be made self-proved at the time of its execution, or at any subsequent date, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a person authorized to administer oaths and take acknowledgments under the laws of this state, and evidenced by such person's certificate, under seal, attached or annexed to the will, in form and content substantially as follows:

Affidavit

State of ..... )  
County of ..... ) ss

We, the undersigned, ....., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, declare to the undersigned authority that said instrument is the testator's will and that the testator willingly signed and executed such instrument, or expressly directed another to sign the same in the presence of the witnesses, as a free and voluntary act for the purposes therein expressed; that said witnesses, and each of them, declare to the undersigned authority that such will was executed and acknowledged by the testator as the testator's will in their presence and that they, in the testator's presence, at the testator's request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the date of the date of such will; and that the testator, at the time of the execution of such instrument, was of full age and of sound mind and that the witnesses were sixteen years of age or older and otherwise competent to be witnesses.

.....  
Testator

.....  
Witness

.....  
Witness

Subscribed, sworn and acknowledged before me by ....., the testator; and subscribed and sworn before me by ..... and ....., witnesses, this ..... day of ..... (month), ..... (year)

.....  
(Seal) Notary Public, or other officer  
authorized to take and certify  
acknowledgments and  
administer oaths

b. A self-proved will shall constitute proof of due execution of such instrument as required by section 633.293 and may be admitted to probate without testimony of witnesses.

[C51, §1281; R60, §2313; C73, §2326; C97, §3274; C24, 27, 31, 35, 39, §11852; C46, 50, 54, 58, 62, §633.7; C66, 71, 73, 75, 77, 79, 81, §633.279]

2000 Acts, ch 1058, §56; 2011 Acts, ch 25, §73

Subsection 2 amended

## DIVISION VII

### ADMINISTRATION OF ESTATES OF DECEDENTS

#### PART 8

#### ACCOUNTING, DISTRIBUTION, FINAL REPORT, AND DISCHARGE

##### **633.477 Final report.**

Each personal representative shall, in the personal representative's final report, set forth:

1. An accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the decedent's interest therein, which has not been sold and conveyed by the personal representative.

2. Whether the deceased died testate or intestate.

3. The name and place of residence of the surviving spouse, or that none survived the deceased.

4. In intestate estates, the name and place of residence of each of the heirs and their relationship to the deceased.

5. In testate estates, the name and place of residence of each of the devisees and their relationship to the deceased, and the name and residence of after-born children, if any, as defined in section 633.267.

6. Whether any legacy or devise remains a charge on the real estate, and, if so, the nature and amount thereof.

7. Whether any distributee is under any legal disability.

8. The name of the conservator or trustee for any distributee, and the court from which the letters were issued.

9. An accounting of all property coming into the hands of the personal representative and a detailed accounting of all cash receipts and disbursements. The accounting may be omitted if waived by all interested parties.

10. A statement as to whether or not all statutory requirements pertaining to taxes have been complied with including whether the federal estate tax due has been paid, whether a lien continues to exist for any federal estate tax, and whether inheritance tax was paid or a return was filed in this state.

11. Upon the request of the personal representative, an itemization of services performed, time spent for such services, and responsibilities assumed by the personal representative's attorney for all estates of decedents dying after January 1, 1981. If the itemization is not included, there shall be set forth a statement that the personal representative was informed of the provisions of this subsection and did not request the itemization.

12. A statement as to whether all statutory requirements pertaining to claims have been complied with and a statement as to whether all claims, including charges, have been paid and whether a lien continues to exist on any property as security for any claim.

13. A statement as to whether the decedent left any genetic material, and if the decedent left genetic material, if the personal representative has reserved sufficient estate assets to fund the distribution to which posthumous heirs, if any, would be entitled to receive; that the personal representative will wait until two years after the decedent's date of death to make

final distributions; and that the personal representative will submit a supplemental report after such final distributions have been made.

[C73, §2491; C97, §3412; C24, 27, 31, 35, 39, §12071; C46, 50, 54, 58, 62, §638.34; C66, 71, 73, 75, 77, 79, 81, §633.477]

87 Acts, ch 54, §1; 89 Acts, ch 35, §8; 2005 Acts, ch 38, §28; 2011 Acts, ch 18, §4

NEW subsection 13

DIVISION XIV  
ADMINISTRATION OF GUARDIANSHIPS  
AND CONSERVATORSHIPS

PART 10  
TERMINATION OF GUARDIANSHIPS  
AND CONSERVATORSHIPS

**633.675 Cause for termination.**

1. A guardianship shall cease, and a conservatorship shall terminate, upon the occurrence of any of the following circumstances:

- a. If the ward is a minor, when the ward reaches full age.
- b. The death of the ward.

c. A determination by the court that the ward is no longer a person whose decision-making capacity is so impaired as to bring the ward within the categories of section 633.552, subsection 2, paragraph “a”, or section 633.566, subsection 2, paragraph “a”. In a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity. Once the ward has made that showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the ward’s decision-making capacity is so impaired, as provided in section 633.552, subsection 2, paragraph “a”, or section 633.566, subsection 2, paragraph “a”, that the guardianship or conservatorship should not be terminated.

d. Upon determination by the court that the conservatorship or guardianship is no longer necessary for any other reason.

2. Notwithstanding subsection 1, paragraphs “a” through “d”, if the court appointed a guardian for a minor child for whom the court’s jurisdiction over the child’s guardianship was established pursuant to transfer of the child’s case in accordance with section 232.104, the court shall not enter an order terminating the guardianship before the child becomes age eighteen unless the court finds by clear and convincing evidence that the best interests of the child warrant a return of custody to the child’s parent.

[S13, §3228-e; C24, 27, 31, 35, 39, §12641; C46, 50, 54, 58, 62, §671.10, 672.21; C66, 71, 73, 75, 77, 79, 81, §633.675]

97 Acts, ch 178, §16; 2010 Acts, ch 1143, §3; 2011 Acts, ch 25, §74

Section amended

DIVISION XV  
UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE  
PROCEEDINGS JURISDICTION ACT

PART 2  
JURISDICTION

**633.707 Significant connection factors.**

In determining whether a respondent has a significant connection with a particular state, the court shall consider all of the following:

1. The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding.
2. The length of time the respondent at any time was physically present in the state and the duration of any absence.
3. The location of the respondent's property.
4. The extent to which the respondent has ties to the state such as voter registration, state or local tax return filing, vehicle registration, driver's license, social relationships, and receipt of services.

2010 Acts, ch 1086, §8, 24, 25; 2011 Acts, ch 25, §75

Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24  
Subsection 4 amended

PART 4  
REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

**633.717 Accepting guardianship or conservatorship transferred from another state.**

1. To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 633.716, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

2. Notice of a petition under subsection 1 must be given to those persons that would be entitled to notice if the petition were to petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1.

4. The court shall issue an order provisionally granting a petition filed under subsection 1 unless any of the following applies:

a. An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person.

b. The guardian or conservator is ineligible for appointment in this state.

5. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 633.716 transferring the proceeding to this state.

6. Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this state.

7. Subject to subsections 4 and 6, in granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the

determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

8. The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under section 633.551, 633.552, or 633.566, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

2010 Acts, ch 1086, §18, 24, 25; 2011 Acts, ch 34, §140

Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued;

2010 Acts, ch 1086, §24

Subsection 8 amended

## CHAPTER 633A

### IOWA TRUST CODE

Transferred from ch 633, division XXI, in Code Supplement 2005 pursuant to Code editor directive; 2005 Acts, ch 38, §54  
For applicability of chapter 633 and this chapter to trusts subject to continuous court supervision, see §633.10, 633.751, and 633A.1107

#### SUBCHAPTER III

#### PROVISIONS RELATING TO REVOCABLE TRUSTS

##### **633A.3106 Children born or adopted after execution of a revocable trust.**

1. When a settlor fails to provide in a revocable trust for any of the settlor's children born to or adopted by the settlor after the execution of the trust or the last amendment to the trust, such child, whether born before or after the settlor's death, shall receive a share of the trust equal in value to that which the child would have received under section 633.219, after taking into account the spouse's intestate share under section 633.211 or section 633.212, whichever is applicable, as if the settlor had died intestate, unless it appears from the terms of the trust or decedent's will that such omission was intentional.

2. For the purposes of this section, a child born after the death of the settlor who would have been entitled to a share of the settlor's probate estate pursuant to section 633.267 shall be treated as a child of the settlor for purposes of this section.

99 Acts, ch 125, §30, 109

C2001, §633.3106

2005 Acts, ch 38, §54

CS2005, §633A.3106

2008 Acts, ch 1119, §28, 39; 2011 Acts, ch 18, §5

2008 amendments to this section apply to trusts of settlors dying on or after July 1, 2008; 2008 Acts, ch 1119, §39  
Section amended

##### **633A.3112 Definitions — revocable trusts.**

As used in this subchapter:

1. "*Charges*" includes costs of administration, funeral expenses, costs of monuments, and federal and state estate taxes.

2. "*Claimant*" includes any interested party who possesses any legal claim to trust property, the settlor's spouse, the settlor's heirs as defined in section 633A.3109, and any other person or entity with standing to challenge the trust, a creditor of the settlor, and a personal representative of the settlor's estate.

3. “*Debts*” includes liabilities of the settlor owed at death that survive the settlor’s death, whether arising in contract, tort, or otherwise.

2005 Acts, ch 38, §41, 55; 2006 Acts, ch 1104, §10; 2008 Acts, ch 1119, §30; 2011 Acts, ch 34, §141

Subsection 1 amended

## CHAPTER 636

### SURETIES — FIDUCIARIES — TRUSTS — INVESTMENTS

#### **636.45 Federally insured loans.**

1. Insurance companies, savings and loan associations, trustees, guardians, executors, administrators, and other fiduciaries, the state and its political subdivisions, and institutions and agencies thereof, and all other persons, associations, and corporations:

a. May make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance pursuant to Tit. I, § 2, of the National Housing Act (1934), codified at 12 U.S.C. ch. 13, and may obtain such insurance;

b. May make such loans, secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure pursuant to Tit. II of the National Housing Act (1934), and may obtain such insurance; and

c. May make real property loans which are guaranteed or insured by the secretary of the United States department of veterans affairs under the provisions of 38 U.S.C. § 3701 et seq.

2. It shall be lawful for insurance companies, savings and loan associations, trustees, guardians, executors, administrators, and other fiduciaries, the state and its political subdivisions, and institutions and agencies thereof, and all other persons, associations, and corporations, subject to the laws of this state, to originate real estate loans which are guaranteed or insured by the secretary of the United States department of veterans affairs under the provisions of 38 U.S.C. § 3701 et seq., and originate loans secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure pursuant to Tit. II of the National Housing Act (1934), and may obtain such insurance and may invest their funds, and the moneys in their custody or possession, eligible for investment, in bonds and notes secured by mortgage or trust deed insured by the federal housing administrator, and in the debentures issued by the federal housing administrator pursuant to Tit. II of the National Housing Act (1934), and in securities issued by national mortgage associations or similar credit institutions now or hereafter organized under Tit. III of the National Housing Act (1934), and in real estate loans which are guaranteed or insured by the secretary of the United States department of veterans affairs under the provisions of 38 U.S.C. § 3701 et seq.

[C35, §12786-g1; C39, §12786.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.45]

C93, §636.45

2009 Acts, ch 26, §24; 2010 Acts, ch 1061, §78; 2011 Acts, ch 34, §142

Subsection 2 amended

## CHAPTER 642

### GARNISHMENT

#### **642.5 Sheriff may take answers.**

1. When the plaintiff, in writing, directs the sheriff to take the answer of the garnishee, the sheriff shall put to the garnishee the following questions:

1. Are you in any manner indebted to the defendant in this suit, or do you owe the defendant money or property which is not yet due? If so, state the particulars.

2. Have you in your possession or under your control any property, rights, or credits of the said defendants? If so, what is the value of the same? State all particulars.

3. Do you know of any debts owing the said defendant, whether due or not due, or any property, rights, or credits belonging to the defendant and now in the possession or under the control of others? If so, state the particulars.

4. Do you compensate the defendant in this suit for any personal services whether denominated as wages, salary, commission, bonus or otherwise, including periodic payments pursuant to a pension or retirement program? If so, state the amount of the compensation reasonably anticipated to be paid defendant during the calendar year.

2. The sheriff shall append the examination to the sheriff's return.

[C51, §1864, 1865; R60, §3200, 3201; C73, §2980; C97, §3939; C24, 27, 31, 35, 39, §12162; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.5]

84 Acts, ch 1239, §9; 2011 Acts, ch 25, §76

Section amended

#### **642.21 Exemption from net earnings.**

1. The disposable earnings of an individual are exempt from garnishment to the extent provided by the federal Consumer Credit Protection Act, Tit. III, 15 U.S.C. § 1671 – 1677 (1982). The maximum amount of an employee's earnings which may be garnished during any one calendar year is two hundred fifty dollars for each judgment creditor, except as provided in chapter 252D and sections 598.22, 598.23, and 627.12, or when those earnings are reasonably expected to be in excess of twelve thousand dollars for that calendar year as determined from the answers taken by the sheriff or by the court pursuant to section 642.5, question number four. When the employee's earnings are reasonably expected to be more than twelve thousand dollars, the maximum amount of those earnings which may be garnished during a calendar year for each creditor is as follows:

a. Employees with expected earnings of twelve thousand dollars or more, but less than sixteen thousand dollars, not more than four hundred dollars may be garnished.

b. Employees with expected earnings of sixteen thousand dollars or more, but less than twenty-four thousand dollars, not more than eight hundred dollars may be garnished.

c. Employees with expected earnings of twenty-four thousand dollars or more, but less than thirty-five thousand dollars, not more than one thousand five hundred dollars may be garnished.

d. Employees with expected earnings of thirty-five thousand dollars or more, but less than fifty thousand dollars, not more than two thousand dollars may be garnished.

e. Employees with expected earnings of fifty thousand dollars or more, not more than ten percent of an employee's expected earnings.

2. No employer shall:

a. Withhold from the earnings of an individual an amount greater than that provided by law.

b. Dispose of garnished wages in any manner other than ordered by a court of law.

c. Discharge an individual by reason of the individual's earnings having been subject to garnishment for indebtedness.

d. Be held liable for an amount not earned at the time of the service of notice of garnishment or for the costs of a garnishment action.

3. For the purpose of this section:

a. The term "earnings" means compensation paid or payable for personal services,

whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

*b.* The term “*disposable earnings*” means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

[C51, §1901; R60, §3307; C73, §3074; C97, §4011; C24, 27, 31, 35, 39, §11763; C46, 50, 54, 58, 62, 66, 71, §627.10; C73, 75, 77, 79, 81, §642.21]

84 Acts, ch 1239, §11; 85 Acts, ch 178, §14; 2011 Acts, ch 25, §77

Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 654

### FORECLOSURE OF REAL ESTATE MORTGAGES

See also chapter 615

#### **654.4B Acceleration of indebtedness — notice of mortgage mediation assistance.**

1. Prior to commencing a foreclosure on the accelerated balance of a mortgage loan and after termination of any applicable cure period, including but not limited to those provided in section 654.2A or 654.2D, a creditor shall give the borrower a fourteen-day demand for payment of the accelerated balance to qualify for an award of attorney fees under section 625.25 on the accelerated balance.

2. *a.* Prior to filing a petition under this chapter on a one-family or two-family dwelling that is the residence of the owner, the creditor shall inform the owner of the availability of counseling and mediation on a form as the attorney general may prescribe. The notice required by this section shall be mailed by ordinary mail to the owner along with the notice of acceleration or other initial communication from the attorney representing the creditor in the action, and shall also be served on the owner with the original notice and petition seeking foreclosure. If, following application by the owner or on its own motion, the court finds that the notice was not served on the owner as required by this subsection and that the owner desires counseling or mediation, the court shall grant to the owner a delay of the sheriff’s sale or, in the event the sheriff’s sale has occurred and the mortgagee or its affiliate was the winning bidder at the sheriff’s sale, a delay of the recording of the sheriff’s deed. In either case, the delay shall not exceed sixty days. If the affidavit of service for the original notice in the court file indicates that the notice required by this subsection was served on the owner, there shall be a rebuttable presumption that the notice was served as required by this subsection. The court may grant an application for a delay pursuant to this subsection *ex parte* only if the court file does not show service of the notice on the owner along with the original notice. Objection to the failure of the mortgagee to serve the notice is barred unless an application under this subsection is timely filed and is granted before the date of the sale or recording, respectively. If the court delays the sheriff’s sale, the new sale date and time shall be announced orally by the sheriff at the time previously scheduled for sale, and the mortgagee need not republish and serve notice of the rescheduled sale.

*b.* This subsection is repealed July 1, 2012.

2009 Acts, ch 51, §6, 16, 17; 2011 Acts, ch 134, §17, 29

Section takes effect May 1, 2009, and subsection 1 applies to judgments entered on or after July 1, 2009; 2009 Acts, ch 51, §16, 17  
Subsection 2, paragraph b amended

**654.6 Deficiency — general execution.**

If the mortgaged property does not sell for an amount which is sufficient to satisfy the execution, a general execution may be issued against the mortgagor, unless the parties have stipulated otherwise.

[C51, §2085; R60, §3662; C73, §3322; C97, §4290; C24, 27, 31, 35, 39, §12377; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.6]

86 Acts, ch 1216, §3, 14; 2011 Acts, ch 34, §143

See also §615.1  
Section amended

**CHAPTER 663****HABEAS CORPUS**

Postconviction procedure, see chapter 822

**663.44 Costs.**

1. If the plaintiff is discharged, the costs shall be assessed to the defendant, unless the defendant is an officer holding the plaintiff in custody under a commitment, or under other legal process, in which case the costs shall be assessed to the county. If the plaintiff's application is refused, the costs shall be assessed against the plaintiff, and, in the discretion of the court, against the person who filed the petition in the plaintiff's behalf.

2. Notwithstanding subsection 1, if the plaintiff is confined in any state institution and is discharged in habeas corpus proceedings, or if the habeas corpus proceedings fail, and costs and fees cannot be collected from the person liable to pay costs and fees, the costs and fees shall be paid by the county in which such state institution is located. The facts of such payment and the proceedings on which it is based, with a statement of the amount of fees or costs incurred, with approval in writing by the presiding judge appended to the statement or endorsed on the statement, shall be certified by the clerk of the district court under the seal of office to the state executive council. The executive council shall review the proceedings and authorize reimbursement for all such fees and costs or such part of the fees and costs as the executive council finds justified, and shall notify the director of the department of administrative services to draw a warrant to such county treasurer for the amount authorized. There is appropriated from moneys in the general fund not otherwise appropriated an amount necessary to pay the reimbursement authorized by the executive council. The costs and fees referred to above shall include any award of fees made to a court appointed attorney representing an indigent party bringing the habeas corpus action.

[C97, §4459; C24, 27, 31, 35, 39, §12511; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.44]

86 Acts, ch 1237, §40; 2003 Acts, ch 145, §286; 2011 Acts, ch 131, §39, 158

Appropriation limited for fiscal years beginning July 1, 1993; see §8.59  
Section amended

**CHAPTER 669****STATE TORT CLAIMS**

Comparative fault, see chapter 668  
This chapter not enacted as a part of this title;  
transferred from chapter 25A in Code 1993

**669.2 Definitions.**

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

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

2. “Award” means any amount determined by the attorney general to be payable to a claimant under section 669.3, and the amount of any compromise or settlement under section 669.9.

3. “Claim” means:

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

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

4. a. “Employee of the state” includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation, but does not include a contractor doing business with the state. Professional personnel, including physicians, osteopathic physicians and surgeons, osteopathic physicians, optometrists, dentists, nurses, physician assistants, and other medical personnel, who render services to patients or inmates of state institutions under the jurisdiction of the department of human services or the Iowa department of corrections, and employees of the department of veterans affairs, are to be considered employees of the state, whether the personnel are employed on a full-time basis or render services on a part-time basis on a fee schedule or other arrangement. Criminal defendants while performing unpaid community service ordered by the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, and persons supervising those inmates under and according to the terms of the chapter 28E agreement, are to be considered employees of the state. Members of the Iowa national guard performing duties in a requesting state pursuant to section 29C.21 are to be considered employees of the state solely for the purpose of claims arising out of those duties in the event that the requesting state’s tort claims coverage does not extend to such members of the Iowa national guard or is less than that provided under Iowa law.

b. “Employee of the state” also includes an individual performing unpaid community service under an order of the district court pursuant to section 598.23A.

5. “State agency” includes all executive departments, agencies, boards, bureaus, and commissions of the state of Iowa, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the state of Iowa, whether or not authorized to sue and be sued in their own names. This definition does not include a contractor with the state of Iowa. Soil and water conservation districts as defined in section 161A.3, subsection 6, and judicial district departments of correctional services as established in section 905.2 are state agencies for purposes of this chapter.

6. “State appeal board” means the state appeal board as defined in section 73A.1.

[C66, 71, 73, 75, 77, 79, 81, §25A.2]

83 Acts, ch 96, §56, 159; 84 Acts, ch 1259, §1; 86 Acts, ch 1172, §1; 87 Acts, ch 23, §1; 89 Acts, ch 83, §13; 90 Acts, ch 1251, §2

C93, §669.2

93 Acts, ch 48, §53; 94 Acts, ch 1171, §51; 96 Acts, ch 1165, §1; 97 Acts, ch 33, §12, 15; 98 Acts, ch 1086, §1; 2001 Acts, ch 158, §37; 2005 Acts, ch 115, §36, 40; 2006 Acts, ch 1185, §104; 2011 Acts, ch 47, §11; 2011 Acts, ch 132, §64, 106

Subsection 4, unnumbered paragraphs 1 and 2 editorially redesignated as paragraphs a and b

Subsection 4, paragraph a amended

Subsection 5 amended

## CHAPTER 685

### FALSE CLAIMS

Annual report by attorney general to chairperson and ranking members of committees on judiciary, legislative caucus staffs, and legislative services agency providing statistics on cases filed, courts in which cases were filed, qui tam plaintiffs, recovery amounts, and apportionment of recovery amounts; 2010 Acts, ch 1031, §345

#### 685.1 Definitions.

1. “*Claim*” means any request or demand, whether pursuant to a contract or otherwise, for money or property and whether the state has title to the money or property, which is presented to an officer, employee, agent, or other representative of the state or to a contractor, grantee, or other person if the money or property is to be spent or used on the state’s behalf or to advance a state program or interest, and if the state provides any portion of the money or property which is requested or demanded, or if the state will reimburse directly or indirectly such contractor, grantee, or other person for any portion of the money or property which is requested or demanded. “*Claim*” does not include any requests or demands for money or property that the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual’s use of the money or property.

2. “*Custodian*” means the custodian, or any deputy custodian, designated by the attorney general under section 685.6.

3. “*Documentary material*” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

4. “*False claims law*” means this chapter.

5. “*False claims law investigation*” means any inquiry conducted by a false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law.

6. “*False claims law investigator*” means any attorney or investigator employed by the department of justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the state acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation.

7. a. “*Knowing*” or “*knowingly*” means that a person with respect to information, does any of the following:

(1) Has actual knowledge of the information.

(2) Acts in deliberate ignorance of the truth or falsity of the information.

(3) Acts in reckless disregard of the truth or falsity of the information.

b. “*Knowing*” or “*knowingly*” does not require proof of specific intent to defraud.

8. “*Material*” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

9. “*Obligation*” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

10. “*Official use*” means any use that is consistent with the law, and the regulations and policies of the department of justice, including use, in connection with internal department of justice memoranda and reports; communications between the department of justice and a federal, state, or local government agency or a contractor of a federal, state, or local government agency, undertaken in furtherance of a department of justice investigation or prosecution of a case; interviews of any qui tam plaintiff or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with government investigators, auditors, consultants and experts, the counsel of other parties, and arbitrators and mediators, concerning an investigation, case, or proceeding.

11. “*Original source*” means an individual who prior to a public disclosure under section 685.3, subsection 5, paragraph “c”, has voluntarily disclosed to the state the information on which the allegations or transactions in a claim are based; or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and has voluntarily provided the information to the state before filing an action under this chapter.

12. “*Person*” means any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision of the state.

13. “*Product of discovery*” includes all of the following:

a. The original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature.

b. Any digest, analysis, selection, compilation, or derivation of any item listed in paragraph “a”.

c. Any index or other manner of access to any item listed in paragraph “a”.

14. “*Qui tam plaintiff*” means a private plaintiff who brings an action under this chapter on behalf of the state.

15. “*State*” means the state of Iowa.

2010 Acts, ch 1031, §338; 2011 Acts, ch 129, §100, 101, 156

Subsection 11 amended

NEW subsection 15

#### **685.2 Acts subjecting person to treble damages, costs, and civil penalties — exceptions.**

1. A person who commits any of the following acts is liable to the state for a civil penalty of not less than and not more than the civil penalty allowed under the federal False Claims Act, as codified in 31 U.S.C. § 3729 et seq., as may be adjusted in accordance with the inflation adjustment procedures prescribed in the federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, for each false or fraudulent claim, plus three times the amount of damages which the state sustains:

a. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval.

b. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.

c. Conspires to commit a violation of paragraph “a”, “b”, “d”, “e”, “f”, or “g”.

d. Has possession, custody, or control of property or money used, or to be used, by the state and knowingly delivers, or causes to be delivered, less than all of that money or property.

e. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true.

f. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state, or a member of the Iowa national guard, who lawfully may not sell or pledge property.

g. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state.

2. Notwithstanding subsection 1, the court may assess not less than two times the amount of damages which the state sustains because of the act of the person described in subsection 1, if the court finds all of the following:

a. The person committing the violation furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty days after the date on which the person first obtained the information.

b. The person fully cooperated with the state investigation of such violation.

c. At the time the person furnished the state with the information about the violation, a criminal prosecution, civil action, or administrative action had not commenced under this chapter with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

3. A person violating this section shall also be liable to the state for the costs of a civil action brought to recover any such penalty or damages.

4. Any information furnished pursuant to subsection 2 is deemed confidential information exempt from disclosure pursuant to chapter 22.

5. This section shall not apply to claims, records, or statements made under Title X relating to state revenue and taxation.

2010 Acts, ch 1031, §339; 2011 Acts, ch 129, §102, 156

Subsection 1, unnumbered paragraph 1 amended

**685.3 Investigations and prosecutions — powers of prosecuting authority — civil actions by individuals as qui tam plaintiffs and as private citizens — jurisdiction of courts.**

1. The attorney general shall diligently investigate a violation under section 685.2. If the attorney general finds that a person has violated or is violating section 685.2, the attorney general may bring a civil action under this section against that person.

2. a. A person may bring a civil action for a violation of this chapter for the person and for the state, in the name of the state. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only if the court and the attorney general provide written consent to the dismissal and the reasons for such consent.

b. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the attorney general pursuant to the Iowa rules of civil procedure. The complaint shall also be filed in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty days after the state receives both the complaint and the material evidence and the information.

c. The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph “b”. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant pursuant to rule 1.302 of the Iowa rules of civil procedure.

d. Before the expiration of the sixty-day period or any extensions obtained under paragraph “c”, the state shall do one of the following:

(1) Proceed with the action, in which case the action shall be conducted by the state.

(2) Notify the court that the state declines to take over the action, in which case the qui tam plaintiff shall have the right to conduct the action.

e. When a person brings an action under this section, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

3. a. If the state proceeds with the action, the state shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the qui tam plaintiff. Such qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations specified in paragraph “b”.

b. (1) The state may move to dismiss the action, notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(2) The state may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(3) Upon a showing by the state that unrestricted participation during the course of the litigation by the qui tam plaintiff would interfere with or unduly delay the state’s prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the qui tam plaintiff’s participation, including but not limited to any of the following:

(a) Limiting the number of witnesses the qui tam plaintiff may call.

(b) Limiting the length of the testimony of such witnesses.

(c) Limiting the qui tam plaintiff’s cross-examination of witnesses.

(d) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

(4) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the qui tam plaintiff would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the qui tam plaintiff in the litigation.

c. If the state elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the state so requests, the state shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the state's expense. When a qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the state to intervene at a later date upon a showing of good cause.

d. Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the qui tam plaintiff would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

e. Notwithstanding subsection 2, the state may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil penalty. If any such alternate remedy is pursued in another proceeding, the qui tam plaintiff shall have the same rights in such proceeding as such qui tam plaintiff would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final, shall be conclusive as to all such parties to an action under this section. For purposes of this paragraph, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

4. a. (1) If the state proceeds with an action brought by a qui tam plaintiff under subsection 2, the qui tam plaintiff shall, subject to subparagraph (2), receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

(2) If the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions in a criminal, civil, or administrative hearing, or in a legislative, administrative or state auditor report, hearing, audit, or investigation, or from the news media, the court may award an amount the court considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

(3) Any payment to a qui tam plaintiff under subparagraph (1) or (2) shall be made from the proceeds. Any such qui tam plaintiff shall also receive an amount for reasonable expenses which the appropriate court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

b. If the state does not proceed with an action under this section, the qui tam plaintiff or person settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such qui tam plaintiff or person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

c. Whether or not the state proceeds with the action, if the court finds that the action was brought by a qui tam plaintiff who planned and initiated the violation of section 685.2 upon which the action was brought, the court may, to the extent the court considers appropriate,

reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under paragraph “a” or “b”, taking into account the role of that qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the qui tam plaintiff is convicted of criminal conduct arising from the qui tam plaintiff’s role in the violation of section 685.2, the qui tam plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action represented by the attorney general.

d. If the state does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

5. a. A court shall not have jurisdiction over an action brought by a former or present member of the Iowa national guard under this chapter against a member of the Iowa national guard arising out of such person’s services in the Iowa national guard.

b. A qui tam plaintiff shall not bring an action under subsection 2 which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil penalty proceeding in which the state is already a party.

c. A court shall dismiss an action or claim under this section, unless opposed by the state, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a state criminal, civil, or administrative hearing in which the state or an agent of the state is a party; in a state legislative, state auditor, or other state report, hearing, audit, or investigation; or by the news media, unless the action is brought by the attorney general or the qui tam plaintiff is an original source of the information.

d. The state is not liable for expenses which a person incurs in bringing an action under this section.

6. a. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this section or other efforts to stop one or more violations of this chapter.

b. Relief under paragraph “a” shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. An action under this subsection may be brought in the appropriate district court of the state for the relief provided in this subsection.

c. A civil action under this subsection shall not be brought more than three years after the date when the retaliation occurred.

2010 Acts, ch 1031, §340; 2011 Acts, ch 129, §103, 104, 156

Subsection 5, paragraph c stricken and rewritten

Subsection 6 amended

## CHAPTER 690

### CRIMINAL IDENTIFICATION

#### **690.2 Fingerprints and palm prints — photographs — duty of sheriff and chief of police.**

The sheriff of every county, and the chief of police of each city regardless of the form of government thereof, shall take the fingerprints of all unidentified dead bodies in their respective jurisdictions and all persons who are taken into custody for the commission of a serious misdemeanor, aggravated misdemeanor, or felony and shall forward such fingerprint records on such forms and in such manner as may be prescribed by the commissioner of public safety, within two working days after the fingerprint records are taken, to the

department of public safety. Fingerprints may be taken of a person who has been arrested for a simple misdemeanor subject to an enhanced penalty for conviction of a second or subsequent offense. In addition to the fingerprints as herein provided, any such officer may also take the photograph and palm prints of any such person and forward them to the department of public safety. If a defendant is convicted by a court of this state of an offense which is a simple misdemeanor subject to an enhanced penalty for conviction of a second or subsequent offense, a serious misdemeanor, an aggravated misdemeanor, or a felony, the court shall determine whether such defendant has previously been fingerprinted in connection with the criminal proceedings leading to the conviction and, if not, shall order that the defendant be fingerprinted and those prints submitted to the department of public safety. The court shall also order that a juvenile adjudicated delinquent for an offense which would be an offense other than a simple misdemeanor if committed by an adult, be fingerprinted and the prints submitted to the department of public safety if the juvenile has not previously been fingerprinted. The taking of fingerprints for a serious misdemeanor offense under chapter 321 or 321A is not required under this section.

[C27, 31, 35, §13417-b1; C39, §13417.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §749.2; C79, 81, §690.2]

93 Acts, ch 115, §1; 96 Acts, ch 1135, §1; 99 Acts, ch 37, §2; 2011 Acts, ch 95, §5

See also §232.148, 690.4, and 726.23

Section amended

#### **690.4 Fingerprints and photographs at institutions.**

1. The warden of the Iowa medical and classification center and superintendent of the state training school shall take or procure the taking of the fingerprints, and, in the case of the Iowa medical and classification center only, Bertillon photographs of any person received on commitment to their respective institutions, and shall forward such fingerprint records and photographs within ten days after they are taken to the department of public safety. Information obtained from fingerprint cards submitted pursuant to this section may be retained by the department of public safety as criminal history records. If a charge for a serious misdemeanor, aggravated misdemeanor, or felony is brought against a person already in the custody of a law enforcement or correctional agency and the charge is filed in a case separate from the case for which the person was previously arrested or confined, the agency shall take the fingerprints of the person in connection with the new case and submit them to the department of public safety.

2. The wardens and superintendents of all department of corrections facilities shall procure the taking of a photograph showing the facial features of each inmate of a state correctional institution prior to the inmate's discharge. The photograph shall be placed in the inmate's file and shall be made available to the Iowa department of public safety upon request.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §749.4; C79, 81, §690.4; 82 Acts, ch 1260, §37]

83 Acts, ch 96, §116, 159; 84 Acts, ch 1184, §18; 86 Acts, ch 1075, §4; 93 Acts, ch 115, §2; 2011 Acts, ch 95, §6

Section amended

## **CHAPTER 692**

### **CRIMINAL HISTORY AND INTELLIGENCE DATA**

#### **692.15 Reports to department.**

1. If it comes to the attention of a sheriff, police department, or other law enforcement agency that a public offense or delinquent act has been committed in its jurisdiction, the law enforcement agency shall report information concerning the public offense or delinquent act to the department on a form to be furnished by the department not more than thirty-five days from the time the public offense or delinquent act first comes to the attention of the law

enforcement agency. The reports shall be used to generate crime statistics. The department shall submit statistics to the governor, the general assembly, and the division of criminal and juvenile justice planning of the department of human rights on a quarterly and yearly basis.

2. If a sheriff, police department, or other law enforcement agency makes an arrest or takes a juvenile into custody which is reported to the department, the law enforcement agency making the arrest or taking the juvenile into custody and any other law enforcement agency which obtains custody of the arrested person or juvenile taken into custody shall furnish a disposition report to the department if the arrested person or juvenile taken into custody is transferred to the custody of another law enforcement agency or is released without having a complaint or information or petition under section 232.35 filed with any court.

3. The law enforcement agency making an arrest and securing fingerprints pursuant to section 690.2 or taking a juvenile into custody and securing fingerprints pursuant to section 232.148 shall fill out a final disposition report on each arrest or taking into custody on a form and in the manner prescribed by the commissioner of public safety. The final disposition report shall be forwarded to the county attorney, or at the discretion of the county attorney, to the clerk of the district court, in the county where the arrest or taking into custody occurred, or to the juvenile court officer who received the referral, whichever is deemed appropriate under the circumstances.

4. The county attorney of each county or juvenile court officer who received the referral shall complete the final disposition report and submit it to the department within thirty days if a preliminary information or citation is dismissed without a new charge being filed. If an indictment is returned or a county attorney's information is filed, or a petition is filed under section 232.35, the final disposition form shall be forwarded to either the clerk of the district court or juvenile court of that county.

5. If a criminal complaint or information or petition under section 232.35 is filed in any court, the clerk shall furnish a disposition report of the case.

6. Any disposition report shall be sent to the department within thirty days after disposition either electronically or on a printed form provided by the department.

7. The hate crimes listed in section 729A.2 are subject to the reporting requirements of this section.

8. The fact that a person was convicted for a sexually predatory offense under chapter 901A shall be reported with other conviction data regarding that person.

[C75, 77, §749B.15; C79, 81, §692.15]

86 Acts, ch 1237, §42; 92 Acts, ch 1157, §2; 93 Acts, ch 115, §6; 95 Acts, ch 191, §44; 96 Acts, ch 1082, §1; 99 Acts, ch 37, §3; 2000 Acts, ch 1154, §41; 2007 Acts, ch 38, §7; 2011 Acts, ch 95, §7

Subsection 6 amended

## CHAPTER 692A

### SEX OFFENDER REGISTRY

#### **692A.102 Sex offense classifications.**

1. For purposes of this chapter, all individuals required to register shall be classified as a tier I, tier II, or tier III offender. For purposes of this chapter, sex offenses are classified into the following tiers:

a. Tier I offenses include a conviction for the following sex offenses:

(1) Sexual abuse in the second degree in violation of section 709.3, subsection 2, if committed by a person under the age of fourteen.

(2) Sexual abuse in the third degree in violation of section 709.4, subsection 1, 3, or 4, if committed by a person under the age of fourteen.

(3) Sexual abuse in the third degree in violation of section 709.4, subsection 2, paragraph "a" or "b", if committed by a person under the age of fourteen.

- (4) Sexual abuse in the third degree in violation of section 709.4, subsection 2, paragraph “c”.
  - (5) Indecent exposure in violation of section 709.9.
  - (6) (a) Harassment in violation of section 708.7, subsection 1, 2, or 3, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (b) Stalking in violation of section 708.11, if a determination is made that the offense was sexually motivated pursuant to section 692A.126, except a violation of section 708.11, subsection 3, paragraph “b”, subparagraph (3), shall be classified a tier II offense as provided in paragraph “b”.
  - (c) Any other indictable offense in violation of chapter 708 if the offense is committed against a minor and if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (7) Pimping in violation of section 725.2 if the offense was committed against a minor or otherwise involves a minor and if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (8) Pandering in violation of section 725.3, subsection 2, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (9) Any indictable offense in violation of chapter 726 if the offense is committed against a minor or otherwise involves a minor and if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (10) (a) Dissemination or exhibition of obscene material to minors in violation of section 728.2 or telephone dissemination of obscene material to minors in violation of section 728.15.
  - (b) Rental or sale of hard-core pornography, if delivery is to a minor, in violation of section 728.4.
  - (11) Admitting minors to premises where obscene material is exhibited in violation of section 728.3.
  - (12) Receipt or possession of child pornography in violation of 18 U.S.C. § 2252.
  - (13) Material containing child pornography in violation of 18 U.S.C. § 2252A.
  - (14) Misleading domain names on the internet in violation of 18 U.S.C. § 2252B.
  - (15) Misleading words or digital images on the internet in violation of section 18 U.S.C. § 2252C.
  - (16) Failure to file a factual statement about an alien individual in violation of 18 U.S.C. § 2424.
  - (17) Transmitting information about a minor to further criminal sexual conduct in violation of 18 U.S.C. § 2425.
  - (18) Any sex offense specified in the laws of another jurisdiction or any sex offense that may be prosecuted in federal, military, or foreign court, that is comparable to an offense listed in subparagraphs (1) through (17).
  - (19) Any sex offense under the prior laws of this state or another jurisdiction, or any sex offense under prior law that was prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in subparagraphs (1) through (17).
- b.* Tier II offenses include a conviction for the following sex offenses:
- (1) Lascivious acts with a child in violation of section 709.8, subsection 3 or 4.
  - (2) Solicitation of a minor to engage in an illegal sex act in violation of section 705.1.
  - (3) Solicitation of a minor to engage in an illegal act under section 709.8, subsection 3, in violation of section 705.1.
  - (4) Solicitation of a minor to engage in an illegal act under section 709.12, in violation of section 705.1.
  - (5) False imprisonment of a minor in violation of section 710.7, except if committed by a parent.
  - (6) Assault with intent to commit sexual abuse if no injury results in violation of section 709.11.
  - (7) Invasion of privacy — nudity in violation of section 709.21.
  - (8) Stalking in violation of section 708.11, subsection 3, paragraph “b”, subparagraph (3), if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

- (9) Indecent contact with a child in violation of section 709.12, if the child is thirteen years of age.
  - (10) Lascivious conduct with a minor in violation of section 709.14.
  - (11) Sexual exploitation by a counselor, therapist, or school employee in violation of section 709.15, if the victim is thirteen years of age or older.
  - (12) Sexual misconduct with offenders and juveniles in violation of section 709.16, if the victim is thirteen years of age or older.
  - (13) Sexual abuse of a corpse in violation of section 709.18.
  - (14) Kidnapping of a person who is not a minor in violation of section 710.2, 710.3, or 710.4, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (15) Pandering in violation of section 725.3.
  - (16) Solicitation of a minor to engage in an illegal act under section 725.3, subsection 2, in violation of section 705.1.
  - (17) Incest committed against a dependent adult as defined in section 235B.2 in violation of section 726.2.
  - (18) Incest committed against a minor in violation of section 726.2.
  - (19) Sexual exploitation of a minor in violation of section 728.12, subsection 2 or 3.
  - (20) Material involving the sexual exploitation of a minor in violation of 18 U.S.C. § 2252(a), except receipt or possession of child pornography.
  - (21) Production of sexually explicit depictions of a minor for import into the United States in violation of 18 U.S.C. § 2260.
  - (22) Transportation of a minor for illegal sexual activity in violation of 18 U.S.C. § 2421.
  - (23) Coercion and enticement of a minor for illegal sexual activity in violation of 18 U.S.C. § 2422(a) or (b).
  - (24) Transportation of minors for illegal sexual activity in violation of 18 U.S.C. § 2423(a).
  - (25) Travel with the intent to engage in illegal sexual conduct with a minor in violation of 18 U.S.C. § 2423.
  - (26) Engaging in illicit sexual conduct in foreign places in violation of 18 U.S.C. § 2423(c).
  - (27) Video voyeurism of a minor in violation of 18 U.S.C. § 1801.
  - (28) Any sex offense specified in the laws of another jurisdiction or any offense that may be prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in subparagraphs (1) through (27).
  - (29) Any sex offense under the prior laws of this state or another jurisdiction, or any sex offense under prior law that was prosecuted in a federal, military, or foreign court, that is comparable to a sex offense listed in subparagraphs (1) through (27).
- c. Tier III offenses include a conviction for the following sex offenses:
- (1) Murder in violation of section 707.2 or 707.3 if sexual abuse as defined in section 709.1 is committed during the commission of the offense.
  - (2) Murder in violation of section 707.2 or 707.3, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (3) Voluntary manslaughter in violation of section 707.4, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (4) Involuntary manslaughter in violation of section 707.5, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (5) Attempt to commit murder in violation of section 707.11, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.
  - (6) Penetration of the genitalia or anus with an object in violation of section 708.2, subsection 5.
  - (7) Sexual abuse in the first degree in violation of section 709.2.
  - (8) Sexual abuse in the second degree in violation of section 709.3, subsection 1 or 3.
  - (9) Sexual abuse in the second degree in violation of section 709.3, subsection 2, if committed by a person fourteen years of age or older.
  - (10) Sexual abuse in the third degree in violation of section 709.4, subsection 1, 3, or 4, if committed by a person fourteen years of age or older.

(11) Sexual abuse in the third degree in violation of section 709.4, subsection 2, paragraph “a” or “b”, if committed by a person fourteen years of age or older.

(12) Lascivious acts with a child in violation of section 709.8, subsection 1 or 2.

(13) Kidnapping in violation of section 710.2 if sexual abuse as defined in section 709.1 is committed during the commission of the offense.

(14) Kidnapping of a minor in violation of section 710.2, 710.3, or 710.4, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(15) Assault with intent to commit sexual abuse resulting in serious or bodily injury in violation of section 709.11.

(16) Burglary in the first degree in violation of section 713.3, subsection 1, paragraph “d”.

(17) Any other burglary in the first degree offense in violation of section 713.3 that is not included in subparagraph (16), if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(18) Attempted burglary in the first degree in violation of section 713.4, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(19) Burglary in the second degree in violation of section 713.5, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(20) Attempted burglary in the second degree in violation of section 713.6, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(21) Burglary in the third degree in violation of section 713.6A, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(22) Attempted burglary in the third degree in violation of section 713.6B, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(23) Criminal transmission of human immunodeficiency virus in violation of section 709C.1, subsection 1, paragraph “a”.

(24) Human trafficking in violation of section 710A.2 if sexual abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense.

(25) Purchase or sale of an individual in violation of section 710.11 if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(26) Sexual exploitation of a minor in violation of section 728.12, subsection 1.

(27) Indecent contact with a child in violation of section 709.12 if the child is under thirteen years of age.

(28) Sexual exploitation by a counselor, therapist, or school employee in violation of section 709.15, if the child is under thirteen years of age.

(29) Sexual misconduct with offenders and juveniles in violation of section 709.16, if the child is under thirteen years of age.

(30) Child stealing in violation of section 710.5, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(31) Enticing a minor in violation of section 710.10, if the violation includes an intent to commit sexual abuse, sexual exploitation, sexual contact, or sexual conduct directed towards a minor.

(32) Sex trafficking of children in violation of 18 U.S.C. § 1591.

(33) Aggravated sexual abuse in violation of 18 U.S.C. § 2241.

(34) Sexual abuse in violation of 18 U.S.C. § 2242.

(35) Sexual abuse of a minor or ward in violation of 18 U.S.C. § 2243.

(36) Abusive sexual contact in violation of 18 U.S.C. § 2244.

(37) Offenses resulting in death in violation of 18 U.S.C. § 2245.

(38) Sexual exploitation of children in violation of 18 U.S.C. § 2251.

(39) Selling or buying of children in violation of 18 U.S.C. § 2251A.

(40) Any sex offense specified in the laws of another jurisdiction or any sex offense that may be prosecuted in federal, military, or foreign court, that is comparable to an offense listed in subparagraphs (1) through (39).

(41) Any sex offense under the prior laws of this state or another jurisdiction, or any sex offense under prior law that was prosecuted in federal, military, or foreign court, that is comparable to a sex offense listed in subparagraphs (1) through (39).

2. A sex offender classified as a tier I offender shall be reclassified as a tier II offender, if it is determined the offender has one previous conviction for an offense classified as a tier I offense.

3. A sex offender classified as a tier II offender, shall be reclassified as a tier III offender, if it is determined the offender has a previous conviction for a tier II offense or has been reclassified as a tier II offender because of a previous conviction.

4. Notwithstanding the classifications of sex offenses in subsection 1, any sex offense which would qualify a sex offender as a sexually violent predator shall be classified as a tier III offense.

5. An offense classified as a tier II offense if committed against a person under thirteen years of age shall be reclassified as a tier III offense.

6. Convictions of more than one sex offense which require registration under this chapter but which are prosecuted within a single indictment shall be considered as a single offense for purposes of registration.

2009 Acts, ch 119, §2; 2010 Acts, ch 1043, §2; 2010 Acts, ch 1074, §2; 2010 Acts, ch 1104, §4 - 7, 23; 2010 Acts, ch 1193, §65, 78; 2011 Acts, ch 95, §8

Subsection 1, paragraph a, subparagraph (6), subparagraph division (b) amended

### **692A.113 Exclusion zones and prohibition of certain employment-related activities.**

1. A sex offender who has been convicted of a sex offense against a minor or a person required to register as a sex offender in another jurisdiction for an offense involving a minor shall not do any of the following:

a. Be present upon the real property of a public or nonpublic elementary or secondary school without the written permission of the school administrator or school administrator's designee, unless enrolled as a student at the school.

b. Loiter within three hundred feet of the real property boundary of a public or nonpublic elementary or secondary school, unless enrolled as a student at the school.

c. Be present on or in any vehicle or other conveyance owned, leased, or contracted by a public or nonpublic elementary or secondary school without the written permission of the school administrator or school administrator's designee when the vehicle is in use to transport students to or from a school or school-related activities, unless enrolled as a student at the school or unless the vehicle is simultaneously made available to the public as a form of public transportation.

d. Be present upon the real property of a child care facility without the written permission of the child care facility administrator.

e. Loiter within three hundred feet of the real property boundary of a child care facility.

f. Be present upon the real property of a public library without the written permission of the library administrator.

g. Loiter within three hundred feet of the real property boundary of a public library.

h. Loiter on or within three hundred feet of the premises of any place intended primarily for the use of minors including but not limited to a playground available to the public, a children's play area available to the public, a recreational or sport-related activity area when in use by a minor, a swimming or wading pool available to the public when in use by a minor, or a beach available to the public when in use by a minor.

2. A sex offender who has been convicted of a sex offense against a minor:

a. Who resides in a dwelling located within three hundred feet of the real property boundary of public or nonpublic elementary or secondary school, child care facility, public library, or place intended primarily for the use of minors as specified in subsection 1, paragraph "h", shall not be in violation of subsection 1 for having an established residence within the exclusion zone.

b. Who is the parent or legal guardian of a minor shall not be in violation of subsection 1 solely during the period of time reasonably necessary to transport the offender's own minor child or ward to or from a place specified in subsection 1.

c. Who is legally entitled to vote shall not be in violation of subsection 1 solely for the period of time reasonably necessary to exercise the right to vote in a public election if the polling location of the offender is located in a place specified in subsection 1.

3. A sex offender who has been convicted of a sex offense against a minor shall not do any of the following:

a. Operate, manage, be employed by, or act as a contractor or volunteer at any municipal, county, or state fair or carnival when a minor is present on the premises.

b. Operate, manage, be employed by, or act as a contractor or volunteer on the premises of any children's arcade, an amusement center having coin or token operated devices for entertainment, or facilities providing programs or services intended primarily for minors, when a minor is present.

c. Operate, manage, be employed by, or act as a contractor or volunteer at a public or nonpublic elementary or secondary school, child care facility, or public library.

d. Operate, manage, be employed by, or act as a contractor or volunteer at any place intended primarily for use by minors including but not limited to a playground, a children's play area, recreational or sport-related activity area, a swimming or wading pool, or a beach.

2009 Acts, ch 119, §13; 2010 Acts, ch 1104, §10, 23; 2011 Acts, ch 34, §144

Subsection 1, paragraph h amended

### **692A.118 Department duties — registry.**

The department shall perform all of the following duties:

1. Develop an electronic system and standard forms for use in the registration of, verifying addresses of, and verifying understanding of registration requirements by sex offenders. Forms used to verify addresses of sex offenders shall contain a warning against forwarding a form to another address and of the requirement to return the form if the offender to whom the form is directed no longer resides at the address listed on the form or the mailing.

2. Maintain a central registry of information collected from sex offenders, which shall be known as the sex offender registry.

3. In consultation with the attorney general, adopt rules under chapter 17A which list specific offenses under present and former law which constitute sex offenses or sex offenses against a minor under this chapter.

4. Adopt rules under chapter 17A, as necessary, to ensure compliance with registration and verification requirements of this chapter, to provide guidelines for persons required to assist in obtaining registry information, and to provide a procedure for the dissemination of information contained in the registry. The procedure for the dissemination of information shall include but not be limited to practical guidelines for use by criminal or juvenile justice agencies in determining when public release of relevant information contained in the registry is appropriate and a requirement that if a member of the general public requests information regarding a specific individual in the manner provided in section 692A.121, the relevant information shall be released. The department, in developing the procedure, shall consult with associations which represent the interests of law enforcement officers. Rules adopted shall also include a procedure for removal of information from the registry upon the reversal or setting aside of a conviction of an offender.

5. Submit sex offender registry data to the federal bureau of investigation for entry of the data into the national sex offender registry.

6. Perform the requirements under this chapter and under federal law in cooperation with the office of sex offender sentencing, monitoring, apprehending, registering, and tracking of the office of justice programs of the United States department of justice.

7. Enter and maintain fingerprints and palm prints of sex offenders in an automated fingerprint identification system maintained by the department and made accessible to law enforcement agencies in this state, of the federal government, or in another jurisdiction. The department or any law enforcement agency may use such prints for criminal investigative purposes, to include comparison against finger and palm prints identified or recovered as evidence in a criminal investigation.

8. Notify a jurisdiction that provided information that a sex offender has or intends to maintain a residence, employment, or attendance as a student, in this state, of the failure of the sex offender to register as required under this chapter.

9. Submit a DNA sample to the combined DNA index system, if a sample has not been submitted.

10. Submit the social security number to the national crime information center, if the number has not been submitted.

11. When the department has a reasonable basis to believe that a sex offender has changed residence to an unknown location, has become a fugitive from justice, or has otherwise taken flight, the department shall make a reasonable effort to ascertain the whereabouts of the offender, and if such effort fails to identify the location of the offender, an appropriate notice shall be made on the sex offender registry internet site of this state and shall be transmitted to the national sex offender registry. The department shall notify other law enforcement agencies as deemed appropriate.

12. The department shall notify appropriate law enforcement agencies including the United States marshal service to investigate and verify possible violations. The department shall ensure any warrants for arrest are entered into the Iowa online warrant and articles system and the national crime information center and pursue prosecution of stated violations through state or federal court.

2009 Acts, ch 119, §18; 2011 Acts, ch 25, §78

Subsection 11 amended

**692A.126 Sexually motivated offense — determination.**

1. If a judge or jury makes a determination, beyond a reasonable doubt, that any of the following offenses for which a conviction has been entered on or after July 1, 2009, are sexually motivated, the person shall be required to register as provided in this chapter:

- a. Murder in the first degree in violation of section 707.2.
- b. Murder in the second degree in violation of section 707.3.
- c. Voluntary manslaughter in violation of section 707.4.
- d. Involuntary manslaughter in violation of section 707.5.
- e. Attempt to commit murder in violation of section 707.11.
- f. Harassment in violation of section 708.7, subsection 1, 2, or 3.
- g. Stalking in violation of section 708.11.
- h. Any other indictable offense in violation of chapter 708 if the offense was committed against a minor or otherwise involves a minor.
- i. Kidnapping in the first degree in violation of section 710.2.
- j. Kidnapping in the second degree in violation of section 710.3.
- k. Kidnapping in the third degree in violation of section 710.4.
- l. Child stealing in violation of section 710.5.
- m. Purchase or sale or attempted purchase or sale of an individual in violation of section 710.11.
- n. Burglary in the first degree in violation of section 713.3, subsection 1, paragraph “a”, “b”, or “c”.
- o. Attempted burglary in the first degree in violation of section 713.4.
- p. Burglary in the second degree in violation of section 713.5.
- q. Attempted burglary in the second degree in violation of section 713.6.
- r. Burglary in the third degree in violation of section 713.6A.
- s. Attempted burglary in the third degree in violation of section 713.6B.
- t. Pimping in violation of section 725.2 if the offense was committed against a minor or otherwise involves a minor.
- u. Pandering in violation of section 725.3, subsection 2.
- v. Any indictable offense in violation of chapter 726 if the offense was committed against a minor or otherwise involves a minor.

2. a. The following persons shall be required to register as provided in this chapter if the department makes a determination that the offense was sexually motivated:

(1) A person convicted of an offense in this state specified under subsection 1 prior to July 1, 2009.

(2) A person convicted of an offense in another jurisdiction, or convicted of an offense

that was prosecuted in a federal, military, or foreign court, prior to, on, or after July 1, 2009, that is comparable to an offense specified in subsection 1.

(3) A juvenile convicted of an offense in another jurisdiction, or convicted of an offense as a juvenile in a similar juvenile court proceeding in a federal, military, or foreign court, prior to, on, or after July 1, 2009, that is comparable to an offense specified in subsection 1.

b. A determination made pursuant to this subsection shall be issued in writing and shall include a summary of the information and evidence considered in making the determination that the offense was sexually motivated.

c. The determination made by the department shall be subject to judicial review in accordance with chapter 17A.

2009 Acts, ch 119, §26; 2010 Acts, ch 1104, §14, 23; 2011 Acts, ch 95, §9  
Subsection 1, paragraph g amended

## CHAPTER 707

### HOMICIDE AND RELATED CRIMES

#### **707.6A Homicide or serious injury by vehicle.**

1. A person commits a class “B” felony when the person unintentionally causes the death of another by operating a motor vehicle while intoxicated, as prohibited by section 321J.2.

1A. Upon a plea or verdict of guilty of a violation of subsection 1, the defendant shall surrender to the court any Iowa license or permit and the court shall forward the license or permit to the department with a copy of the order of conviction. Upon receipt of the order of conviction, the department shall revoke the defendant’s driver’s license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for a temporary restricted license for at least two years after the revocation.

1B. Upon a plea or verdict of guilty of a violation of subsection 1, the court shall order the defendant, at the defendant’s expense, to do the following:

a. Enroll, attend, and satisfactorily complete a course for drinking drivers, as provided in section 321J.22.

b. Submit to evaluation and treatment or rehabilitation services.

1C. A driver’s license or nonresident operating privilege shall not be reinstated until proof of completion of the requirements of subsection 1B is presented to the department.

1D. Where the program is available and appropriate for the defendant, the court shall also order the defendant to participate in a reality education substance abuse prevention program as provided in section 321J.24.

2. A person commits a class “C” felony when the person unintentionally causes the death of another by any of the following means:

a. Driving a motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property, in violation of section 321.277.

b. Eluding or attempting to elude a pursuing law enforcement vehicle, in violation of section 321.279, if the death of the other person directly or indirectly results from the violation.

3. A person commits a class “D” felony when the person unintentionally causes the death of another while drag racing, in violation of section 321.278.

4. A person commits a class “D” felony when the person unintentionally causes a serious injury, as defined in section 702.18, by any of the means described in subsection 1 or 2.

5. As used in this section, “motor vehicle” includes any vehicle defined as a motor vehicle in section 321.1.

6. Except for the purpose of sentencing under section 321J.2, subsections 3, 4, and 5, a conviction or deferral of judgment for a violation of this section, where a violation of section 321J.2 is admitted or proved, shall be treated as a conviction or deferral of judgment for a

violation of section 321J.2 for the purposes of chapters 321, 321A, and 321J, and section 907.3, subsection 1.

7. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any part of the sentence applicable to the defendant for a violation of subsection 1, or for a violation of subsection 4 involving the operation of a motor vehicle while intoxicated.

86 Acts, ch 1220, §41; 89 Acts, ch 211, §1; 90 Acts, ch 1251, §55; 94 Acts, ch 1069, §2; 97 Acts, ch 177, §26 – 28; 98 Acts, ch 1073, §9; 2010 Acts, ch 1097, §12; 2010 Acts, ch 1124, §3, 9; 2011 Acts, ch 34, §145

See also penalties applicable under §707.5, 707.8, and 708.2  
Subsection 4 amended

## CHAPTER 714

### THEFT, FRAUD, AND RELATED OFFENSES

#### **714.8 Fraudulent practices defined.**

A person who does any of the following acts is guilty of a fraudulent practice:

1. Makes, tenders or keeps for sale any warehouse receipt, bill of lading, or any other instrument purporting to represent any right to goods, with knowledge that the goods represented by such instrument do not exist.

2. Knowingly attaches or alters any label to any goods offered or kept for sale so as to materially misrepresent the quality or quantity of such goods, or the maker or source of such goods.

3. Knowingly executes or tenders a false certification under penalty of perjury, false affidavit, or false certificate, if the certification, affidavit, or certificate is required by law or given in support of a claim for compensation, indemnification, restitution, or other payment.

4. Makes any entry in or alteration of any public records, or any records of any corporation, partnership, or other business enterprise or nonprofit enterprise, knowing the same to be false.

5. Removes, alters or defaces any serial or other identification number, or any owners' identification mark, from any property not the person's own.

6. For the purpose of soliciting assistance, contributions, or other thing of value, falsely represents oneself to be a veteran of the armed forces of the United States, or a member of any fraternal, religious, charitable, or veterans organization, or any pretended organization of a similar nature, or to be acting on behalf of such person or organization.

7. Manufactures, sells, or keeps for sale any token or device suitable for the operation of a coin-operated device or vending machine, with the intent that such token or device may be so used, or with the representation that they can be so used; provided, that the owner or operator of any coin-operated device or vending machine may sell slugs or tokens for use in the person's own devices.

8. Manufactures or possesses any false or counterfeit label, with the intent that it be placed on merchandise to falsely identify its origin or quality, or who sells any such false or counterfeit label with the representation that it may be so used.

9. Alters or renders inoperative or inaccurate any meter or measuring device used in determining the value of or compensation for the purchase, use or enjoyment of property, with the intent to defraud any person.

10. Does any act expressly declared to be a fraudulent practice by any other section of the Code.

11. Removes, defaces, covers, alters, or destroys any component part number as defined in section 321.1, vehicle identification number as defined in section 321.1, or product identification number as defined in section 321.1, for the purpose of concealing or misrepresenting the identity or year of manufacture of the component part or vehicle.

12. Knowingly transfers or assigns a legal or equitable interest in property, as defined

in section 702.14, for less than fair consideration, with the intent to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6, or accepts a transfer of or an assignment of a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent of enabling the party transferring the property to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6. A transfer or assignment of property for less than fair consideration within one year prior to an application for public assistance benefits shall be evidence of intent to transfer or assign the property in order to obtain public assistance for which a person is not eligible by reason of the amount of the person's assets. If a person is found guilty of a fraudulent practice in the transfer or assignment of property under this subsection the maximum sentence shall be the penalty established for a serious misdemeanor and sections 714.9, 714.10, and 714.11 shall not apply.

13. *Fraudulent practices in connection with targeted small business programs.*

a. (1) Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a woman or minority person primarily for the purpose of obtaining benefits under targeted small business programs if the transferor would otherwise not be qualified for such programs.

(2) Solicits and is awarded a state contract on behalf of a targeted small business for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

(3) Knowingly falsifying information on an application for the purpose of obtaining benefits under targeted small business programs.

b. A violation under this subsection is grounds for decertification of the targeted small business connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this section.

14. a. Makes payment pursuant to an agreement with a dealer or market agency for livestock held by the dealer or market agency by use of a financial instrument which is a check, share draft, draft, or written order on any financial institution, as defined in section 203.1, if after seven days from the date that possession of the livestock is transferred pursuant to the purchase, the financial institution refuses payment on the instrument because of insufficient funds in the maker's account.

b. This subsection is not applicable if the maker pays the holder of the instrument the amount due on the instrument within one business day from a receipt of notice by certified mail from the holder that payment has been refused by the financial institution.

c. As used in this subsection, "dealer" means a person engaged in the business of buying or selling livestock, either on the person's own account, or as an employee or agent of a vendor or purchaser. "Market agency" means a person engaged in the business of buying or selling livestock on a commission basis.

15. Obtains or attempts to obtain the transfer of possession, control, or ownership, of the property of another by deception through communications conducted primarily by telephone and involving direct or implied claims that the other person contacted has won or is about to win a prize, or involving direct or implied claims that the other person contacted may be able to recover any losses suffered by such other person in connection with a prize promotion.

16. Knowingly provides false information to the treasurer of state when claiming, pursuant to section 556.19, an interest in unclaimed property held by the state, or knowingly provides false information to a person or fails to disclose the nature, value, and location of unclaimed property prior to entering into a contract to receive compensation to recover or assist in the recovery of property reported as unclaimed pursuant to section 556.11.

17. A packer who includes a confidentiality provision in a contract with a livestock seller in violation of section 202A.4.

18. a. Manufactures, creates, reproduces, alters, possesses, uses, transfers, or otherwise knowingly contributes to the production or use of a fraudulent retail sales receipt or universal product code label with intent to defraud another person engaged in the business of retailing.

b. For purposes of this subsection:

(1) "Retail sales receipt" means a document intended to evidence payment for goods or services.

(2) “*Universal product code label*” means the unique ten-digit bar code placed on the packaging of an item that may be used for purposes including but not limited to tracking inventory, maintaining price information in a computerized database, and serving as proof of purchase of a particular item.

19. A contractor who enforces a provision in a production contract that provides that information contained in the production contract is confidential as provided in section 202.3.

20. A contract seller who intentionally provides inaccurate information with regard to any matter required to be disclosed under section 558.70, subsection 1, or section 558A.4.

[C51, §2744, 2755; R60, §4394, 4405; C73, §4073, 4084, 4088; C97, §5041, 5056, 5068; C24, 27, §13045, 13058, 13059, 13071; C31, 35, §13045, 13058, 13059, 13071, 13092-d1; C39, §13045, 13058, 13059, 13071, 13092.1; C46, §713.1, 713.13, 713.14, 713.26, 714.12; C50, 54, 58, 62, §713.1, 713.13, 713.14, 713.26, 713.36 – 713.38, 714.12; C66, 71, 73, 75, 77, §713.1, 713.13, 713.14, 713.26, 713.36 – 713.38, 713.40, 714.12; C79, 81, §714.8]

84 Acts, ch 1048, §2; 85 Acts, ch 195, §61; 90 Acts, ch 1156, §12; 91 Acts, ch 15, §1; 91 Acts, ch 258, §65; 94 Acts, ch 1023, §70; 94 Acts, ch 1185, §1; 96 Acts, ch 1038, §2; 99 Acts, ch 88, §9, 13; 99 Acts, ch 107, §1; 99 Acts, ch 108, §11; 99 Acts, ch 169, §21, 22, 24; 2002 Acts, ch 1136, §5, 6; 2009 Acts, ch 133, §178; 2011 Acts, ch 34, §146

Subsection 3, see also §720.2

Subsection 14, paragraph a amended

#### **714.27 Copper theft — ordinance authorized — penalty.**

1. The governing body of a political subdivision in which copper theft has been reported may consider the adoption of a copper theft ordinance requiring a salvage dealer to maintain complete, accurate, and legible records in the English language of all purchases and receipt of salvaged materials. Such records shall be maintained and located at the place of business of the salvage dealer for a minimum of one year from the date of purchase or receipt by the salvage dealer.

2. The ordinance may require a salvage dealer to maintain one or more of the following records:

a. The identity of the person from whom the salvaged material was received or purchased, including name and address; date of birth; Iowa driver’s license number, Iowa nonoperator’s identification card number, or social security number in conjunction with photo identification; sex, age, height, and race.

b. The vehicle license plate number of the vehicle that delivered the salvaged material to the salvage dealer, if applicable.

c. The date and hour of the purchase or receipt of the salvaged material.

d. A reasonably accurate inventory and description of the salvaged material obtained.

e. The value of or amount paid for the salvaged material.

f. The weight or other measurable quantity of the salvaged material.

g. From whom and at what time and place the salvaged material was obtained by the person from whom it was purchased or received, if known.

h. The date and manner of disposition by the salvage dealer of the salvaged material by each article or in bulk.

i. The name and address of the person to whom the salvaged material was sold or otherwise disposed of.

3. a. (1) In the event that a political subdivision issues a license or permit to a salvage dealer for the operation of a salvage business, the ordinance may provide for the suspension, revocation, or nonrenewal of the license or permit in the event the ordinance is violated by the salvage dealer. A suspension, revocation, or nonrenewal shall not take effect without notice delivered to the licensee or permittee in the regular mail addressed to the licensee or permittee at the licensed premises a minimum of ten days prior to a date set for hearing before a magistrate or district associate judge. The notice shall inform the licensee or permittee of the time, date, and place of hearing, the purpose of the hearing, and shall set out briefly the reasons for the hearing.

(2) A decision regarding whether to suspend or revoke a license or permit, or deny its

renewal, shall be at the discretion of the magistrate or district associate judge, based upon the circumstances surrounding the violation and its severity.

(3) A licensee or permittee whose license or permit or renewal has been revoked or denied because of a violation of this section shall not be eligible for another such license or permit for a period of one hundred eighty days after the revocation or denial.

b. In the event a political subdivision does not issue a license or permit to a salvage dealer for the operation of a salvage business, the ordinance may provide for such penalty provision as the governing body of the political subdivision may deem appropriate.

2011 Acts, ch 51, §1

NEW section

## CHAPTER 716

### DAMAGE AND TRESPASS TO PROPERTY

#### 716.7 Trespass defined.

1. The term “*property*” shall include any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure whether publicly or privately owned.

2. The term “*trespass*” shall mean one or more of the following acts:

a. Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense, to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate, or to hunt, fish or trap on or in the property, including the act of taking or attempting to take a deer, other than a farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, which is on or in the property by a person who is outside the property. This paragraph does not prohibit the unarmed pursuit of game or fur-bearing animals by a person who lawfully injured or killed the game or fur-bearing animal which comes to rest on or escapes to the property of another.

b. Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

c. Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

d. Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

e. Entering or remaining upon or in railway property without lawful authority or without the consent of the railway corporation which owns, leases, or operates the railway property. This paragraph does not apply to passage over a railroad right-of-way, other than a track, railroad roadbed, viaduct, bridge, trestle, or railroad yard, by an unarmed person if the person has not been notified or requested to abstain from entering on to the right-of-way or to vacate the right-of-way and the passage over the right-of-way does not interfere with the operation of the railroad.

f. Entering or remaining upon or in public utility property without lawful authority or without the consent of the public utility that owns, leases, or operates the public utility property. This paragraph does not apply to passage over public utility right-of-way by a person if the person has not been notified or requested by posted signage or other means to abstain from entering onto the right-of-way or to vacate the right-of-way.

3. The term “*trespass*” shall not mean entering upon the property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the

property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property. This subsection does not apply to public utility property where the person has been notified or requested by posted signage or other means to abstain from entering.

4. The term “trespass” does not mean the entering upon the right-of-way of a public road or highway.

5. a. For purposes of this section, “railway property” means all tangible real and personal property owned, leased, or operated by a railway corporation with the exception of any administrative building or offices of the railway corporation.

b. For purposes of this section, “railway corporation” means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within this state.

6. For purposes of this section, “public utility property” means any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure owned, leased, or operated by a public utility and that is completely enclosed by a physical barrier of any kind. For the purposes of this section, a “public utility” is a public utility as defined in section 476.1 or an electric transmission line as provided in chapter 478.

7. This section shall not apply to the following persons:

a. Representatives of the state department of transportation, the federal railroad administration, or the national transportation safety board who enter or remain upon or in railway property while engaged in the performance of official duties.

b. Employees of a railway corporation who enter or remain upon or in railway property while acting in the course of employment.

c. Any person who is engaged in the operation of a lawful business on railway station grounds or in the railway depot.

d. Representatives of the Iowa utilities board, the federal energy regulatory commission, or the federal communications commission who enter or remain upon or in public utility property while engaged in the performance of official duties.

e. Employees of a public utility who enter or remain upon or in public utility property while acting in the course of employment.

[C51, §2684; R60, §4324; C73, §3983; C97, §4793, 4829; C24, 27, 31, 35, 39, §13086, 13374; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §714.6, 729.1; C79, 81, §716.7; 81 Acts, ch 205, §1]

88 Acts, ch 1212, §1; 98 Acts, ch 1067, §1, 2; 2007 Acts, ch 28, §20; 2011 Acts, ch 51, §2 – 5

Subsection 2, NEW paragraph f

Subsection 3 amended

Subsection 5, unnumbered paragraphs 1 and 2 editorially designated as paragraphs a and b

NEW subsection 6 and former subsection 6 renumbered as 7

Subsection 7, NEW paragraphs d and e

### 716.8 Penalties.

1. Any person who knowingly trespasses upon the property of another commits a simple misdemeanor.

2. Any person committing a trespass as defined in section 716.7, other than a trespass as defined in section 716.7, subsection 2, paragraph “f”, which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits a serious misdemeanor.

3. A person who knowingly trespasses on the property of another with the intent to commit a hate crime, as defined in section 729A.2, commits a serious misdemeanor.

4. A person committing a trespass as defined in section 716.7 with the intent to commit a hate crime which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits an aggravated misdemeanor.

5. A person who commits a trespass while hunting deer, other than a farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, commits a simple misdemeanor. The person shall also be subject to civil penalties as provided in sections 481A.130 and 481A.131. A deer taken by a person while committing such a trespass shall be subject to seizure as provided in section 481A.12.

6. Any person who commits a trespass as defined in section 716.7, subsection 2, paragraph “f”, commits a class “D” felony.

[C73, 75, 77, §729.2, 729.3; C79, 81, §716.8]

92 Acts, ch 1157, §6; 99 Acts, ch 153, §15, 16; 2007 Acts, ch 28, §21; 2008 Acts, ch 1161, §21; 2011 Acts, ch 51, §6, 7

Subsection 2 amended  
NEW subsection 6

## CHAPTER 716B

### HAZARDOUS WASTE OFFENSES

#### 716B.1 Definitions.

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

1. “*Department*” means the department of natural resources.
2. “*Disposal*” or “*dispose*” means disposal as defined in section 455B.411, subsection 1.
3. “*Hazardous waste*” means a hazardous waste as defined in section 455B.411, subsection 3, or a hazardous substance as defined in 42 U.S.C. § 9601, or a hazardous substance as designated by regulations adopted by the administrator of the United States environmental protection agency pursuant to 42 U.S.C. § 9602.
4. “*Person*” means an agency of the state or federal government, a municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity, and includes an officer, or governing or managing body of a municipality, governmental subdivision, interstate body, or public or private corporation.
5. “*Storage*” or “*store*” means the containment of a hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.
6. “*Treatment*” or “*treat*” means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste or to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or to reduce the waste in volume. “*Treatment*” includes any activity or processing designed to change the physical form or chemical composition of hazardous waste to render the waste nonhazardous.

88 Acts, ch 1080, §3; 2011 Acts, ch 9, §9

Subsections 5 and 6 amended

## CHAPTER 717

### INJURY TO LIVESTOCK

#### 717.1 Definitions.

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

1. “*Department*” means the department of agriculture and land stewardship.
2. “*Electronic mail*” means any message transmitted through the internet including but not limited to messages transmitted from or to any address affiliated with an internet site.
3. “*Law enforcement officer*” means a regularly employed member of a police force of a city or county, including a sheriff, who is responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state.
4. “*Livestock*” means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus; farm deer as defined in section 170.1; or poultry.

5. “*Livestock care provider*” means a person designated by a local authority to provide care to livestock which is rescued by the local authority pursuant to section 717.2A.

6. “*Local authority*” means a city as defined in section 362.2 or a county as provided in chapter 331.

7. “*Maintenance*” means to provide on-site or off-site care to neglected livestock.

8. “*Sustenance*” means food, water, or a nutritional formulation customarily used in the production of livestock.

[C51, §2678; R60, §4318; C73, §3977; C97, §4818; C24, 27, 31, 35, 39, §13132; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §717.1]

94 Acts, ch 1103, §7; 95 Acts, ch 43, §14; 95 Acts, ch 134, § 6; 2003 Acts, ch 149, §21, 23; 2011 Acts, ch 81, §5

NEW subsections 1 and 2 and former subsections 1 – 6 renumbered as 3 – 8

### **717.3 Livestock in immediate need of sustenance — court order.**

1. This section applies only to livestock which are cattle, sheep, swine, or poultry.

2. For purposes of this section, “*interested person*” means all of the following:

a. An owner of the livestock.

b. A person caring for the livestock, if different from the owner of the livestock.

c. A person holding a perfected agricultural lien or security interest in the livestock under chapter 554.

3. The department may determine that some or all of the livestock kept by a person are in immediate need of sustenance. Upon making the determination the department may file a petition with a district court in a county where some or all of the livestock are kept requesting the court to issue an order to provide sustenance of the livestock. The petition may be made separately or with a petition filed pursuant to section 717.5. The petition must at least include all of the following:

a. A statement signed by a veterinarian licensed pursuant to chapter 169 stating that the livestock are in immediate need of sustenance.

b. The address of each location where the livestock are kept.

c. A brief description of the livestock.

d. The name and address of each interested person, if known.

e. The name and address of each qualified person appointed by the department to provide sustenance to the livestock.

4. Upon receiving the petition, the court may do any of the following:

a. Notify any interested person that the petition has been filed with the court. The notification must be made in writing and may be delivered by ordinary, certified, or restricted certified mail by United States postal service; delivered by a common carrier; or transmitted by electronic mail.

b. Hold a hearing to determine whether the livestock are in immediate need of sustenance.

5. If the court determines that the livestock are in immediate need of sustenance, the court shall issue an order which at least declares all of the following:

a. That the livestock are in immediate need of sustenance.

b. That the department shall assume supervision of and provide for the sustenance of the livestock as provided in section 717.4.

c. That a lien is created attaching to the livestock and associated proceeds and products as provided in section 717.4.

6. The department shall assume supervision of the livestock as provided in the court order. The department may directly provide for the sustenance of the livestock or appoint a qualified person to provide for such sustenance.

2011 Acts, ch 81, §6; 2011 Acts, ch 131, §74, 158

NEW section

### **717.4 Livestock in immediate need of sustenance — lien.**

1. This section applies to a lien created by a court order entered pursuant to section 717.3 or 717.5. The court-ordered lien is an agricultural lien subject to chapter 554 except as otherwise provided in this section.

2. The court-ordered lien shall be for the benefit of the department. The amount of the lien shall not be more than for expenses incurred in providing sustenance to the livestock pursuant to section 717.3 and providing for the disposition of the livestock pursuant to section 717.5.

3. The court-ordered lien shall attach to the livestock, identifiable proceeds from the disposition of the livestock, and products from the livestock in the products' unmanufactured states.

4. The court-ordered lien becomes effective on the date that the court order is entered. To perfect the lien, the department must file a financing statement in the office of the secretary of state as provided in sections 554.9308 and 554.9310 on or after but not later than twenty days after the effective date of the lien. For purposes of chapter 554, article 9, the department is a secured party; the owner of the livestock is a debtor; and the livestock and associated proceeds and products as provided in subsection 3 are the collateral.

5. The court-ordered lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the livestock and associated proceeds and products as provided in subsection 3, including a lien or security interest that was perfected prior to the perfection of the court-ordered lien.

2011 Acts, ch 81, §7; 2011 Acts, ch 131, §75, 158

NEW section

#### **717.4A Livestock in immediate need of sustenance — livestock remediation fund.**

The department may utilize the moneys deposited into the livestock remediation fund pursuant to section 459.501 to pay for any expenses associated with providing sustenance to or the disposition of the livestock pursuant to a court order entered pursuant to section 717.3 or 717.5. The department shall utilize moneys from the fund only to the extent that the department determines that expenses cannot be timely paid by utilizing the available provisions of sections 717.4 and 717.5. The department shall deposit any unexpended and unobligated moneys in the fund. The department shall pay to the fund the proceeds from the disposition of the livestock and associated products less expenses incurred by the department in providing for the sustenance and disposition of the livestock, as provided in section 717.5.

2011 Acts, ch 81, §8; 2011 Acts, ch 131, §76, 158

NEW section

#### **717.5 Disposition of neglected livestock.**

1. *a.* A court shall order the disposition of livestock neglected as provided in section 717.2 or livestock in immediate need of sustenance and associated products as provided in sections 717.3 and 717.4 in accordance with this section.

(1) A petition may be filed by a local authority or a person owning or caring for the livestock pursuant to section 717.2.

(2) A petition may be filed by the department. The court shall notify interested persons in the same manner as provided in section 717.3. The petition may be filed separately or with a petition filed pursuant to section 717.3.

*b.* The matter shall be heard by the court within ten days from the filing of the petition.

(1) For livestock alleged to be neglected under section 717.2, the court may continue the hearing for up to forty days upon petition by the person. However, the person shall post a bond or other security with the local authority in an amount determined by the court, which shall not be more than the amount sufficient to provide for the maintenance of the livestock for forty days. The court may grant a subsequent continuance by the person for the same length of time if the person submits a new bond or security.

(2) For livestock alleged to be in immediate need of sustenance under section 717.3, the court may continue the hearing for up to forty days upon petition by the department. The department may file and the court may grant one or more subsequent continuances each for up to forty days. The department is not required to post a bond or other security.

*c.* Notwithstanding paragraph "b", the court shall order the immediate disposition of

livestock if the livestock is permanently distressed by disease or injury to a degree that would result in severe or prolonged suffering.

2. The hearing to determine if livestock has been neglected under section 717.2 for purposes of disposition shall be a civil proceeding. If the case is related to a criminal proceeding under section 717.2, the disposition shall not be part of that proceeding and shall not be considered a criminal penalty imposed on a person found in violation of section 717.2.

3. A court may order a person owning the livestock neglected under section 717.2 or in immediate need of sustenance under section 717.3 to pay an amount associated with expenses associated with the livestock as follows:

a. (1) For livestock neglected under section 717.2, the amount shall not be more than for expenses incurred by the local authority in maintaining and disposing the neglected livestock rescued pursuant to section 717.2A, and reasonable attorney fees and expenses related to the investigation of the case. The remaining amount of a bond or other security posted pursuant to subsection 1 shall be used to reimburse the local authority.

(2) For livestock in immediate need of sustenance under section 717.3, the amount shall not be more than for expenses incurred by the department in providing sustenance to and disposing of the neglected livestock as provided in section 717.3 and this section. The amount paid to the department shall be sufficient to allow the department to repay the livestock remediation fund as provided in section 459.501.

b. If more than one person has a divisible ownership interest in the livestock, the amount required to be paid shall be prorated based on the percentage of interest in the livestock owned by each person. The moneys shall be paid to the local authority or department incurring the expense as provided in paragraph "a". The amount shall be subtracted from proceeds owed to the owner or owners of the livestock, which are received from the sale of the livestock ordered by the court.

c. (1) Moneys owed to the local authority from the sale of neglected livestock that have been rescued by a local authority pursuant to section 717.2A shall be paid to the local authority before satisfying indebtedness secured by any security interest in or lien on the livestock. Moneys owed to the department from the sale of livestock in immediate need of sustenance and associated products shall be paid to the department according to its priority status as a lienholder as provided in section 717.4.

(2) If an owner of the livestock is a landowner, the local authority may submit an amount of the moneys owed to the clerk of the county board of supervisors who shall report the amount to the county treasurer. The amount shall equal the balance remaining after the sale of the livestock. If the livestock owner owns a percentage of the livestock, the reported amount shall equal the remaining balance owed by all landowners who own a percentage of the livestock. That amount shall be prorated among the landowners based on the percentage of interest in the livestock attributable to each landowner. The amount shall be placed upon the tax books, and collected with interest and penalties after due, in the same manner as other unpaid property taxes. The county shall reimburse a city within thirty days from the collection of the property taxes.

4. Neglected livestock ordered to be destroyed shall be destroyed only by a humane method, including euthanasia as defined in section 162.2.

86 Acts, ch 1121, §4; 94 Acts, ch 1103, §11; 2011 Acts, ch 81, §9

Subsections 1 - 3 amended

### **717.6 Rulemaking.**

The department may adopt rules pursuant to chapter 17A as required to implement and administer sections 717.3 through 717.5.

2011 Acts, ch 81, §10

NEW section

## CHAPTER 717F

## DANGEROUS WILD ANIMALS

**717F.1 Definitions.**

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

1. “*Agricultural animal*” means an agricultural animal as defined in section 717A.1 other than swine which is a member of the species *sus scrofa linnaeus*, including but not limited to swine commonly known as Russian boar or European boar of either sex.

2. “*Assistive animal*” means the same as defined in section 216C.11.

3. a. “*Circus*” means a person who is all of the following:

(1) The holder of a class “C” license issued by the United States department of agriculture as provided in 9 C.F.R. pt. 2, subpt. A.

(2) Is temporarily in this state as an exhibitor as defined in 9 C.F.R. pt. 1, for purposes of providing skilled performances by dangerous wild animals, clowns, or acrobats for public entertainment.

b. “*Circus*” does not include a person, regardless of whether the person is a holder of a class “C” license as provided in paragraph “a”, who uses a dangerous wild animal for any of the following purposes:

(1) A presentation to children at a public or nonpublic school as defined in section 280.2.

(2) Entertainment that involves an activity in which a member of the public is in close proximity to the dangerous wild animal, including but not limited to a contest or a photographic opportunity.

4. “*Custody*” means to possess, control, keep, or harbor a dangerous wild animal in this state by a public agency.

5. a. “*Dangerous wild animal*” means any of the following:

(1) A member of the family *canidae* of the order *carnivora*, including but not limited to wolves, coyotes, and jackals. However, a dangerous wild animal does not include a domestic dog.

(2) A member of the family *hyaenidae* of the order of *carnivora*, including but not limited to hyenas.

(3) A member of the family *felidae* of the order *carnivora*, including but not limited to lions, tigers, cougars, leopards, cheetahs, ocelots, and servals. However, a dangerous wild animal does not include a domestic cat.

(4) A member of the family *ursidae* of the order *carnivora*, including bears and pandas.

(5) A member of the family *rhinocerotidae* order *perissodactyla*, which is a rhinoceros.

(6) A member of the order *proboscidea*, which are any species of elephant.

(7) A member of the order of *primates* other than humans, and including the following families: *callitrichidae*, *cebidae*, *cercopithecidae*, *cheirogaleidae*, *daubentoniidae*, *galagonidae*, *hominidae*, *hylobatidae*, *indridae*, *lemuridae*, *loridae*, *megaladapidae*, or *tarsiidae*. A member includes but is not limited to marmosets, tamarins, monkeys, lemurs, galagos, bushbabies, great apes, gibbons, lesser apes, indris, sifakas, and tarsiers.

(8) A member of the order *crocodilia*, including but not limited to alligators, caimans, crocodiles, and gharials.

(9) A member of the family *varanidae* of the order *squamata*, which are limited to water monitors and crocodile monitors.

(10) A member of the order *squamata* which is any of the following:

(a) A member of the family *varanidae*, which are limited to water monitors and crocodile monitors.

(b) A member of the family *atractaspidae*, including but not limited to mole vipers and burrowing asps.

(c) A member of the family *helodermatidae*, including but not limited to beaded lizards and gila monsters.

(d) A member of the family *elapidae*, *viperidae*, *crotalidae*, *atractaspidae*, or *hydrophidae* which are venomous, including but not limited to cobras, mambas, coral snakes, kraits,

adders, vipers, rattlesnakes, copperheads, pit vipers, keelbacks, cottonmouths, and sea snakes.

(e) A member of the superfamily henophidia, which are limited to reticulated pythons, anacondas, and African rock pythons.

(11) Swine which is a member of the species *sus scrofa linnaeus*, including but not limited to swine commonly known as Russian boar or European boar of either sex.

b. “*Dangerous wild animal*” includes an animal which is the offspring of an animal provided in paragraph “a”, and another animal provided in that paragraph or any other animal. It also includes animals which are the offspring of each subsequent generation. However, a dangerous wild animal does not include the offspring of a domestic dog and a wolf, or the offspring from each subsequent generation in which at least one parent is a domestic dog.

6. “*Department*” means the department of agriculture and land stewardship.

7. “*Electronic identification device*” means a device which when installed is designed to store information regarding an animal or the animal’s owner in a digital format which may be accessed by a computer for purposes of reading or manipulating the information.

8. “*Possess*” means to own, keep, or control a dangerous wild animal, or supervise or provide for the care and feeding of a dangerous wild animal, including any activity relating to confining, handling, breeding, transporting, or exhibiting the dangerous wild animal.

9. “*Public agency*” means the same as defined in section 28E.2.

10. “*Research facility*” means any of the following:

a. A federal research facility as provided in 9 C.F.R. ch. I.

b. A research facility that is required to be registered by the United States department of agriculture pursuant to 9 C.F.R. ch. I.

c. A research facility which has been issued a certificate of registration by the department of agriculture and land stewardship as provided in sections 162.2A and 162.4A.

11. “*Wildlife sanctuary*” means an organization exempt from taxation pursuant to section 501(c) of the Internal Revenue Code that operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced wildlife are provided care for their lifetime, if all of the following apply:

a. The organization does not buy, sell, trade, auction, lease, loan, or breed any animal of which the organization is an owner.

b. The organization is accredited by the American sanctuary association, the association of sanctuaries, or another similar organization recognized by the department.

2007 Acts, ch 195, §1; 2007 Acts, ch 215, §118 – 120; 2011 Acts, ch 34, §147

Subsection 10, paragraph c amended

## CHAPTER 718B

### IMPERSONATING A DECORATED MILITARY VETERAN

#### **718B.1 Impersonating a decorated military veteran.**

A person who impersonates a decorated military veteran with the intent to deceive another person for the purpose of gaining any real or anticipated monetary gain commits a serious misdemeanor. For the purposes of this section, “*decorated military veteran*” means a veteran of the armed forces of the United States who has been awarded any decoration or medal authorized by the United States Congress for service in the armed forces of the United States, any of the service medals or badges awarded to the members of such forces, or the ribbon, button, or rosette of any such badge, decoration, or medal.

2011 Acts, ch 96, §1

NEW section

## CHAPTER 719

### OBSTRUCTING JUSTICE

#### **719.7A Electronic contraband — criminal penalties.**

1. As used in this section, unless the context otherwise requires:
  - a. “*Electronic contraband*” means a mobile telephone or other hand-held electronic communication device.
  - b. “*Facility*” means a county jail, municipal holding facility, or institution under the management of the department of corrections.
2. A person commits the offense of possessing electronic contraband under this section if the person, not authorized by law, does any of the following:
  - a. Knowingly supplies or attempts to supply electronic contraband to any person confined in a facility, or to any person confined in a facility while the person is being transported or moved incidental to the confinement.
  - b. Knowingly makes, obtains, or possesses electronic contraband while confined in a facility, or while being transported or moved incidental to confinement.
3. A person who possesses electronic contraband commits a class “D” felony.
4. a. A person commits the offense of failing to report electronic contraband when the person fails to report a known violation or attempted violation of this section to an official or officer at a facility.
  - b. A person who violates this subsection commits an aggravated misdemeanor.
5. The sheriff may x-ray a person committed to the jail, the supervising law enforcement agency may x-ray a person confined in the municipal holding facility, or the department of corrections may x-ray a person under the control of the department, if there is reason to believe that the person is in possession of electronic contraband. A licensed physician or x-ray technician under the supervision of a licensed physician must x-ray the person.
6. Nothing in this section is intended to limit the authority of the administrator of any facility to prescribe or enforce rules concerning the definition of electronic contraband, and the supplying, making, obtaining, or possession of electronic contraband.

2011 Acts, ch 19, §1  
NEW section

## CHAPTER 724

### WEAPONS

Restrictions on shooting over public waters or roads; §481A.54

#### **724.7 Nonprofessional permit to carry weapons.**

1. Any person who is not disqualified under section 724.8, who satisfies the training requirements of section 724.9, and who files an application in accordance with section 724.10 shall be issued a nonprofessional permit to carry weapons. Such permits shall be on a form prescribed and published by the commissioner of public safety, which shall be readily distinguishable from the professional permit, and shall identify the holder of the permit. Such permits shall not be issued for a particular weapon and shall not contain information about a particular weapon including the make, model, or serial number of the weapon or any ammunition used in that weapon. All permits so issued shall be for a period of five years and shall be valid throughout the state except where the possession or carrying of a firearm is prohibited by state or federal law.
2. The commissioner of public safety shall develop a process to allow service members deployed for military service to submit a renewal of a nonprofessional permit to carry weapons early and by mail. In addition, a permit issued to a service member who is deployed for military service, as defined in section 29A.1, subsection 3, 11, or 12, that would otherwise

expire during the period of deployment shall remain valid for ninety days after the end of the service member's deployment.

[S13, §4775-3a; C24, 27, 31, 35, 39, §12938, 12945; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.4, 695.13; C79, 81, §724.7]

2010 Acts, ch 1170, §6; 2010 Acts, ch 1178, §5, 19; 2011 Acts, ch 47, §12

For transition provisions relating to permits issued under this chapter prior to January 1, 2011, see 2010 Acts, ch 1178, §18  
Subsection 2 amended

**724.31 Persons subject to firearm disabilities due to mental health commitments or adjudications — relief from disabilities — reports.**

1. When a court issues an order or judgment under the laws of this state by which a person becomes subject to the provisions of 18 U.S.C. § 922(d)(4) and (g)(4), the clerk of the district court shall forward only such information as is necessary to identify the person to the department of public safety, which in turn shall forward the information to the federal bureau of investigation or its successor agency for the sole purpose of inclusion in the national instant criminal background check system database. The clerk of the district court shall also notify the person of the prohibitions imposed under 18 U.S.C. § 922(d)(4) and (g)(4).

2. A person who is subject to the disabilities imposed by 18 U.S.C. § 922(d)(4) and (g)(4) because of an order or judgment that occurred under the laws of this state may petition the court that issued the order or judgment or the court in the county where the person resides for relief from the disabilities imposed under 18 U.S.C. § 922(d)(4) and (g)(4). A copy of the petition shall also be served on the director of human services and the county attorney at the county attorney's office of the county in which the original order occurred, and the director or the county attorney may appear, support, object to, and present evidence relevant to the relief sought by the petitioner.

3. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner, concerning all of the following:

a. The circumstances surrounding the original issuance of the order or judgment that resulted in the firearm disabilities imposed by 18 U.S.C. § 922(d)(4) and (g)(4).

b. The petitioner's record, which shall include, at a minimum, the petitioner's mental health records and criminal history records, if any.

c. The petitioner's reputation, developed, at a minimum, through character witness statements, testimony, and other character evidence.

d. Any changes in the petitioner's condition or circumstances since the issuance of the original order or judgment that are relevant to the relief sought.

4. The court shall grant a petition for relief filed pursuant to subsection 2 if the court finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to the public safety and that the granting of the relief would not be contrary to the public interest. A record shall be kept of the proceedings, but the record shall remain confidential and shall be disclosed only to a court in the event of an appeal. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo. A person may file a petition for relief under subsection 2 not more than once every two years.

5. If a court issues an order granting a petition for relief filed pursuant to subsection 2, the clerk of the court shall immediately notify the department of public safety of the order granting relief under this section. The department of public safety shall, as soon thereafter as is practicable but not later than ten business days thereafter, update, correct, modify, or remove the petitioner's record in any database that the department of public safety makes available to the national instant criminal background check system and shall notify the United States department of justice that the basis for such record being made available no longer applies.

2010 Acts, ch 1178, §17, 19; 2011 Acts, ch 72, §1 – 3

2011 amendment takes effect April 19, 2011, and also applies to information in an order or judgment specified in subsection 2 issued prior to that date which is determined necessary to identify a person subject to such order or judgment, if such order or judgment is available electronically in the Iowa court information system; department of public safety to notify Code editor upon fulfillment of requirements; 2011 Acts, ch 72, §2, 3

Section stricken and rewritten

## CHAPTER 728

### OBSCENITY

Victim counselor privilege; see §915.20A  
Complaint alleging a child in need of assistance; see §709.13

#### **728.8 Suspension of licenses or permits.**

Any person who knowingly permits a violation of section 728.2, 728.3, or 728.5, subsection 1, paragraph “f”, to occur on premises under the person’s control shall have all permits and licenses issued to the person under state or local law as a prerequisite for doing business on such premises revoked for a period of six months. The county attorney shall notify all agencies responsible for issuing licenses and permits of any conviction under section 728.2, 728.3, or 728.5, subsection 1, paragraph “f”.

[C75, 77, §725.6; C79, 81, §728.8]

92 Acts, ch 1029, §2; 97 Acts, ch 125, §4; 2011 Acts, ch 34, §148

Section amended

## CHAPTER 731

### LABOR UNION MEMBERSHIP

#### **731.8 Exception.**

The provisions of this chapter shall not apply to employers or employees covered by the federal Railway Labor Act, 45 U.S.C. § 151 et seq.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736A.8; C79, 81, §731.8]

2011 Acts, ch 34, §149

Section amended

## CHAPTER 805

### CITATIONS IN LIEU OF ARREST

#### **805.8A Motor vehicle and transportation scheduled violations.**

##### *1. Parking violations.*

a. For parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, the scheduled fine is five dollars, except if the local authority has established the fine by ordinance. The scheduled fine for a parking violation pursuant to section 321.236 increases by five dollars if authorized by ordinance and if the parking violation is not paid within thirty days of the date upon which the violation occurred. For purposes of calculating the unsecured appearance bond required under section 805.6, the scheduled fine shall be five dollars, or if the amount of the fine is greater than five dollars, the unsecured appearance bond shall be the amount of the fine established by the local authority. However, violations charged by a city or county upon simple notice of a fine instead of a uniform citation and complaint required by section 321.236, subsection 1, paragraph “b”, are not scheduled violations, and this section shall not apply to any offense charged in that manner. For a parking violation under section 461A.38, the scheduled fine is ten dollars. For a parking violation under section 321.362, the scheduled fine is twenty dollars.

b. For a parking violation under section 321L.2A, subsection 2, the scheduled fine is twenty dollars.

c. For violations under section 321L.2A, subsection 3, sections 321L.3, 321L.4, subsection 2, and section 321L.7, the scheduled fine is two hundred dollars.

2. *Title and registration violations.* For title or registration violations under the following sections, the scheduled fine is as follows:

a. Section 321.17.....	\$ 50.
b. Section 321.25.....	\$100.
c. Section 321.32.....	\$ 20.
d. Section 321.34.....	\$ 20.
e. Section 321.37.....	\$ 20.
f. Section 321.38.....	\$ 20.
g. Section 321.41.....	\$ 20.
h. Section 321.45.....	\$100.
i. Section 321.46.....	\$100.
j. Section 321.47.....	\$100.
k. Section 321.48.....	\$100.
l. Section 321.52.....	\$100.
m. Section 321.55.....	\$ 50.
n. Section 321.57.....	\$100.
o. Section 321.62.....	\$100.
p. Section 321.67.....	\$100.
q. Section 321.98.....	\$ 50.
r. Section 321.99.....	\$200.
s. Section 321.104.....	\$100.
t. Section 321.115.....	\$ 30.
u. Section 321.115A.....	\$ 30.

3. *Equipment violations.* For equipment violations under the following sections, the scheduled fine is as follows:

a. Section 321.234A.....	\$ 50.
b. Section 321.247.....	\$100.
c. Section 321.317.....	\$ 20.
d. Section 321.381.....	\$100.
e. Section 321.381A.....	\$100.
f. Section 321.382.....	\$ 25.
g. Section 321.383.....	\$ 30.
h. Section 321.384.....	\$ 30.
i. Section 321.385.....	\$ 30.
j. Section 321.386.....	\$ 30.
k. Section 321.387.....	\$ 20.
l. Section 321.388.....	\$ 20.
m. Section 321.389.....	\$ 20.
n. Section 321.390.....	\$ 20.
o. Section 321.392.....	\$ 20.
p. Section 321.393.....	\$ 20.
q. Section 321.398.....	\$ 30.
r. Section 321.402.....	\$ 30.
s. Section 321.403.....	\$ 30.
t. Section 321.404.....	\$ 30.
u. Section 321.404A.....	\$ 25.
v. Section 321.409.....	\$ 30.
w. Section 321.415.....	\$ 30.
x. Section 321.419.....	\$ 30.
y. Section 321.420.....	\$ 30.
z. Section 321.421.....	\$ 30.
aa. Section 321.422.....	\$ 20.
ab. Section 321.423.....	\$ 30.
ac. Section 321.430.....	\$100.
ad. Section 321.432.....	\$ 20.
ae. Section 321.433.....	\$ 30.

- af. Section 321.436.....\$ 20.
- ag. Section 321.438.....\$ 50.
- ah. Section 321.439.....\$ 20.
- ai. Section 321.440.....\$ 20.
- aj. Section 321.441.....\$ 20.
- ak. Section 321.442.....\$ 20.
- al. Section 321.444.....\$ 20.

4. *Driver’s license violations.* For driver’s license violations under the following sections, the scheduled fine is as follows:

- a. Section 321.174.....\$ 200.
- b. Section 321.174A.....\$ 50.
- c. Section 321.178, subsection 2,  
paragraph “a”, subparagraph (2).....\$ 30.
- d. Section 321.180.....\$ 50.
- e. Section 321.180B.....\$ 50.
- f. Section 321.193.....\$ 50.
- g. Section 321.194.....\$ 50.
- h. Section 321.216.....\$ 100.
- i. Section 321.216B.....\$ 200.
- j. Section 321.216C.....\$ 200.
- k. Section 321.219.....\$ 200.
- l. Section 321.220.....\$ 200.

5. *Speed violations.*

a. For excessive speed violations in excess of the limit under section 321.236, subsections 5 and 11, sections 321.285, and 461A.36, the scheduled fine shall be the following:

- (1) Twenty dollars for speed not more than five miles per hour in excess of the limit.
- (2) Forty dollars for speed greater than five but not more than ten miles per hour in excess of the limit.
- (3) Eighty dollars for speed greater than ten but not more than fifteen miles per hour in excess of the limit.
- (4) Ninety dollars for speed greater than fifteen but not more than twenty miles per hour in excess of the limit.
- (5) One hundred dollars plus five dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

b. Notwithstanding paragraph “a”, for excessive speed violations in speed zones greater than fifty-five miles per hour, the scheduled fine shall be:

- (1) Twenty dollars for speed not more than five miles per hour in excess of the limit.
- (2) Forty dollars for speed greater than five but not more than ten miles per hour in excess of the limit.
- (3) Eighty dollars for speed greater than ten but not more than fifteen miles per hour in excess of the limit.
- (4) Ninety dollars for speed greater than fifteen but not more than twenty miles per hour in excess of the limit.
- (5) One hundred dollars plus five dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

c. Excessive speed in whatever amount by a school bus is not a scheduled violation under any section listed in this subsection.

d. Excessive speed in conjunction with a violation of section 321.278 is not a scheduled violation, whatever the amount of excess speed.

e. For a violation under section 321.295, the scheduled fine is fifty dollars.

6. *Operating violations.* For operating violations under the following sections, the scheduled fine is as follows:

- a. Section 321.236, subsections 3, 4, 9,  
and 12.....\$ 20.
- b. Section 321.275, subsections 1  
through 7.....\$ 35.

- c. Section 321.277A .....\$ 35.
  - d. Section 321.288.....\$100.
  - e. Section 321.297.....\$100.
  - f. Section 321.299.....\$100.
  - g. Section 321.302.....\$100.
  - h. Section 321.303.....\$100.
  - i. Section 321.304, subsections 1  
and 2 .....\$100.
  - j. Section 321.305.....\$100.
  - k. Section 321.306.....\$100.
  - l. Section 321.311.....\$100.
  - m. Section 321.312.....\$100.
  - n. Section 321.314.....\$100.
  - o. Section 321.315.....\$ 35.
  - p. Section 321.316.....\$ 35.
  - q. Section 321.318.....\$ 35.
  - r. Section 321.323.....\$100.
  - s. Section 321.340.....\$100.
  - t. Section 321.353.....\$100.
  - u. Section 321.354.....\$100.
  - v. Section 321.363.....\$ 35.
  - w. Section 321.365.....\$ 35.
  - x. Section 321.366.....\$100.
  - y. Section 321.395.....\$100.
7. *Failure to yield or obey violations.* For failure to yield or obey violations under the following sections, the scheduled fine is as follows:
- a. Section 321.257, subsection 2, for a violation by an operator of a  
motor vehicle.....\$100.
  - b. Section 321.298.....\$100.
  - c. Section 321.307.....\$100.
  - d. Section 321.308.....\$100.
  - e. Section 321.313.....\$100.
  - f. Section 321.319.....\$100.
  - g. Section 321.320.....\$100.
  - h. Section 321.321.....\$100.
  - i. Section 321.327.....\$100.
  - j. Section 321.329.....\$100.
  - k. Section 321.333.....\$100.
8. *Traffic sign or signal violations.* For traffic sign or signal violations under the following sections, the scheduled fine is as follows:
- a. Section 321.236, subsections 2 and 6.....\$ 35.
  - b. Section 321.256.....\$100.
  - c. Section 321.294.....\$100.
  - d. Section 321.304, subsection 3.....\$100.
  - e. Section 321.322.....\$100.
9. *Bicycle or pedestrian violations.* For bicycle or pedestrian violations under the following sections, the scheduled fine for a pedestrian or bicyclist is as follows:
- a. Section 321.234, subsections 3 and 4.....\$ 25.
  - b. Section 321.236, subsection 10.....\$ 15.
  - c. Section 321.257, subsection 2.....\$ 25.
  - d. Section 321.275, subsection 8.....\$ 25.
  - e. Section 321.325.....\$ 25.
  - f. Section 321.326.....\$ 25.
  - g. Section 321.328.....\$ 25.
  - h. Section 321.331.....\$ 25.
  - i. Section 321.332.....\$ 25.

- j. Section 321.397.....\$ 25.
- k. Section 321.434.....\$ 25.

9A. *Electric personal assistive mobility device violations.* For violations under section 321.235A, the scheduled fine is fifteen dollars.

10. *School bus violations.*

a. For violations by an operator of a school bus under sections 321.285 and 321.372, subsections 1 and 2, the scheduled fine is one hundred dollars. However, an excessive speed violation by a school bus of more than ten miles per hour in excess of the limit is not a scheduled violation.

b. For a violation under section 321.372, subsection 3, the scheduled fine is two hundred dollars.

11. *Emergency vehicle violations.* For emergency vehicle violations under the following sections, the scheduled fine is as follows:

- a. Section 321.231.....\$100.
- b. Section 321.323A.....\$100.
- c. Section 321.324.....\$100.
- d. Section 321.367.....\$100.
- e. Section 321.368.....\$100.

12. *Restrictions on vehicles.*

a. For violations under sections 321.309, 321.310, 321.394, 321.461, and 321.462, the scheduled fine is thirty-five dollars.

b. For violations under section 321.437, the scheduled fine is thirty-five dollars.

c. For height, length, width, and load violations under sections 321.454, 321.455, 321.456, 321.457, and 321.458, the scheduled fine is two hundred dollars.

d. For violations under section 321.466, the scheduled fine is twenty dollars for each two thousand pounds or fraction thereof of overweight.

e. (1) Violations of the schedule of axle and tandem axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the provisions, procedures, and exceptions contained in sections 805.6 through 805.11, irrespective of the amount of the fine under that schedule.

(a) Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one thousand dollars, only by uniform citation and complaint.

(b) Violations of the schedule of weight violations, where the fine charged exceeds one thousand dollars shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney’s information, but otherwise shall be chargeable only upon indictment or county attorney’s information.

(2) In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one thousand dollars, the conviction shall be of an indictable offense although section 805.9 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney’s information.

f. For a violation under section 321E.16, other than the provisions relating to weight, the scheduled fine is two hundred dollars.

13. *Motor carrier violations.*

a. (1) For a violation under section 321.54, the scheduled fine is thirty dollars.

(2) For violations under sections 326.22 and 326.23, the scheduled fine is fifty dollars.

b. For a violation under section 321.449, the scheduled fine is fifty dollars.

c. For violations under sections 321.364, 321.450, 321.460, and 452A.52, the scheduled fine is two hundred dollars.

d. For violations of section 325A.3, subsection 5, or section 325A.8, the scheduled fine is one hundred dollars.

e. For violations of chapter 325A, other than a violation of section 325A.3, subsection 5, or section 325A.8, the scheduled fine is two hundred fifty dollars.

f. For violations of section 327B.1, subsection 1 or 2, the scheduled fine is two hundred fifty dollars.

14. *Miscellaneous violations.*

a. *Failure to obey a peace officer.* For a violation under section 321.229, the scheduled fine is one hundred dollars.

b. *Abandoning a motor vehicle.* For a violation under section 321.91, the scheduled fine is two hundred dollars.

c. *Seat belt or restraint violations.*

(1) For a violation under section 321.445, the scheduled fine is fifty dollars.

(2) For a violation under section 321.446, the scheduled fine is one hundred dollars.

d. *Litter and debris violations.* For violations under sections 321.369 and 321.370, the scheduled fine is seventy dollars.

e. *Open container violations.* For violations under sections 321.284 and 321.284A, the scheduled fine is two hundred dollars.

f. *Proof of financial responsibility.* If, in connection with a motor vehicle accident, a person is charged and found guilty of a violation of section 321.20B, subsection 1, the scheduled fine is five hundred dollars; otherwise, the scheduled fine for a violation of section 321.20B, subsection 1, is two hundred fifty dollars. Notwithstanding section 805.12, fines collected pursuant to this paragraph shall be submitted to the state court administrator and distributed fifty percent to the victim compensation fund established in section 915.94, twenty-five percent to the county in which such fine is imposed, and twenty-five percent to the general fund of the state.

g. *Radar-jamming devices.* For a violation under section 321.232, the scheduled fine is one hundred dollars.

h. *Railroad crossing violations.* For violations under sections 321.341, 321.342, 321.343, and 321.344, and 321.344B, the scheduled fine is two hundred dollars.

i. *Road work zone violations.* The scheduled fine for any moving traffic violation under chapter 321, as provided in this section, shall be doubled if the violation occurs within any road work zone, as defined in section 321.1. However, notwithstanding subsection 5, the scheduled fine for violating the speed limit in a road work zone is as follows:

(1) One hundred fifty dollars for speed not more than ten miles per hour over the posted speed limit.

(2) Three hundred dollars for speed greater than ten but not more than twenty miles per hour over the posted speed limit.

(3) Five hundred dollars for speed greater than twenty but not more than twenty-five miles per hour over the posted speed limit.

(4) One thousand dollars for speed greater than twenty-five miles per hour over the posted speed limit.

j. *Vehicle component parts records violations.* For violations under section 321.95, the scheduled fine is fifty dollars.

k. *Actions against a person on a bicycle.* For violations under section 321.281, the scheduled fine is two hundred fifty dollars.

l. *Text-messaging while driving violations.* For violations under section 321.276, the scheduled fine is thirty dollars.

2001 Acts, ch 137, §2; 2002 Acts, ch 1013, §2; 2002 Acts, ch 1063, §53; 2003 Acts, ch 108, §116 – 118; 2003 Acts, ch 178, §15; 2004 Acts, ch 1101, §91; 2005 Acts, ch 165, §8; 2006 Acts, ch 1087, §4; 2008 Acts, ch 1021, §13; 2008 Acts, ch 1044, §7, 8; 2008 Acts, ch 1124, §36; 2009 Acts, ch 21, §14; 2009 Acts, ch 41, §261; 2009 Acts, ch 130, §43; 2009 Acts, ch 133, §226; 2010 Acts, ch 1105, §9, 10; 2010 Acts, ch 1190, §18; 2010 Acts, ch 1193, §144; 2011 Acts, ch 34, §150 – 154; 2011 Acts, ch 38, §28, 29

For additional penalties applicable to certain motor vehicle violations causing serious injury or death, see §321.482A

Subsection 4, unnumbered paragraph 1 amended

Subsection 6, unnumbered paragraph 1 amended

Subsection 7, unnumbered paragraph 1 amended

Subsection 8, unnumbered paragraph 1 amended

Subsection 13, paragraph f stricken and rewritten

Subsection 13, paragraph g stricken

Subsection 14, paragraph c, subparagraph (2) amended

## CHAPTER 811

## PRETRIAL AND POST-TRIAL RELEASE — BAIL

**811.1 Bail and bail restrictions.**

All defendants are bailable both before and after conviction, by sufficient surety, or subject to release upon condition or on their own recognizance, except that the following defendants shall not be admitted to bail:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class “A” felony, forcible felony as defined in section 702.11, any class “B” felony included in section 462A.14 or 707.6A; any felony included in section 124.401, subsection 1, paragraph “a” or “b”; or a second or subsequent offense under section 124.401, subsection 1, paragraph “c”; any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to chapter 229A.

2. A defendant appealing a conviction of a class “A” felony; forcible felony as defined in section 702.11; any class “B” or “C” felony included in section 462A.14 or 707.6A; any felony included in section 124.401, subsection 1, paragraph “a” or “b”; or a second or subsequent conviction under section 124.401, subsection 1, paragraph “c”; any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to chapter 229A.

3. Notwithstanding subsections 1 and 2, a defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of, or appealing a conviction of, any felony offense included in section 708.11, subsection 3, or a felony offense under chapter 124 not provided for in subsection 1 or 2 is presumed to be ineligible to be admitted to bail unless the court determines that such release reasonably will not result in the person failing to appear as required and will not jeopardize the personal safety of another person or persons.

[C51, §3211 – 3213; R60, §4885, 4962; C73, §3845, 4107, 4511; C97, §5096, 5442; S13, §5096; C24, 27, 31, 35, 39, §13609, 13610, 13966; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §763.1, 763.2, 789.19; C79, 81, §811.1; 82 Acts, ch 1236, §1]

89 Acts, ch 138, §4, 5; 90 Acts, ch 1251, §61; 92 Acts, ch 1179, §2; 94 Acts, ch 1093, §6; 95 Acts, ch 87, §1; 97 Acts, ch 177, §30; 98 Acts, ch 1138, §27; 99 Acts, ch 12, §10; 99 Acts, ch 71, §1; 99 Acts, ch 123, §1; 2000 Acts, ch 1099, §10; 2002 Acts, ch 1139, §22, 27; 2011 Acts, ch 22, §1

See R.Cr.P. 2.37 – Form 1

See also §124.416

Subsections 1 and 2 amended

## CHAPTER 818

### INTERSTATE EXTRADITION COMPACT

Chapter repealed by 2011 Acts, ch 43, §6; see chapter 820

## CHAPTER 819A

### UNIFORM ACT FOR RENDITION OF PRISONERS AS WITNESSES IN CRIMINAL PROCEEDINGS

Chapter repealed by 2011 Acts, ch 43, §7

## CHAPTER 901

### JUDGMENT AND SENTENCING PROCEDURES

#### **901.3 Presentence investigation report.**

If a presentence investigation is ordered by the court, the investigator shall promptly inquire into all of the following:

1. The defendant's characteristics, family and financial circumstances, needs, and potentialities.
2. The defendant's criminal record and social history.
3. The circumstances of the offense.
4. The time the defendant has been in detention.
5. The harm to the victim, the victim's immediate family, and the community. Additionally, the presentence investigator shall provide a victim impact statement form to each victim, if one has not already been provided, and shall file the completed statement or statements with the presentence investigation report.
6. The defendant's potential as a candidate for the community service sentence program established pursuant to section 907.13.
7. Any mitigating circumstances relating to the offense and the defendant's potential as a candidate for deferred judgment, deferred sentencing, a suspended sentence, or probation, if the defendant is charged with or convicted of assisting suicide pursuant to section 707A.2.
8. Whether the defendant has a history of mental health or substance abuse problems. If so, the investigator shall inquire into the treatment options available in both the community of the defendant and the correctional system.

All local and state mental and correctional institutions, courts, and police agencies shall furnish to the investigator on request the defendant's criminal record and other relevant information. The originating source of specific mental health or substance abuse information including the histories, treatment, and use of medications shall not be released to the presentence investigator unless the defendant authorizes the release of such information. If the defendant refuses to release the information, the presentence investigator may note the defendant's refusal to release mental health or substance abuse information in the presentence investigation report and rely upon other mental health or substance abuse information available to the presentence investigator. With the approval of the court, a physical examination or psychiatric evaluation of the defendant may be ordered, or the defendant may be committed to an inpatient or outpatient psychiatric facility for an

evaluation of the defendant's personality and mental health. The results of any such examination or evaluation shall be included in the report of the investigator.

[C75, 77, §789A.4; C79, 81, §901.3; 82 Acts, ch 1069, §1]

86 Acts, ch 1178, §2; 90 Acts, ch 1251, §63; 91 Acts, ch 219, §23; 96 Acts, ch 1002, §4; 2011 Acts, ch 7, §1 – 3

Subsection 1 amended

NEW subsection 8

Unnumbered paragraph 2 amended

### **901.5 Pronouncing judgment and sentence.**

After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

At the time fixed by the court for pronouncement of judgment and sentence, the court shall act accordingly:

1. If authorized by section 907.3, the court may defer judgment and sentence for an indefinite period in accordance with chapter 907.

2. If the defendant is not an habitual offender as defined by section 902.8, the court may pronounce judgment and impose a fine.

3. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both, and suspend the execution of the sentence or any part of it as provided in chapter 907.

4. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both.

5. If authorized by section 907.3, the court may defer the sentence and assign the defendant to the judicial district department of correctional services.

6. The court may pronounce judgment and sentence the defendant to confinement and then reconsider the sentence as provided by section 902.4 or 903.2.

7. The court shall inform the defendant of the mandatory minimum sentence, if one is applicable.

8. The court may order the defendant to complete any treatment indicated by a substance abuse evaluation ordered pursuant to section 901.4A or any other section.

8A. a. The court shall order DNA profiling of a defendant convicted of an offense that requires profiling under section 81.2.

b. Notwithstanding section 81.2, the court may order the defendant to provide a DNA sample to be submitted for DNA profiling if appropriate. In determining the appropriateness of ordering DNA profiling, the court shall consider the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense.

9. If the defendant is being sentenced for an aggravated misdemeanor or a felony, the court shall publicly announce the following:

a. That the defendant's term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits, and program credits.

b. That the defendant may be eligible for parole before the sentence is discharged.

c. In the case of multiple sentences, whether the sentences shall be served consecutively or concurrently.

10. a. In addition to any sentence imposed pursuant to chapter 902 or 903, the court shall order the department of transportation to revoke the defendant's driver's license or motor vehicle operating privilege for a period of one hundred eighty days, or to delay the issuance of a driver's license for one hundred eighty days after the person is first eligible if the defendant has not been issued a driver's license, and shall send a copy of the order in addition to the notice of conviction required under section 124.412, 126.26, or 453B.16, to the department of transportation, if the defendant is being sentenced for any of the following offenses:

(1) A controlled substance offense under section 124.401, 124.401A, 124.402, or 124.403.

(2) A drug or drug-related offense under section 126.3.

(3) A controlled substance tax offense under chapter 453B.

b. If the person's operating privileges are suspended or revoked at the time of sentencing, the order shall provide that the one hundred eighty-day revocation period shall not begin until all other suspensions or revocations have terminated.

11. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the provisions of 21 U.S.C. § 862, regarding the denial of federal benefits to drug traffickers and possessors convicted under state or federal law, and may enter an order specifying the range and scope of benefits to be denied to the defendant, according to the provisions of 21 U.S.C. § 862. For the purposes of this subsection, "*federal benefit*" means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or through the appropriation of funds of the United States, but does not include any retirement, welfare, social security, health, disability, veterans, public housing, or similar benefit for which payments or services are required for eligibility. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to the denial of federal benefits program of the United States department of justice, along with any other forms and information required by the department.

12. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the denial of state benefits to the defendant, and may enter an order specifying the range and scope of benefits to be denied to the defendant, comparable to the federal benefits denied under subsection 11. For the purposes of this subsection, "*state benefit*" means the issuance of any grant, contract, loan, professional license, or commercial license provided by a state agency, department, program, or otherwise through the appropriation of funds of the state, but does not include any retirement, welfare, health, disability, veterans, public housing, or similar benefit. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and comparable to the guidelines for denial of federal benefits in 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to each state agency, department, or program required to deny benefits pursuant to such an order.

13. In addition to any other sentence or other penalty imposed against the defendant, the court shall impose a special sentence if required under section 903B.1 or 903B.2.

[C79, 81, §901.5]

84 Acts, ch 1063, §1; 86 Acts, ch 1178, §3; 90 Acts, ch 1251, §65; 92 Acts, ch 1023, §1; 96 Acts, ch 1218, §68; 98 Acts, ch 1073, §9; 98 Acts, ch 1138, §26; 2000 Acts, ch 1122, §3; 2000 Acts, ch 1173, §2, 10; 2001 Acts, ch 165, §3; 2003 Acts, ch 109, §1; 2003 Acts, ch 156, §8; 2003 Acts, ch 179, §77; 2004 Acts, ch 1101, §93; 2005 Acts, ch 58, §1; 2005 Acts, ch 158, §14, 19, 37; 2006 Acts, ch 1101, §16; 2011 Acts, ch 38, §30

Modification of no-contact orders, §664A.5

Fines, see chapter 909

Surcharge on penalty, chapter 911

Subsection 10 amended

## CHAPTER 902

### FELONIES

#### 902.1 Class "A" felony.

1. Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a class "A" felony may be rendered, the court shall enter a judgment of conviction and shall commit the defendant into the custody of the director of the Iowa department of corrections for the rest of the defendant's life. Nothing in the Iowa

corrections code pertaining to deferred judgment, deferred sentence, suspended sentence, or reconsideration of sentence applies to a class “A” felony, and a person convicted of a class “A” felony shall not be released on parole unless the governor commutes the sentence to a term of years.

2. a. Notwithstanding subsection 1, a person convicted of a class “A” felony, and who was under the age of eighteen at the time the offense was committed shall be eligible for parole after serving a minimum term of confinement of twenty-five years.

b. If a person is paroled pursuant to this subsection the person shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and chapter 908, and rules adopted under those chapters for persons on parole.

c. A person convicted of murder in the first degree in violation of section 707.2 shall not be eligible for parole pursuant to this subsection.

[C79, 81, §902.1]

83 Acts, ch 96, §127, 159; 2011 Acts, ch 131, §147, 148, 158

Section amended

## CHAPTER 903A

### REDUCTION OF SENTENCES

#### 903A.2 Earned time.

1. Each inmate committed to the custody of the director of the department of corrections is eligible to earn a reduction of sentence in the manner provided in this section. For purposes of calculating the amount of time by which an inmate’s sentence may be reduced, inmates shall be grouped into the following two sentencing categories:

a. Category “A” sentences are those sentences which are not subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12. To the extent provided in subsection 5, category “A” sentences also include life sentences imposed under section 902.1. An inmate of an institution under the control of the department of corrections who is serving a category “A” sentence is eligible for a reduction of sentence equal to one and two-tenths days for each day the inmate demonstrates good conduct and satisfactorily participates in any program or placement status identified by the director to earn the reduction. The programs include but are not limited to the following:

- (1) Employment in the institution.
- (2) Iowa state industries.
- (3) An employment program established by the director.
- (4) A treatment program established by the director.
- (5) An inmate educational program approved by the director.

However, an inmate required to participate in a sex offender treatment program shall not be eligible for a reduction of sentence unless the inmate participates in and completes a sex offender treatment program established by the director.

An inmate serving a category “A” sentence is eligible for an additional reduction of sentence of up to three hundred sixty-five days of the full term of the sentence of the inmate for exemplary acts. In accordance with section 903A.4, the director shall by policy identify what constitutes an exemplary act that may warrant an additional reduction of sentence.

b. Category “B” sentences are those sentences which are subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12. An inmate of an institution under the control of the department of corrections who is serving a category “B” sentence is eligible for a reduction of sentence equal to fifteen eighty-fifths of a day for each day of good conduct by the inmate.

2. Earned time accrued pursuant to this section may be forfeited in the manner prescribed in section 903A.3.

3. Time served in a jail, municipal holding facility, or another facility prior to actual

placement in an institution under the control of the department of corrections and credited against the sentence by the court shall accrue for the purpose of reduction of sentence under this section. Time which elapses during an escape shall not accrue for purposes of reduction of sentence under this section.

4. Time which elapses between the date on which a person is incarcerated, based upon a determination of the board of parole that a violation of parole has occurred, and the date on which the violation of parole was committed shall not accrue for purposes of reduction of sentence under this section.

5. Earned time accrued by inmates serving life sentences imposed under section 902.1 shall not reduce the life sentence, but shall be credited against the inmate's sentence if the life sentence is commuted to a term of years under section 902.2.

83 Acts, ch 147, §3, 14, 15; 90 Acts, ch 1251, §67; 96 Acts, ch 1151, §4; 97 Acts, ch 131, §2, 4; 98 Acts, ch 1100, §88; 2000 Acts, ch 1173, §4, 10; 2003 Acts, 1st Ex, ch 2, §52, 209; 2005 Acts, ch 158, §32; 2011 Acts, ch 22, §2

Subsection 3 amended

#### **903A.5 Time to be served — credit.**

1. An inmate shall not be discharged from the custody of the director of the Iowa department of corrections until the inmate has served the full term for which the inmate was sentenced, less earned time and other credits earned and not forfeited, unless the inmate is pardoned or otherwise legally released. Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.406, 124.413, 902.7, 902.8, 902.8A, or 902.11. An inmate shall be deemed to be serving the sentence from the day on which the inmate is received into the institution. If an inmate was confined to a county jail, municipal holding facility, or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, the inmate shall be given credit for the days already served upon the term of the sentence. However, if a person commits any offense while confined in a county jail, municipal holding facility, or other correctional or mental health facility, the person shall not be granted credit for that offense. Unless the inmate was confined in a correctional facility, the sheriff of the county in which the inmate was confined or the officer in charge of the municipal holding facility in which the inmate was confined shall certify to the clerk of the district court from which the inmate was sentenced and to the department of corrections' records administrator at the Iowa medical and classification center the number of days so served. The department of corrections' records administrator, or the administrator's designee, shall apply credit as ordered by the court of proper jurisdiction or as authorized by this section and section 907.3, subsection 3.

2. An inmate shall not receive credit upon the inmate's sentence for time spent in custody in another state resisting return to Iowa following an escape. However, an inmate may receive credit upon the inmate's sentence while incarcerated in an institution or jail of another jurisdiction during any period of time the person is receiving credit upon a sentence of that other jurisdiction.

83 Acts, ch 147, §6, 14, 15; 90 Acts, ch 1168, §61; 95 Acts, ch 91, §8; 99 Acts, ch 12, §18; 99 Acts, ch 182, §4; 2000 Acts, ch 1173, §7, 10; 2000 Acts, ch 1204, §1; 2006 Acts, ch 1183, §23; 2011 Acts, ch 22, §3; 2011 Acts, ch 131, §77, 158

See Code editor's note on simple harmonization

Subsection 1 amended

## CHAPTER 904

### DEPARTMENT OF CORRECTIONS

This chapter not enacted as a part of this title;  
transferred from chapter 246 in Code 1993  
See §218.95 for provisions pertaining to construction of  
synonymous terms

#### DIVISION I

#### ADMINISTRATION GENERALLY

##### **904.114 Travel expenses.**

The director, staff members, assistants, and employees, in addition to salary, shall receive their necessary traveling expenses by the nearest practicable route, when engaged in the performance of official business. Permission shall not be granted to any person to travel to another state except by approval of the board.

83 Acts, ch 96, §11, 159

CS83, §217A.16

85 Acts, ch 21, §54

CS85, §246.114

C93, §904.114

2011 Acts, ch 127, §52, 89

Section amended

#### DIVISION III

#### PERSONNEL AND GENERAL MANAGEMENT OF INSTITUTIONS

##### **904.312B Purchase of biobased hydraulic fluids, greases, and other industrial lubricants.**

The department when purchasing hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing biobased hydraulic fluids, greases, and other industrial lubricants as provided in section 8A.316.

98 Acts, ch 1082, §7; 2000 Acts, ch 1109, §7; 2003 Acts, ch 145, §281; 2011 Acts, ch 25, §79

Section amended

#### DIVISION VI

#### RECORDS — CONFIDENTIALITY

##### **904.601 Records of inmates.**

1. The director shall keep the following record of every person committed to any of the department's institutions: Name, residence, sex, age, place of birth, occupation, civil condition, date of entrance or commitment, date of discharge, whether a discharge is final, condition of the person when discharged, the name of the institutions from which and to which the person has been transferred, and if the person is dead, the date and cause of death. The director may permit the division of library services of the department of education and the historical division of the department of cultural affairs to copy or reproduce by any photographic, photostatic, microfilm, microcard, or other process which accurately reproduces in a durable medium and to destroy in the manner described by law the records of inmates required by this paragraph.

2. The director shall keep other records for the use of the board of parole as the board of parole may request.

83 Acts, ch 96, §22, 159

CS83, §217A.32

84 Acts, ch 1148, §3; 85 Acts, ch 21, §20, 54

CS85, §246.601

C93, §904.601

93 Acts, ch 48, §54; 2011 Acts, ch 132, §65, 106

Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2  
Subsection 1 amended

## DIVISION VII INMATE WORK

### 904.701 Services required — gratuitous allowances — hard labor — rules.

1. An inmate of an institution shall be required to perform hard labor which is suited to the inmate's age, gender, physical and mental condition, strength, and attainments in the institution proper, in the industries established in connection with the institution, or at such other places as may be determined by the director. Substantially equivalent hard labor programs shall be available to both male and female inmates. When an inmate of an institution is working outside the institution proper, the inmate shall be deemed at all times to be in the actual custody of the superintendent of the institution. Inmates performing hard labor on chain gangs at a location other than within or on the grounds of a correctional institution shall be attired in brightly colored uniforms that readily identify them as inmates of correctional institutions. Inmates performing other types of hard labor at locations other than within or on the grounds of a correctional institution may also be required by the department to wear the brightly colored uniforms. Inmates not required to wear brightly colored uniforms while performing hard labor shall be otherwise clearly designated as inmates of correctional institutions. The employment of inmates in hard labor shall not displace employed workers, shall not be applied to skills, crafts, or trades in which a local surplus of labor exists, and shall not impair existing contracts for employment or services.

2. The director may when practicable pay the inmate an allowance as the director deems proper in view of the circumstances, and in view of the cost attending the maintenance of the inmate. The allowance is a gratuitous payment and is not a wage arising out of an employment relationship. The payment shall not exceed the amount paid to free labor for a like or equivalent service.

3. For purposes of this section, "*hard labor*" means physical or mental labor which is performed for a period of time which shall average, as nearly as possible, forty hours each week, and may include useful and productive work, chain gangs, menial labor, treatment or education programs, any training necessary to perform any work required, and, if possible, work providing an inmate with marketable vocational skills. "*Hard labor*" does not include labor which is dangerous to an inmate's life or health, is unduly painful, or is required to be performed under conditions that would violate occupational safety and health standards applicable to such labor if performed by a person who is not an inmate.

4. Notwithstanding subsection 1, an inmate who has been determined by the director to be unsuitable for the performance of hard labor due to the inmate's age, gender, physical or mental condition, strength, or security status shall not be required to perform hard labor.

5. The department shall adopt rules to implement this section.

83 Acts, ch 96, §33, 159

CS83, §217A.46

85 Acts, ch 21, §23, 54

CS85, §246.701

C93, §904.701

95 Acts, ch 166, §1; 96 Acts, ch 1216, §33

Reports concerning inmate labor; 2002 Acts, 2nd Ex, ch 1003, §158, 172; 2003 Acts, ch 174, §7; 2004 Acts, ch 1175, §186; 2005 Acts, ch 174, §7; 2006 Acts, ch 1183, §8; 2007 Acts, ch 213, §7; 2008 Acts, ch 1180, §7; 2009 Acts, ch 178, §7; 2010 Acts, ch 1190, §7; 2011 Acts, ch 134, §7, 36

Section not amended; footnote revised

## CHAPTER 907

### DEFERRED JUDGMENT, DEFERRED OR SUSPENDED SENTENCE, AND PROBATION

#### **907.3 Deferred judgment, deferred sentence, or suspended sentence.**

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony or to a violation of chapter 709 committed by a person who is a mandatory reporter of child abuse under section 232.69 in which the victim is a person who is under the age of eighteen.

1. With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon conditions as it may require. However, a civil penalty shall be assessed as provided in section 907.14 upon the entry of a deferred judgment. Upon a showing that the defendant is not cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation and the payment of fees imposed and not waived by the judicial district department of correctional services under section 905.14, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

However, this subsection shall not apply if any of the following is true:

- a. The offense is a violation of section 709.8 and the child is twelve years of age or under.
- b. The defendant previously has been convicted of a felony. “*Felony*” means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which the defendant was convicted at the time of the defendant’s conviction.
- c. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.
- d. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.
- e. The defendant committed an assault as defined in section 708.1, against a peace officer in the performance of the peace officer’s duty.
- f. The defendant is a corporation.
- g. The offense is a violation of section 321J.2 and the person has been convicted of a violation of that section or the person’s driver’s license has been revoked under chapter 321J, and any of the following apply:
  - (1) If the defendant’s alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.
  - (2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.
  - (3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.
  - (4) If the defendant refused to consent to testing requested in accordance with section 321J.6.
  - (5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.
- h. Prior to the commission of the offense the defendant had been granted a deferred

judgment or deferred sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or was granted similar relief anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A, and the current offense is a violation of section 708.2A.

i. The offense is a conviction for or plea of guilty to a violation of section 664A.7 or a finding of contempt pursuant to section 664A.7.

j. The offense is a violation of section 707.6A, subsection 1; or a violation of section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

k. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

l. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

m. The offense is a violation of chapter 692A.

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. The court may assign the defendant to supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate. However, the court shall not defer the sentence for a violation of any of the following:

a. Section 708.2A, if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A.

b. Section 664A.7 or for contempt pursuant to section 664A.7.

c. Section 321J.2, subsection 1, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. Section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

f. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

g. The offense is a violation of chapter 692A.

Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential

treatment facility to be followed by a period of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate and the payment of fees imposed under section 905.14. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend any of the following sentences:

a. The minimum term of two days imposed pursuant to section 708.2A, subsection 6, paragraph “a”, or a sentence imposed under section 708.2A, subsection 6, paragraph “b”.

b. A sentence imposed pursuant to section 664A.7 for contempt.

c. A mandatory minimum sentence of incarceration imposed pursuant to a violation of section 321J.2, subsection 1; furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsection 3, 4, or 5, beyond the mandatory minimum if any of the following apply:

(1) If the defendant’s alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. A sentence imposed pursuant to section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph “a” or “b”, and the controlled substance is methamphetamine.

f. A mandatory minimum sentence or fine imposed for a violation of section 462A.14.

[S13, §5447-a; C24, 27, 31, 35, 39, §3800; C46, 50, 54, 58, 62, 66, 71, 73, §247.20; C75, 77, §789A.1; C79, 81, §907.3; 81 Acts, ch 206, §17; 82 Acts, ch 1167, §28]

86 Acts, ch 1220, §45; 88 Acts, ch 1168, §3, 4; 89 Acts, ch 296, §93; 91 Acts, ch 218, §30; 91 Acts, ch 219, §25, 26; 93 Acts, ch 157, §11, 12; 95 Acts, ch 180, §16, 17; 96 Acts, ch 1131, §4; 96 Acts, ch 1193, §17 – 19; 97 Acts, ch 177, §31 – 33; 97 Acts, ch 189, §2; 97 Acts, ch 190, §8, 9; 98 Acts, ch 1138, §6 – 9, 29 – 31, 37; 99 Acts, ch 182, §8; 2000 Acts, ch 1099, §11 – 13; 2000 Acts, ch 1201, §15; 2001 Acts, ch 165, §7 – 9; 2002 Acts, ch 1050, §56, 57; 2003 Acts, ch 156, §17 – 19; 2005 Acts, ch 143, §4; 2006 Acts, ch 1101, §17 – 19; 2009 Acts, ch 119, §61, 62; 2010 Acts, ch 1193, §70, 81; 2011 Acts, ch 34, §155

Definition of forcible felony, §702.11

For bail after deferred judgment, see §811.2, 811.11

Subsection 3, unnumbered paragraph 1 amended

#### 907.4 Deferred judgment docket.

A deferment of judgment under section 907.3 shall be entered promptly by the clerk of the district court, or the clerk’s designee, into the deferred judgment database of the state, which shall serve as the deferred judgment docket. The docket shall contain a permanent record of the deferred judgment including the name and date of birth of the defendant, the district court docket number, the nature of the offense, and the date of the deferred judgment. Before granting deferred judgment in any case, the court shall search the deferred judgment docket and shall consider any prior record of a deferred judgment against the defendant. The permanent record provided for in this section is a confidential record exempted from public access under section 22.7 and shall be available only to justices of the supreme court, judges of the court of appeals, district judges, district associate judges, judicial magistrates, clerks

of the district court, judicial district departments of correctional services, county attorneys, the department of public safety, and the department of corrections requesting information pursuant to this section, or the designee of a justice, judge, magistrate, clerk, judicial district department of correctional services, or county attorney, or departments.

[C75, 77, §789A.1; C79, 81, §907.4]

84 Acts, ch 1292, §20; 85 Acts, ch 197, §44; 88 Acts, ch 1168, §5; 97 Acts, ch 128, §5; 2003 Acts, ch 151, §61; 2003 Acts, 1st Ex, ch 2, §60, 209; 2011 Acts, ch 95, §10

Section amended

#### **907.5 Standards for release on probation — written reasons.**

Before deferring judgment, deferring sentence, or suspending sentence, the court first shall determine which option, if available, will provide maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the defendant and others. In making this determination, the court shall consider the age of the defendant; the defendant's prior record of convictions and prior record of deferments of judgment if any; the defendant's employment circumstances; the defendant's family circumstances; the defendant's mental health and substance abuse history and treatment options available in the community and the correctional system; the nature of the offense committed; and such other factors as are appropriate. The court shall file a specific written statement of its reasons for and the facts supporting its decision to defer judgment, to defer sentence, or to suspend sentence, and its decision on the length of probation.

[C75, 77, §789A.1(2); C79, 81, §907.5]

2011 Acts, ch 7, §4

Section amended

## **CHAPTER 908**

### **VIOLATIONS OF PAROLE OR PROBATION**

#### **908.11 Violation of probation.**

1. A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation.

2. The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense.

3. If the probation officer proceeds by arrest, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger.

4. If the violation is established, the court may continue the probation or youthful offender status with or without an alteration of the conditions of probation or a youthful offender status. If the defendant is an adult or a youthful offender the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation or youthful offender status, order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation or youthful offender status, extend the period of probation for up to one year as authorized in section 907.7 while continuing the probation or youthful offender status, or revoke the probation or youthful offender status and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

5. Notwithstanding any other provision of law to the contrary, if the court revokes the probation of a defendant who received a deferred judgment and imposes a fine, the court shall reduce the amount of the fine by an amount equal to the amount of the civil penalty previously assessed against the defendant pursuant to section 907.14. However, the court shall assess any required surcharge, court cost, or fee upon the total amount of the fine prior to reduction pursuant to this subsection.

[S13, §5447-b; C24, 27, 31, 35, 39, §3805, 3806; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.26, 247.27; C79, 81, §908.11]

84 Acts, ch 1244, §6; 91 Acts, ch 219, §29; 97 Acts, ch 125, §10; 97 Acts, ch 126, §52; 98 Acts, ch 1197, §2, 3, 8, 13; 2000 Acts, ch 1177, §4, 5; 2007 Acts, ch 180, §12; 2010 Acts, ch 1175, §2, 4; 2011 Acts, ch 34, §156

2010 amendment to subsection 4 applies to criminal offenses committed on or after July 1, 2010; 2010 Acts, ch 1175, §4  
Subsection 4 amended

## CHAPTER 910

### RESTITUTION

Victim compensation, see chapter 915, subchapter VI

#### 910.1 Definitions.

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

1. “*Criminal activities*” means any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982, which is admitted or not contested by the offender, whether or not prosecuted. However, “*criminal activities*” does not include simple misdemeanors under chapter 321.

2. “*Local anticrime organization*” means an entity organized for the primary purpose of crime prevention which has been officially recognized by the chief of police of the city in which the organization is located or the sheriff of the county in which the organization is located.

3. “*Pecuniary damages*” means all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, “*pecuniary damages*” includes damages for wrongful death and expenses incurred for psychiatric or psychological services or counseling or other counseling for the victim which became necessary as a direct result of the criminal activity.

4. “*Restitution*” means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender’s plan of restitution. “*Restitution*” also includes fines, penalties, and surcharges, the contribution of funds to a local anticrime organization which provided assistance to law enforcement in an offender’s case, the payment of crime victim compensation program reimbursements, payment of restitution to public agencies pursuant to section 321J.2, subsection 13, paragraph “b”, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the court costs including correctional fees approved pursuant to section 356.7, or court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and payment to the medical assistance program pursuant to chapter 249A for expenditures paid on behalf of the victim resulting from the offender’s criminal activities including investigative costs incurred by the Medicaid fraud control unit pursuant to section 249A.7.

5. “*Victim*” means a person who has suffered pecuniary damages as a result of the offender’s criminal activities. However, for purposes of this chapter, an insurer is not a victim and does not have a right of subrogation. The crime victim compensation program is

not an insurer for purposes of this chapter, and the right of subrogation provided by section 915.92 does not prohibit restitution to the crime victim compensation program.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §2]

83 Acts, ch 15, §1, 3; 90 Acts, ch 1251, §73, 74; 91 Acts, ch 181, §2, 16; 94 Acts, ch 1142, §15; 96 Acts, ch 1091, §1, 2; 97 Acts, ch 140, §2; 97 Acts, ch 177, §34; 98 Acts, ch 1090, §83, 84; 2002 Acts, ch 1119, §195; 2003 Acts, ch 44, §107; 2010 Acts, ch 1124, §6, 9; 2011 Acts, ch 52, §2

Subsection 4 amended

### **910.2 Restitution or community service to be ordered by sentencing court.**

1. In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities, to the clerk of court for fines, penalties, surcharges, and, to the extent that the offender is reasonably able to pay, for crime victim assistance reimbursement, restitution to public agencies pursuant to section 321J.2, subsection 13, paragraph "b", court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, when applicable, contribution to a local anticrime organization, or restitution to the medical assistance program pursuant to chapter 249A. However, victims shall be paid in full before fines, penalties, and surcharges, crime victim compensation program reimbursement, public agencies, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expenses of a public defender, contributions to a local anticrime organization, or the medical assistance program are paid. In structuring a plan of restitution, the court shall provide for payments in the following order of priority: victim, fines, penalties, and surcharges, crime victim compensation program reimbursement, public agencies, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, contribution to a local anticrime organization, and the medical assistance program.

2. When the offender is not reasonably able to pay all or a part of the crime victim compensation program reimbursement, public agency restitution, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, contribution to a local anticrime organization, or medical assistance program restitution, the court may require the offender in lieu of that portion of the crime victim compensation program reimbursement, public agency restitution, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, contribution to a local anticrime organization, or medical assistance program restitution for which the offender is not reasonably able to pay, to perform a needed public service for a governmental agency or for a private nonprofit agency which provides a service to the youth, elderly, or poor of the community. When community service is ordered, the court shall set a specific number of hours of service to be performed by the offender which, for payment of court-appointed attorney fees ordered pursuant to section 815.9, including the expenses of a public defender, shall be approximately equivalent in value to those costs. The judicial district department of correctional services shall provide for the assignment of the offender to a public agency or private nonprofit agency to perform the required service.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §3]

83 Acts, ch 15, §2, 3; 85 Acts, ch 195, §66; 90 Acts, ch 1251, §75; 92 Acts, ch 1242, §36; 94 Acts, ch 1142, §16; 95 Acts, ch 75, §1; 96 Acts, ch 1091, §3; 96 Acts, ch 1193, §21; 97 Acts, ch 140, §3; 97 Acts, ch 177, §35; 2000 Acts, ch 1115, §9; 2002 Acts, ch 1119, §196; 2010 Acts, ch 1093, §2; 2010 Acts, ch 1124, §7, 9; 2011 Acts, ch 52, §3

Subsection 1 amended

## CHAPTER 915

### VICTIM RIGHTS

#### SUBCHAPTER VI

#### VICTIM COMPENSATION

##### **915.86 Computation of compensation.**

The department shall award compensation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed twenty-five thousand dollars. Reasonable charges incurred for mental health care not to exceed five thousand dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work or counseling and guidance, or a victim counselor as defined in section 915.20A.

a. The department shall establish the rates at which it will pay charges for medical care.

b. If the department awards compensation, in full, at the established rate for medical care, and the medical provider accepts the payment, the medical provider shall hold harmless the victim for any amount not collected that is more than the rate established by the department.

2. Loss of income from work the victim would have performed and for which the victim would have received remuneration if the victim had not been injured, not to exceed six thousand dollars.

3. Loss of income from work that the victim's parent or caretaker would have performed and for which the victim's parent or caretaker would have received remuneration for up to three days after the crime or the discovery of the crime to allow the victim's parent or caretaker to assist the victim and when the victim's parent or caretaker accompanies the victim to medical and counseling services, not to exceed one thousand dollars per parent or caretaker.

4. Loss of income from work that the victim, the victim's parent or caretaker, or the survivor of a homicide victim as described in subsection 10 would have performed and for which that person would have received remuneration, where the loss of income is a direct result of cooperation with the investigation and prosecution of the crime or attendance at criminal justice proceedings including the trial and sentencing in the case, not to exceed one thousand dollars.

5. Reasonable replacement value of clothing that is held for evidentiary purposes not to exceed two hundred dollars.

6. Reasonable funeral and burial expenses not to exceed seven thousand five hundred dollars.

7. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed four thousand dollars per dependent.

8. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 915.20A, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 148. The allowable charges under this subsection shall not exceed five thousand dollars per person.

9. In the event of a homicide, reasonable charges incurred for health care for the victim's spouse; child, foster child, stepchild, son-in-law, or daughter-in-law; parent, foster parent, or stepparent; sibling, foster sibling, stepsibling, brother-in-law, or sister-in-law; grandparent; grandchild; aunt, uncle, or first cousin; legal ward; or person cohabiting with the victim, not to exceed three thousand dollars per survivor.

10. In the event of a homicide, loss of income from work that, but for the death of

the victim, would have been earned by the victim's spouse; child, foster child, stepchild, son-in-law, or daughter-in-law; parent, foster parent, or stepparent; sibling, foster sibling, stepsibling, brother-in-law, or sister-in-law; grandparent; grandchild; aunt, uncle, or first cousin; legal ward; or person cohabiting with the victim, not to exceed six thousand dollars.

11. Reasonable expenses incurred for cleaning the scene of a crime, if the scene is a residence, not to exceed one thousand dollars.

12. Reasonable charges incurred for mental health care for secondary victims which include the services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work, counseling, or a related field, a victim counselor as defined in section 915.20A, or a psychiatrist licensed under chapter 148. The allowable charges under this subsection shall not exceed two thousand dollars per secondary victim.

13. Reasonable dependent care expenses incurred by the victim, the victim's parent or caretaker, or the survivor of a homicide victim as described in subsection 10 for the care of dependents while attending criminal justice proceedings or medical or counseling services, not to exceed one thousand dollars per person.

14. Reasonable expenses incurred by a victim, the victim's parent or caretaker, or the survivor of a homicide victim as described in subsection 10 to replace locks, windows, and other residential security items at the victim's residence or at the residential scene of a crime, not to exceed five hundred dollars per residence.

15. Reasonable expenses incurred by the victim, a secondary victim, the parent or guardian of a victim, or the survivor of a homicide victim as described in subsection 10 for transportation to medical, counseling, funeral, or criminal justice proceedings, not to exceed one thousand dollars per person.

98 Acts, ch 1090, §47, 84; 98 Acts, ch 1128, §1, 2; 99 Acts, ch 10, §2; 2000 Acts, ch 1064, §1, 2; 2007 Acts, ch 27, §8, 9; 2009 Acts, ch 178, §29; 2009 Acts, ch 179, §47; 2011 Acts, ch 34, §157

Subsection 14 amended



## CODE EDITOR'S NOTES

### Reference

#### Simple Harmonization Note

The multiple amendments do not conflict, so they were harmonized to give effect to each as required by Code sections 2B.13 and 4.11. In some cases where the note for this chapter is referred to, the amendments are identical. Under Code section 2B.13, a strike or repeal prevails over an amendment to the same material and does not create a conflict.

#### 15.293A

2011 Acts, ch. 118, § 84, 85, direct the Code editor to change “economic development board” to “economic development authority” and “department of economic development” to “economic development authority” in this section. 2011 Acts, ch. 116, § 5, amends subsection 2 to require the department of economic development to review applications for tax credits and to make preliminary determinations in conjunction with the brownfields redevelopment council and the economic development board. 2011 Acts, ch. 116, § 5, also amends subsection 8 to provide that the department, with the approval of the board, may provide additional time to complete a redevelopment project. Because 2011 Acts, ch. 116, § 5, allocates duties to both the former department and the former board and because chapter 15 as amended by 2011 Acts, ch. 118, retains a definition of the term “board” and continues to refer to the authority as a state department, the directives in 2011 Acts, ch. 118, § 84, 85, were applied to change “department” to “authority” in both preexisting Code language and language changed by 2011 Acts, ch. 116, § 5, and “board” to “authority” in language that was not changed by 2011 Acts, ch. 116, § 5.

#### 15.294

2011 Acts, ch. 118, § 84, 85, direct the Code editor to change “economic development board” to “economic development authority” and “department of economic development” to “economic development authority” in this section. 2011 Acts, ch. 118, § 3, amends the definition of “board” to mean the members of the economic development authority. 2011 Acts, ch. 116, § 11, amends subsection 4 to require the brownfields redevelopment advisory council, in conjunction with the department of economic development, to consider applications for tax credits and to make recommendations to the economic development board. Because 2011 Acts, ch. 116, § 11, allocates certain functions to the board only and because chapter 15 as amended by 2011 Acts, ch. 118, retains a definition of the term “board” and continues to refer to the authority as a state department, the directive in 2011 Acts, ch. 118, § 85, was applied to subsection 4 to change “department” to “authority”, but the reference to “board” was left intact when the amendments in 2011 Acts, ch. 116, § 11, were codified.

#### 15G.201

2011 Acts, ch. 113, § 42, amends subsection 2 by changing the definition of “department” to mean the department of agriculture and land stewardship. 2011 Acts, ch. 113, § 55, directs the Code editor to transfer Code sections 15G.201 through 15G.206, the renewable fuel infrastructure program, as amended by 2011 Acts, ch. 113, from Code chapter 15G, which is administered by the department of economic development, to Code chapter 159A, which is administered by the department of agriculture and land stewardship. 2011 Acts, ch. 118, § 74, 75, amend Code section 15G.201 to conform to the general purpose

of 2011 Acts, ch. 118, of replacing references to the department of economic development with references to the department's successor agency, the economic development authority. Because the transfer of Code section 15G.201 into Code chapter 159A effectively repeals the section at its old location and reenacts it at its new location under different administration, the amendments made by 2011 Acts, ch. 113, § 42, 55, were codified at Code section 159A.11. The amendments to former Code section 15G.201 by 2011 Acts, ch. 118, § 74, 75, which are incompatible with the transfer of the section and the change in administration of the program, were not codified.

**29C.20B**

2011 Acts, ch. 122, § 29, 30, amend subsections 1 and 2 to strike references to the rebuild Iowa office in language relating to coordination of emergency management services. 2011 Acts, ch. 129, § 83, strikes references to the rebuild Iowa office in subsections 1 and 2, but places the homeland security and emergency management division in the lead role in coordination efforts and places the homeland security and emergency management division in charge of case management services. 2011 Acts, ch. 69, § 11, strikes the words "local emergency management" from language relating to local plans for emergency management. 2011 Acts, ch. 25, § 8, makes a grammatical change in subsection 2, paragraph "f". The amendments by 2011 Acts, ch. 122, § 29, 30, and 2011 Acts, ch. 129, § 83, conflict. Because it is the later in date of enactment, the amendments by 2011 Acts, ch. 129, § 83, were codified. The amendments by 2011 Acts, ch. 69, § 11, and 2011 Acts, ch. 25, § 8, do not conflict with 2011 Acts, ch. 129, § 83, and were codified.

**35A.8A**

2011 Acts, ch. 129, § 51, amends subsection 2, paragraph "d", of this section by extending the application deadline for the Vietnam Conflict veterans bonus from July 1, 2010, to May 1, 2011. Pursuant to 2011 Acts, ch. 129, § 76, the amendment applies retroactively to July 1, 2010. Code section 35A.8A is repealed by its own terms effective June 30, 2011. Although the repeal of the section prevails and was codified, the amendment made by 2011 Acts, ch. 129, § 51, was applicable from July 1, 2010, through June 30, 2011.

**260G.6**

2011 Acts, ch. 34, § 68, strikes language relating to approval of program capital cost requests from within subsection 4 and reinserts the same language at the end of the subsection as a new sentence. 2011 Acts, ch. 118, § 80, 85, makes terminology changes and an internal reference change in subsection 4, including within the language which is stricken and reinserted by 2011 Acts, ch. 34. The terminology changes in the language which was not stricken by 2011 Acts, ch. 34, § 68, were applied and the terminology changes made to the language which was stricken were applied to the new sentence.

**CONVERSION TABLES OF SENATE AND HOUSE FILES  
AND JOINT RESOLUTIONS TO  
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**2011 REGULAR SESSION**

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	356.....	237A.12(3)		6.....	535B.8
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10.....	1.....	232.51		11.....	260C.72[1a(2 - 4, 6)]	
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	125	476.42(1, 4)		5	15.119(2e)
	126	15.103[1b(7)]		6	Repealing
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