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Daily Bills, Amendments and Study Bills
March 12, 2019

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House Joint Resolution 13

H-1016

1 Amend House Joint Resolution 13 as follows:

2 1. By striking everything after the resolving clause and
3 inserting:

4 <Section 1. The following amendment to the Constitution of
5 the State of Iowa is proposed:

6 Article I of the Constitution of the State of Iowa is amended
7 by adding the following new section:

8 Sec. 1A. **Right to keep and bear arms.** A well regulated
9 militia being necessary to the security of a free state,
10 the right of the people to keep and bear arms shall not be
11 infringed.

12 Sec. 2. REFERRAL AND PUBLICATION. The foregoing proposed
13 amendment to the Constitution of the State of Iowa is referred
14 to the general assembly to be chosen at the next general
15 election for members of the general assembly, and shall be
16 published as provided by law for three months previous to the
17 date of that election.>

18 2. Title page, line 2, after <relating to> by inserting <a
19 well regulated militia and>

OURTH of Warren

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House Joint Resolution 13

H-1017

1 Amend the amendment, H-1016, to House Joint Resolution 13 as
2 follows:

3 1. Page 1, by striking lines 1 through 19 and inserting:

4 <Amend House Joint Resolution 13 as follows:

5 1. By striking everything after the resolving clause and
6 inserting:

7 <Section 1. The following amendment to the Constitution of
8 the State of Iowa is proposed:

9 Article I of the Constitution of the State of Iowa is amended
10 by adding the following new section:

11 SEC. 1A. **Right to keep and bear arms.** A well regulated
12 Militia, being necessary to the security of a free State,
13 the right of the people to keep and bear Arms, shall not be
14 infringed.

15 Sec. 2. REFERRAL AND PUBLICATION. The foregoing proposed
16 amendment to the Constitution of the State of Iowa is referred
17 to the general assembly to be chosen at the next general
18 election for members of the general assembly, and shall be
19 published as provided by law for three months previous to the
20 date of that election.>>

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ABDUL-SAMAD of Polk

ANDERSON of Polk

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BRECKENRIDGE of Jasper

BROWN-POWERS of Black Hawk

COHOON of Des Moines

DERRY of Polk

DONAHUE of Linn

EHLERT of Linn

FORBES of Polk

GAINES of Polk

GASKILL of Wapello

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HALL of Woodbury

HEDDENS of Story

HUNTER of Polk

ISENHART of Dubuque

JAMES of Dubuque

JUDGE of Dallas

KACENA of Woodbury

KONFRST of Polk

KURTH of Scott

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KURTZ of Lee

LENSING of Johnson

MASCHER of Johnson

McCONKEY of Pottawattamie

MEYER of Polk

NIELSEN of Johnson

OLDSON of Polk

OLSON of Polk

PRICHARD of Floyd

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M. SMITH of Marshall

R. SMITH of Black Hawk

STAED of Linn

STECKMAN of Cerro Gordo

SUNDE of Polk

THEDE of Scott

WESSEL-KROESCHELL of Story

WILLIAMS of Black Hawk

WINCKLER of Scott

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WOLFE of Clinton

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House File 650

H-1018

- 1 Amend the amendment, H-1013, to House File 650 as follows:
- 2 1. Page 1, line 6, after <708.1> by inserting <that is a
- 3 felony under section 708.2>

JACOBSEN of Pottawattamie

Iowa General Assembly
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House File 687

H-1019

1 Amend House File 687 as follows:

2 1. Page 1, line 20, before <internet> by inserting <board's>

JACOBSEN of Pottawattamie

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House File 485

H-1020

1 Amend the amendment, H-1012, to House File 485 as follows:
2 1. Page 1, by striking lines 5 through 8 and inserting:
3 <NEW PARAGRAPH. c. By January 15 of each year, the
4 department shall submit to the general assembly electronically
5 an annual report of contracts awarded to targeted small
6 businesses, as defined in section 15.102, in the previous
7 fiscal year pursuant to paragraph "a">

HALL of Woodbury

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House File 710

H-1021

1 Amend House File 710 as follows:

2 1. Page 1, after line 26 by inserting:

3 <3. Each board listed in subsection 1 shall retain sole
4 discretion and authority to execute the core functions of the
5 board including but not limited to policymaking, advocating
6 for and against legislation, rulemaking, licensing, licensee
7 investigations, licensee disciplinary proceedings, and
8 oversight of professional health programs. The director's
9 supervision of the executive director shall not interfere with
10 the board's discretion and authority in executing the core
11 functions of the board.>

FRY of Clarke

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House File 546

H-1022

1 Amend House File 546 as follows:

2 1. Page 5, line 24, after <percent.> by inserting <For
3 the fiscal year beginning July 1, 2019, the equity transfer
4 percentage is three and one-tenth percent.>

5 2. Page 5, line 25, by striking <2019> and inserting <2020>

6 3. Page 6, line 2, by striking <twelve> and inserting
7 <fifteen>

8 4. Page 6, line 3, by striking <twelve> and inserting
9 <fifteen>

10 5. Page 6, by striking line 5 and inserting:

11 <(3) For purposes of this subsection, the foundation base
12 transfer amount for the fiscal year beginning July 1, 2019, is
13 zero, and for each fiscal year beginning on or after July 1,
14 2020, the foundation>

15 6. Page 6, line 9, by striking <Two> and inserting <Three>

16 7. Page 6, line 12, by striking <Two-thirds> and inserting
17 <One-half>

18 8. Page 6, line 13, by striking <two> and inserting <three>

BOSSMAN of Woodbury

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House File 690

H-1023

1 Amend House File 690 as follows:

2 1. Page 5, line 26, by striking <1.>

3 2. Page 5, line 28, by striking <a.> and inserting <1.>

4 3. Page 5, line 30, by striking <b.> and inserting <2.>

5 4. Page 5, line 33, by striking <c.> and inserting <3.>

6 5. Page 6, line 2, by striking <d.> and inserting <4.>

7 6. Page 9, line 16, by striking <children's behavioral
8 health> and inserting <regional service>

9 7. Page 9, line 27, by striking <subparagraph (1)> and
10 inserting <paragraph "a">

11 8. Page 11, by striking line 20.

12 9. Page 12, after line 14 by inserting:

13 <Sec. ____ DEPARTMENT OF HUMAN SERVICES AND DEPARTMENT
14 OF PUBLIC HEALTH — CRISIS HOTLINE. The department of human
15 services and the department of public health shall provide
16 a single, statewide twenty-four-hour crisis hotline that
17 incorporates information for families of children with a
18 serious emotional disturbance which may be provided through
19 expansion of the YourLifeIowa platform.>

20 10. By renumbering as necessary.

FRY of Clarke

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House File 546

H-1024

1 Amend House File 546 as follows:

2 1. Page 11, by striking lines 30 through 32 and inserting
3 <in number to the lesser of two thousand or thirty percent of
4 the number of voters at the last preceding election of school
5 officials under section 277.1, but not less than one hundred.
6 If the>

DOLECHECK of Ringgold

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House File 610

H-1025

1 Amend House File 610 as follows:

2 1. Page 8, after line 12 by inserting:

3 <8. The petition shall provide a brief description of
4 the respondent's alleged functional limitations that make
5 the respondent unable to communicate or carry out important
6 decisions concerning the respondent's financial affairs.>

7 2. Page 8, line 13, by striking <8.> and inserting <9.>

8 3. Page 9, lines 7 and 8, by striking <rule of civil
9 procedure 1.305> and inserting <the Iowa rules of civil
10 procedure>

11 4. Page 9, lines 13 and 14, by striking <rule of civil
12 procedure 1.308(5)> and inserting <the Iowa rules of civil
13 procedure>

14 5. Page 9, lines 24 and 25, by striking <rule of civil
15 procedure 1.305(2)> and inserting <the Iowa rules of civil
16 procedure>

17 6. Page 9, lines 28 and 29, by striking <rule of civil
18 procedure 1.305> and inserting <the Iowa rules of civil
19 procedure>

20 7. Page 9, lines 32 and 33, by striking <rule of civil
21 procedure 1.308(5)> and inserting <the Iowa rules of civil
22 procedure>

23 8. Page 11, after line 10 by inserting:

24 <Sec. _____. NEW SECTION. 633.560A **Mediation.**

25 1. The district court may, on its own motion or on the
26 motion of any party, order the parties to participate in
27 mediation in any guardianship or conservatorship action.
28 Mediation performed under this section shall comply with the
29 provisions of chapter 679C. The court shall, upon application
30 of a party, grant a waiver from any court-ordered mediation
31 under this section if the party demonstrates that a history
32 of domestic abuse exists similarly as considered in section
33 598.41, subsection 3, paragraph "j". The court may, upon
34 application of a party, grant a waiver from any court-ordered
35 mediation if the action involves elder abuse pursuant to

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1 chapter 235F.

2 2. Mediation shall comply with all of the following
3 standards:

4 a. The parties will participate in good faith.

5 Participation in mediation shall include attendance at
6 a mediation session with the mediator and the parties to
7 the action, listening to the mediator's explanation of the
8 mediation process, presentation of one party's view of the
9 case, and listening to the response of the other party.
10 Participation in mediation does not require that the parties
11 reach an agreement.

12 b. Unless the parties agree upon a mediator, the court shall
13 appoint a mediator. Any mediator appointed by the court shall
14 meet the qualifications established in this section.

15 c. Parties to the mediation shall have the right to
16 representation by an attorney at all times.

17 d. The parties to the mediation shall present any agreement
18 reached through the mediation to their attorneys, if any.
19 A mediation agreement reached by the parties shall not be
20 enforceable until approved by the court.

21 e. The costs of mediation shall be borne by the parties, as
22 agreed to by the parties, or as ordered by the court, and may
23 be taxed as court costs.

24 3. A mediator appointed by the court acting pursuant to this
25 section shall have the following qualifications:

26 a. Completed a one-hour internet seminar or live session
27 regarding the external resources available to a respondent with
28 particular focus on resources for older persons.

29 b. A minimum of twenty-five hours of general mediation
30 training.

31 c. Either of the following:

32 (1) Fifteen hours of probate-specific or elder-specific
33 mediation training.

34 (2) Ten continuous years of practice in Iowa as a licensed
35 attorney with the greater of four hundred hours or forty

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1 percent of the total hours of law practice per year being
2 devoted to matters concerning wills, trusts, and estate work
3 for each of the ten continuous years. For mediations involving
4 guardianship of juveniles, the mediator shall also be currently
5 qualified as a family law mediator and have completed a
6 one-hour live session concerning guardianship procedures.>

7 9. Page 14, line 12, by striking <may> and inserting <shall>

8 10. By striking page 15, line 28, through page 16, line 2,
9 and inserting:

10 <1. At or before a hearing on petition for the appointment
11 of a guardian or conservator or the modification or termination
12 of a guardianship or conservatorship, the court shall order a
13 professional evaluation of the respondent unless one of the
14 following criteria are met:

15 a. The court finds it has sufficient information to
16 determine whether the criteria for a guardianship or
17 conservatorship are met.

18 b. The petitioner or respondent has filed a professional
19 evaluation.

20 2. Notwithstanding subsection 1, if the respondent has
21 filed a professional evaluation and the court determines an
22 additional professional evaluation will assist the court in
23 understanding the decision-making capacity and functional
24 abilities and limitations of the respondent, the court may
25 order a professional evaluation of the respondent.>

26 11. Page 16, line 3, by striking <2.> and inserting <3.>

27 12. Page 16, after line 6 by inserting:

28 <4. Unless otherwise directed by the court, the report must
29 contain all of the following:

30 a. A description of the nature, type, and extent of the
31 respondent's cognitive and functional abilities and limitation.

32 b. An evaluation of the respondent's mental and physical
33 condition and, if appropriate, educational potential, adaptive
34 behavior, and social skills.

35 c. A prognosis for improvement and recommendation for the

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1 appropriate treatment, support, or habilitation plan.

2 d. The evaluator's qualifications to evaluate the
3 respondent's cognitive and functional abilities limitations and
4 lack of conflict of interest.

5 e. The date of examination on which the report is based.

6 5. The cost of the professional evaluation shall be paid by
7 the respondent unless the respondent is indigent as defined in
8 section 633.561, subsection 3, in which case the costs shall
9 be paid by the county in which the proceedings are pending or
10 unless the court orders otherwise.>

11 13. Page 16, line 7, by striking <3.> and inserting <6.>

12 14. Page 16, line 9, by striking <4.> and inserting <7.>

13 15. Page 16, line 10, by striking <4.> and inserting <7.>

14 16. Page 23, after line 28 by inserting:

15 <Sec. _____. Section 633.641, Code 2019, is amended by
16 striking the section and inserting in lieu thereof the
17 following:

18 **633.641 Duties of conservator.**

19 1. A conservator is a fiduciary and has duties of prudence
20 and loyalty to the protected person.

21 2. A conservator shall promote the self-determination of
22 the protected person and, to the extent feasible, encourage
23 the protected person to participate in decisions, act on the
24 protected person's own behalf, and develop or regain the
25 capacity to manage the protected person's financial affairs.

26 3. In making decisions for a protected person, the
27 conservator shall make the decision the conservator reasonably
28 believes the protected person would make if able, unless doing
29 so would fail to preserve the resources needed to maintain
30 the protected person's well-being and lifestyle or otherwise
31 unreasonably harm or endanger the welfare or personal or
32 financial interests of the protected person. To determine
33 the decision the protected person would make if able, the
34 conservator shall consider the protected person's prior or
35 current directions, preferences, opinions, values, and actions,

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1 to the extent actually known or reasonably ascertainable by the
2 conservator.

3 4. If a conservator cannot make a decision under subsection
4 3 because the conservator does not know and cannot reasonably
5 determine the decision the protected person would make if
6 able, or the conservator reasonably believes the decision the
7 protected person would make would fail to preserve resources
8 needed to maintain the protected person's well-being and
9 lifestyle or otherwise unreasonably harm or endanger the
10 welfare or personal or financial interests of the protected
11 person, the conservator shall act in accordance with the best
12 interests of the protected person. In determining the best
13 interests of the protected person, the conservator shall
14 consider all of the following:

15 a. Information received from professionals and persons that
16 demonstrate sufficient interest in the welfare of the protected
17 person.

18 b. Other information the conservator believes the protected
19 person would have considered if the protected person were able
20 to act.

21 c. Other factors a reasonable person in the circumstances
22 of the protected person would consider, including consequences
23 to others.

24 5. Except when inconsistent with the conservator's duties
25 under subsections 1 through 4, a conservator shall invest and
26 manage the protected person's assets as a prudent investor
27 would, by considering the circumstances and property of the
28 protected person.

29 6. The propriety of a conservator's investment and
30 management of the conservatorship estate is determined in light
31 of the facts and circumstances existing when the conservator
32 decides or acts and not by hindsight.

33 7. A conservator that has special skills or expertise,
34 or is named conservator in reliance on the conservator's
35 representation of special skills or expertise, has a duty

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1 to use the special skills or expertise in carrying out the
2 conservator's duties.

3 8. In investing and selecting specific property for
4 distribution, a conservator shall consider any estate plan or
5 other donative, nominative, or appointive instrument of the
6 protected person, known to the conservator.

7 9. A conservator shall maintain insurance on the insurable
8 real and personal property of the protected person, unless
9 the conservatorship estate lacks sufficient funds to pay for
10 insurance or the court finds any of the following:

11 a. The property lacks sufficient equity to justify the
12 insurance premium.

13 b. Insuring the property would unreasonably dissipate the
14 conservatorship estate.

15 c. Insuring the property would not be in the best interest
16 of the protected person.

17 10. If a protected person has executed a valid power of
18 attorney under chapter 633B, the conservator shall act in
19 accordance with the applicable provisions of chapter 633B.

20 11. The conservator shall report to the department of
21 human services the protected person's assets and income, if
22 the protected person is receiving medical assistance under
23 chapter 249A. Such reports shall be made upon establishment of
24 a conservatorship for an individual applying for or receiving
25 medical assistance, upon application for benefits on behalf
26 of the protected person, upon annual or semiannual review of
27 continued medical assistance eligibility, when any significant
28 change in the protected person's assets or income occurs, or
29 as otherwise requested by the department of human services.
30 Written reports shall be provided to the department of human
31 services office for the county in which the protected person
32 resides or the office in which the protected person's medical
33 assistance is administered.

34 Sec. _____. NEW SECTION. **633.642 Responsibilities of**
35 **conservator.**

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1 1. The conservator, acting reasonably and consistent
2 with the fiduciary duties of the conservator to accomplish
3 the purpose of the conservatorship, and acting in a manner
4 consistent with the conservator's plan, and consistent with
5 the order establishing the conservatorship, including any
6 limitations in the order, shall, without the necessity of prior
7 court approval, have all the following powers on behalf of the
8 protected person:

9 a. Collect, receive, receipt for any principal or income,
10 and to enforce, defend against, or prosecute any claim by or
11 against the protected person or the conservator; and to sue on
12 and defend claims in favor of or against the protected person
13 or the conservator.

14 b. Sell and transfer personal property of a perishable
15 nature and tangible personal property for which there is a
16 regularly established market.

17 c. Vote at corporate meetings in person or by proxy.

18 d. Receive additional property from any source.

19 e. Notwithstanding the provisions of section 633.123,
20 continue to hold any investment or other property originally
21 received by the conservator, and also any increase thereof,
22 pending the timely filing of the first annual report.

23 f. Pay court costs, bond premiums, and court-approved
24 expenses.

25 g. Open a depository account.

26 h. Receive bank statements and investment reports and
27 correspond with financial institutions.

28 i. Buy, sell, invest, or reinvest assets, except real
29 estate, pursuant to section 633.123.

30 j. Make payments on any existing mortgage, including for
31 real estate taxes and for property and liability insurance.

32 k. Pay for the protected person's housing under an existing
33 agreement.

34 l. Pay health care insurance premiums and prescription
35 medications, medical expenses, hospital expenses, and ambulance

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1 bills.

2 *m.* Authorize preparation and filing of, and pay any amount
3 due for, state and federal income taxes.

4 *n.* Pay utilities on the real property owned or leased by the
5 protected person.

6 *o.* Purchase clothing.

7 *p.* Purchase food, cleaning supplies, toiletries, and
8 personal grooming for the protected person.

9 *q.* Reimburse the guardian or guardians for reasonable
10 out-of-pocket expenses advanced on behalf of the protected
11 person for health care and other items upon presentation of a
12 receipt or statement to the conservator.

13 *r.* Pay reasonable wages and any required employment taxes
14 to individuals or organizations that can assist the protected
15 person as needed with cooking, cleaning, shopping, and other
16 activities of daily living.

17 2. Except as otherwise ordered by the court, a conservator
18 must give notice to persons entitled to notice and receive
19 specific prior authorization by the court before the
20 conservator may take any other action on behalf of the
21 protected person. These other powers requiring court approval
22 include the authority of the conservator to:

23 *a.* Invest the protected person's assets consistent with
24 section 633.123.

25 *b.* Make gifts on the protected person's behalf from
26 conservatorship assets to persons or religious, educational,
27 scientific, charitable, or other nonprofit organizations to
28 whom or to which such gifts were regularly made prior to the
29 conservator's appointment; or on a showing that such gifts
30 would benefit the protected person from the perspective of
31 gift, estate, inheritance, or other taxes. No gift shall be
32 allowed which would foreseeably prevent adequate provision for
33 the protected person's best interest.

34 *c.* Make payments consistent with the conservator's plan
35 described above directly to the protected person or to others

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1 for the protected person's education and training needs.

2 *d.* Use the protected person's income or assets to provide
3 for any person that the protected person is legally obligated
4 to support.

5 *e.* Compromise, adjust, arbitrate, or settle any claim by or
6 against the protected person or the conservator.

7 *f.* Make elections for a protected person who is the
8 surviving spouse as provided in sections 633.236 and 633.240.

9 *g.* Exercise the right to disclaim on behalf of the protected
10 person as provided in section 633E.5.

11 *h.* Sell, mortgage, exchange, pledge, or lease the protected
12 person's real and personal property consistent with subchapter
13 VII, part 6 of this chapter regarding sale of property from a
14 decedent's estate.

15 Sec. _____. Section 633.648, Code 2019, is amended to read as
16 follows:

17 **633.648 Appointment of attorney in compromise of personal**
18 **injury settlements.**

19 Notwithstanding the provisions of ~~section 633.647~~ 633.642
20 prior to authorizing a compromise of a claim for damages on
21 account of personal injuries to the ward, the court may order
22 an independent investigation by an attorney other than by the
23 attorney for the conservator. The cost of such investigation,
24 including a reasonable attorney fee, shall be taxed as part of
25 the cost of the conservatorship.>

26 17. Page 26, by striking lines 9 through 23 and inserting:

27 <Sec. _____. Section 633.670, Code 2019, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 **633.670 Reports by conservators.**

31 1. A conservator shall file an initial plan for protecting,
32 managing, investing, expending, and distributing the assets
33 of the conservatorship estate within ninety days after
34 appointment. The plan must be based on the needs of the
35 protected person and take into account the best interest of the

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1 protected person as well as the protected person's preference,
2 values, and prior directions to the extent known to, or
3 reasonably ascertainable by, the conservator.

4 a. The initial plan shall include all of the following:

5 (1) A budget containing projected expenses and resources,
6 including an estimate of the total amount of fees the
7 conservator anticipates charging per year and a statement or
8 list of the amount the conservator proposes to charge for each
9 service the conservator anticipates providing to the protected
10 person.

11 (2) A statement as to how the conservator will involve
12 the protected person in decisions about management of the
13 conservatorship estate.

14 (3) If ordered by the court, any step the conservator plans
15 to take to develop or restore the ability of the protected
16 person to manage the conservatorship estate.

17 (4) An estimate of the duration of the conservatorship.

18 b. Within two days after filing the initial plan, the
19 conservator shall give notice of the filing of the initial plan
20 with a copy of the plan to the protected person, the protected
21 person's attorney and court advisor, if any, and others as
22 directed by the court. The notice must state that any person
23 entitled to a copy of the plan must file any objections to the
24 plan not later than fifteen days after it is filed.

25 c. At least twenty days after the plan has been filed, the
26 court shall review and determine whether the plan should be
27 approved or revised, after considering objections filed and
28 whether the plan is consistent with the conservator's powers
29 and duties.

30 d. After approval by the court, the conservator shall
31 provide a copy of the approved plan and order approving the
32 plan to the protected person, the protected person's attorney
33 and court advisor, if any, and others as directed by the court.

34 e. The conservator shall file an amended plan when there has
35 been a significant change in circumstances or the conservator

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1 seeks to deviate significantly from the plan. Before the
2 amended plan is implemented, the provisions for court approval
3 of the plan shall be followed as provided in paragraphs "b",
4 "c", and "d".

5 2. A conservator shall file an inventory of the protected
6 person's assets within ninety days after appointment which
7 includes an oath or affirmation that the inventory is believed
8 to be complete and accurate as far as information permits.
9 Copies of the inventory shall be provided to the protected
10 person, the protected person's attorney and court advisor, if
11 any, and others as directed by the court. When the conservator
12 receives additional property of the protected person, or
13 becomes aware of its existence, a description of the property
14 shall be included in the conservator's next annual report.

15 3. A conservator shall file a written and verified report
16 for the period since the end of the preceding report period.
17 The court shall not waive these reports.

18 a. These reports shall include all of the following:

19 (1) Balance of funds on hand at the beginning and end of the
20 period.

21 (2) Disbursements made.

22 (3) Changes in the conservator's plan.

23 (4) List of assets as of the end of the period.

24 (5) Bond amount and surety's name.

25 (6) Residence and physical location of the protected
26 person.

27 (7) General physical and mental condition of the protected
28 person.

29 (8) Other information reflecting the condition of the
30 conservatorship estate.

31 b. These reports shall be filed:

32 (1) On an annual basis within sixty days of the end of the
33 reporting period unless the court orders an extension for good
34 cause shown in accordance with the rules of probate procedure.

35 (2) Within thirty days following removal of the

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1 conservator.

2 (3) Upon the conservator's filing of a resignation and
3 before the resignation is accepted by the court.

4 (4) Within sixty days following the termination of the
5 conservatorship.

6 (5) At other times as ordered by the court.

7 c. Reports required by this section shall be served on the
8 protected person's attorney and court advisor, if any, and the
9 veterans administration if the protected person is receiving
10 veterans benefits.>

11 18. Page 28, line 32, by striking <and>

12 19. Page 28, line 32, after <633.576,> by inserting
13 <633.646, 633.647, 633.649, 633.650, and 633.652,>

14 20. By renumbering, redesignating, and correcting internal
15 references as necessary.

HINSON of Linn

Iowa General Assembly
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House File 265

H-1026

1 Amend House File 265 as follows:

2 1. Page 1, line 11, by striking <the warrant shall be
3 sealed by the court> and inserting <and the warrant includes
4 the name of a specific person, the warrant shall be sealed by
5 the court upon application to the court by the person named in
6 the warrant>

7 2. Page 1, line 17, after <2.> by inserting <a.>

8 3. Page 1, line 21, after <upon> by inserting <application
9 to the court by the person named in the warrant following>

10 4. Page 1, after line 25 by inserting:

11 <b. This subsection shall only apply to a warrant
12 identifying one defendant and not multiple defendants.>

13 5. Title page, by striking lines 2 and 3 and inserting
14 <information.>

JONES of Clay

Iowa General Assembly
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House File 715 - Introduced

HOUSE FILE 715
BY COMMITTEE ON LOCAL
GOVERNMENT

(SUCCESSOR TO HSB 160)

A BILL FOR

1 An Act relating to governmental bodies and advisory bodies and
2 public notice requirements under the open meetings law.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

TLSB 1070HV (3) 88
ec/rh

Iowa General Assembly
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H.F. 715

1 Section 1. Section 21.2, subsection 1, paragraphs a, c, e,
2 h, and j, Code 2019, are amended to read as follows:

3 a. A board, council, commission, or other governing body
4 expressly created by the statutes of this state or by executive
5 order of the governor.

6 c. A multimembered body formally and directly created by
7 one or more boards, councils, commissions, or other governing
8 bodies subject to ~~paragraphs~~ paragraph "a" and or "b" of this
9 subsection.

10 e. An advisory board, advisory commission, advisory
11 committee, or task force formally and directly created by
12 the governor or the general assembly to develop and make
13 recommendations on public policy and budgetary issues.

14 h. An advisory board, advisory commission, advisory
15 committee, task force, or other body formally and directly
16 created by ~~statute or executive order of this state or created~~
17 ~~by an executive order of~~ any measure, including a motion,
18 resolution, amendment, or ordinance, by a political subdivision
19 of this state, one or more boards, councils, commissions, or
20 other governing bodies subject to paragraph "a" or "b", by a
21 mayor, or by a superintendent of schools if the school board of
22 a school district has expressly authorized the superintendent
23 to act on behalf of the school district, to develop and make
24 recommendations on public policy and budgetary issues to the
25 board, council, commission, or other governing body.

26 j. An advisory board, advisory commission, advisory
27 committee, task force, or other body formally and directly
28 created by an entity organized under chapter 28E, or by
29 the administrator or joint board specified in a chapter 28E
30 agreement, to develop and make recommendations on public policy
31 and budgetary issues to the entity or joint board.

32 Sec. 2. Section 21.2, subsection 2, Code 2019, is amended
33 to read as follows:

34 2. "*Meeting*" means a gathering in person or by electronic
35 means, formal or informal, of a majority of the members of

LSB 1070HV (3) 88
ec/rh

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1 a governmental body where there is deliberation or action
2 upon any matter within the scope of the governmental body's
3 policy-making or budgetary duties. Meetings shall not include
4 a gathering of members of a governmental body for purely
5 ministerial or social purposes when there is no discussion of
6 policy or budgetary duties or no intent to avoid the purposes
7 of this chapter.

8 Sec. 3. Section 21.4, subsection 1, paragraph a, Code 2019,
9 is amended to read as follows:

10 a. Except as provided in subsection 3, a governmental body
11 shall give notice of the time, date, and place of each meeting
12 including a reconvened meeting of the governmental body, and
13 the tentative agenda of the meeting, in a manner reasonably
14 calculated to apprise the public of that information.
15 Reasonable notice shall include advising ~~the news media~~
16 any person who have has filed a request for notice with the
17 governmental body and posting the notice on a bulletin board or
18 other prominent place which is easily accessible to the public
19 and clearly designated for that purpose at the principal office
20 of the body holding the meeting, or if no such office exists,
21 at the building in which the meeting is to be held.

22 Sec. 4. Section 21.4, subsection 2, paragraph a, Code 2019,
23 is amended to read as follows:

24 a. Except as otherwise provided in paragraph "c", notice
25 conforming with all of the requirements of subsection 1 shall
26 be given at least twenty-four hours prior to the commencement
27 of any meeting of a governmental body, excluding weekend days
28 and paid holidays as specified in section 1C.2, unless for good
29 cause such notice is impossible or impractical, in which case
30 as much notice as is reasonably possible shall be given.

31 EXPLANATION

32 The inclusion of this explanation does not constitute agreement with
33 the explanation's substance by the members of the general assembly.

34 This bill relates to the regulation of a governmental body
35 and public notice requirements under the open meetings law

LSB 1070HV (3) 88
ec/rh

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1 (Code chapter 21).

2 The bill amends the definition of governmental body under
3 the open meetings law to specify that only advisory boards,
4 advisory commissions, advisory committees, task forces, or
5 any other body that are formally and directly created by a
6 political subdivision of this state, specified governmental
7 bodies, by a mayor, or by a superintendent of schools if the
8 school board of a school district has expressly authorized the
9 superintendent to act on behalf of the school district, are
10 considered governmental bodies subject to the open meetings
11 law.

12 The bill amends the definition of a meeting that is subject
13 to the requirements of the open meetings law by expanding the
14 definition to include any deliberations or actions (including
15 recommendations) taken by a governmental body as defined in
16 the open meetings law, that are within a governmental body's
17 budgetary duties.

18 The bill provides that reasonable notice of a meeting shall
19 include providing notice to any person, and not just the news
20 media, if the person has filed a request for notice.

21 The bill also excludes weekend days and paid holidays as
22 specified in Code section 1C.2 when determining the 24-hour
23 time period for purposes of public notice under the open
24 meetings law.

Iowa General Assembly
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House File 716 - Introduced

HOUSE FILE 716
BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HF 179)

A BILL FOR

1 An Act relating to firearms requirements for hunting deer.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

TLSB 1881HV (2) 88
js/rn

Iowa General Assembly
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H.F. 716

1 Section 1. Section 455A.5, Code 2019, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 7. For purposes of adopting rules, the
4 commission shall define and categorize firearms in a manner
5 fully consistent with the definitions established in 18 U.S.C.
6 §921 and 27 C.F.R. §478.11.

7 Sec. 2. Section 481A.48, subsections 5 and 6, Code 2019, are
8 amended to read as follows:

9 5. The commission shall establish one or more pistol
10 or revolver seasons for hunting deer as separate firearm
11 seasons or to coincide with one or more other firearm deer
12 hunting seasons. Any pistol or revolver ~~firing a magnum~~
13 ~~three hundred fifty seven thousandths of one inch caliber or~~
14 ~~larger, centerfire, straight wall ammunition propelling an~~
15 ~~expanding-type bullet~~ with a barrel length of at least four
16 inches and firing straight wall or other centerfire ammunition
17 propelling an expanding-type bullet with a maximum diameter of
18 no less than three hundred fifty thousandths of one inch and
19 no larger than five hundred thousandths of one inch and with
20 a published or calculated muzzle energy of five hundred foot
21 pounds or higher is legal for hunting deer during the pistol or
22 revolver seasons. The commission shall adopt rules to allow
23 black powder pistols or revolvers for hunting deer. ~~The rules~~
24 ~~shall not allow pistols or revolvers with shoulder stock or~~
25 ~~long-barrel modifications. The barrel length of a pistol or~~
26 ~~revolver used for deer hunting shall be at least four inches.~~
27 The rules may limit types of ~~ammunition~~ projectiles. A person
28 who is ~~sixteen~~ twenty years of age or less shall not hunt deer
29 with a pistol or revolver unless that person is accompanied and
30 under direct supervision throughout the hunt by a responsible
31 person with a valid hunting license who is at least twenty-one
32 years of age, with the consent of a parent, guardian, or spouse
33 who is at least twenty-one years of age, pursuant to section
34 724.22, subsection 5. A person possessing a prohibited pistol
35 or revolver while hunting deer commits a scheduled violation

LSB 1881HV (2) 88

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js/rn

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H.F. 716

1 under [section 805.8B, subsection 3](#), paragraph “h”, subparagraph
2 (5).

3 6. The commission shall adopt rules pursuant to [chapter 17A](#)
4 allowing the use of ~~straight-wall~~ cartridge rifles to hunt deer
5 as follows:

6 a. A ~~straight-wall~~ cartridge rifle may be used to hunt deer
7 during youth and disabled deer hunting season and first and
8 second shotgun deer hunting seasons by a person who has a valid
9 deer hunting license and is otherwise qualified to hunt.

10 b. A ~~straight-wall~~ cartridge rifle that is allowed pursuant
11 to [this subsection](#) shall be of the same caliber and use the
12 same straight wall or other ammunition as is allowed for
13 use in a pistol or revolver for hunting deer as provided in
14 subsection 5. In addition, the commission shall provide, by
15 rule, for the use of straight wall or other ammunition under
16 this subsection that meets ballistics specifications similar to
17 the requirements for straight wall or other ammunition allowed
18 for use in a pistol or revolver for hunting deer as provided in
19 subsection 5.

20 c. A person possessing a prohibited rifle while hunting deer
21 commits a scheduled violation under section 805.8B, subsection
22 3, paragraph “h”, subparagraph (6). In addition, the hunting
23 privileges of a person convicted of possessing a prohibited
24 rifle while hunting deer shall be suspended for two years.

25 EXPLANATION

26 The inclusion of this explanation does not constitute agreement with
27 the explanation’s substance by the members of the general assembly.

28 Current law requires the natural resource commission to
29 establish rules that prohibit the use of pistols and revolvers
30 with shoulder stock or long-barrel modifications when hunting
31 deer. Current law also prohibits a person under the age of 16
32 from hunting deer with a pistol or revolver.

33 This bill requires the commission to define and categorize
34 firearms to be consistent with federal definitions, and
35 modifies current provisions to reflect consistency with federal

LSB 1881HV (2) 88
js/rn

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1 definitions. The bill also allows a person 20 years of age or
2 less to hunt using a pistol or revolver if the person is under
3 direct supervision of a person who is at least 21 years of age
4 with a valid hunting license, and has consent from a parent,
5 guardian, or spouse who is at least 21 years of age.

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House File 717 - Introduced

HOUSE FILE 717
BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 212)

A BILL FOR

1 An Act concerning appeal rights relating to veterans
2 preference.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

TLSB 2742HV (3) 88
ec/rn

Iowa General Assembly
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H.F. 717

1 Section 1. Section 35C.3, Code 2019, is amended to read as
2 follows:

3 **35C.3 Duty to investigate and appoint.**

4 When any preferred person applies for appointment or
5 employment under [this chapter](#), the officer, board, or person
6 whose duty it is or may be to appoint or employ a person to fill
7 the position or place shall, before appointing or employing a
8 person to fill the position or place, make an investigation
9 as to the qualifications of the applicant for the place or
10 position, and if the applicant is of good moral character
11 and can perform the duties of the position applied for, the
12 officer, board, or person shall appoint the applicant to the
13 position, place, or employment. The appointing officer, board,
14 or person shall set forth in writing and file for public
15 inspection the specific grounds upon which it appointed or
16 refused to appoint the person. At the time of application or
17 at an interview for the position, an applicant may request
18 notification of refusal only or notification of refusal and
19 the specific grounds for refusal. The notification shall be
20 sent within ten days after the successful applicant is selected
21 and shall include information on the right of an unsuccessful
22 applicant to maintain an action for mandamus under section
23 35C.4, or file an appeal and the time to file an appeal under
24 section 35C.5.

25 Sec. 2. Section 35C.4, Code 2019, is amended to read as
26 follows:

27 **35C.4 Mandamus — judicial review.**

28 A refusal to allow said preference, or a reduction of
29 the salary for said position with intent to bring about the
30 resignation or discharge of the incumbent, shall entitle the
31 applicant or incumbent, as the case may be, to maintain an
32 action of mandamus to right the wrong. At their election
33 such parties may, in the alternative, maintain an action for
34 judicial review in accordance with the terms of the Iowa
35 administrative procedure Act, [chapter 17A](#), if that is otherwise

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ec/rn

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1 applicable to their case. An action of mandamus shall be filed
2 by an applicant or incumbent within three hundred days after a
3 refusal to allow said preference, or a reduction of the salary
4 for said position with intent to bring about the resignation
5 or discharge of the incumbent.

6 Sec. 3. Section 35C.6, Code 2019, is amended to read as
7 follows:

8 **35C.6 Removal — certiorari — judicial review.**

9 No person holding a public position by appointment or
10 employment, and belonging to any of the classes of persons
11 to whom a preference is granted under this chapter, shall
12 be removed from such position or employment except for
13 incompetency or misconduct shown after a hearing, upon due
14 notice, upon stated charges, and with the right of such
15 employee or appointee to a review by a writ of certiorari or at
16 such person's election, to judicial review in accordance with
17 the terms of the Iowa administrative procedure Act, chapter
18 17A, if that is otherwise applicable to their case. Upon
19 removal from such position or employment, the person shall be
20 provided written notification of the right of such employee
21 or appointee to a review by a writ of certiorari or judicial
22 review. A review by a writ of certiorari shall be filed within
23 three hundred days of the removal of the employee or appointee.

24 EXPLANATION

25 The inclusion of this explanation does not constitute agreement with
26 the explanation's substance by the members of the general assembly.

27 This bill concerns veterans preference under Code chapter
28 35C.

29 Code section 35C.3 is amended to provide that notification
30 to a veteran of a refusal to appoint or employ the veteran
31 for employment covered by Code chapter 35C shall include
32 information on the right of the veteran to maintain an action
33 for mandamus under Code section 35C.4 or file an appeal, and
34 the time to file an appeal, under Code section 35C.5.

35 Code section 35C.4, concerning mandamus and judicial review,

LSB 2742HV (3) 88
ec/rn

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1 is amended to provide that an action of mandamus shall be filed
2 by an applicant or incumbent within 300 days after a refusal to
3 allow a preference, or a reduction of salary designed to bring
4 about the resignation or discharge of the incumbent.

5 Code section 35C.6, concerning removal from a position or
6 employment, is amended to provide that upon removal, the person
7 removed shall be provided written notification of the right to
8 a review by a writ of certiorari or judicial review. The bill
9 also provides that a writ of certiorari be filed within 300
10 days of the removal of the person.

Iowa General Assembly
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House File 718 - Introduced

HOUSE FILE 718
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO HSB 233)

A BILL FOR

1 An Act relating to the power of cities to regulate certain
2 building restrictions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

TLSB 2598HV (1) 88
js/rn

H.F. 718

Iowa General Assembly
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House File 719 - Introduced

HOUSE FILE 719
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 544)

A BILL FOR

1 An Act relating to participation in conciliation related to a
2 dissolution of marriage.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

TLSB 2468HV (2) 88
pf/rh

Iowa General Assembly
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H.F. 719

1 Section 1. Section 598.16, Code 2019, is amended to read as
2 follows:

3 **598.16 Conciliation — domestic relations divisions.**

4 1. A majority of the judges in any judicial district, with
5 the cooperation of any county board of supervisors in the
6 district, may establish a domestic relations division of the
7 district court of the county where the board is located. The
8 division shall offer counseling and related services to persons
9 before the court.

10 2. ~~Except as provided in subsection 7, upon the application~~
11 ~~of the petitioner in the petition or by the respondent in the~~
12 ~~responsive pleading to the petition, or within twenty days of~~
13 ~~appointment of an attorney appointed under section 598.12A,~~
14 ~~the~~ The court shall may on its own motion or upon the motion
15 of a party require the parties to participate in conciliation
16 efforts for a period of sixty days from or less following
17 the issuance of an order setting forth the conciliation
18 procedure and the conciliator. In making a determination under
19 this section, the court shall consider all relevant factors
20 including but not limited to whether a history of abuse or
21 violence exists.

22 3. ~~At any time upon its own motion or upon the application~~
23 ~~of a party the court may require the parties to participate~~
24 ~~in conciliation efforts for sixty days or less following the~~
25 ~~issuance of such an order.~~

26 4. 3. Every order for conciliation shall require the
27 conciliator to file a written report by a date certain which
28 shall state the conciliation procedures undertaken and such
29 other matters as may have been required by the court. The
30 report shall be a part of the record unless otherwise ordered
31 by the court. Such conciliation procedure may include but is
32 not limited to referrals to the domestic relations division
33 of the court, if established, public or private marriage
34 counselors, family service agencies, community health centers,
35 physicians and clergy.

LSB 2468HV (2) 88
pf/rh

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1 ~~5.~~ 4. The costs of conciliation procedures shall be paid
2 in full or in part by the parties and taxed as court costs;
3 however, if the court determines that the parties will be
4 unable to pay the costs without prejudicing their financial
5 ability to provide themselves and any minor children with
6 economic necessities, the costs may be paid in full or in part
7 by the county.

8 ~~6.~~ 5. Persons providing counseling and other services
9 pursuant to [this section](#) are not court employees, but are
10 subject to court supervision.

11 ~~7.~~ Upon application, the court shall grant a waiver from
12 the requirements of [this section](#) if a party demonstrates that
13 a history of elder abuse, as defined in [section 235F.1](#), or
14 domestic abuse, as defined in [section 236.2](#), exists.

15 ~~a.~~ In determining whether a history of elder abuse exists,
16 the court's consideration shall include but is not limited
17 to commencement of an action pursuant to [section 235F.2](#), the
18 issuance of a court order or consent agreement pursuant to
19 [section 235F.6](#), the issuance of an emergency order pursuant to
20 [section 235F.7](#), the holding of a party in contempt pursuant to
21 [section 664A.7](#), the response of a peace officer to the scene
22 of alleged elder abuse, or the arrest of a party following
23 response to a report of alleged elder abuse.

24 ~~b.~~ In determining whether a history of domestic abuse
25 exists, the court's consideration shall include but is not
26 limited to commencement of an action pursuant to [section 236.3](#),
27 the issuance of a protective order against a party or the
28 issuance of a court order or consent agreement pursuant to
29 [section 236.5](#), the issuance of an emergency order pursuant to
30 [section 236.6](#), the holding of a party in contempt pursuant to
31 [section 664A.7](#), the response of a peace officer to the scene
32 of alleged domestic abuse or the arrest of a party following
33 response to a report of alleged domestic abuse, or a conviction
34 for domestic abuse assault pursuant to [section 708.2A](#).

35 Sec. 2. Section 598.19, Code 2019, is amended to read as

LSB 2468HV (2) 88
pf/rh

2/4

H.F. 719

3/4

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H.F. 719

1 The bill also eliminates the specific provisions requiring
2 the court to grant a waiver of mandatory participation in
3 conciliation based on a history of elder abuse or domestic
4 abuse since participation in conciliation is no longer
5 mandatory. Instead, the bill requires that the court, in
6 making its determination whether to require participation in
7 conciliation efforts, shall consider all relevant factors
8 including but not limited to whether a history of abuse or
9 violence exists.

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House File 720 - Introduced

HOUSE FILE 720
BY COMMITTEE ON EDUCATION

(SUCCESSOR TO HF 445)

A BILL FOR

1 An Act relating to education funding weighting for children
2 living in certain facilities and including effective date
3 provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

TLSB 1674HV (4) 88
md/jh

Iowa General Assembly
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H.F. 720

1 Section 1. Section 282.31, subsection 1, paragraph b, Code
2 2019, is amended to read as follows:

3 b. (1) A child who lives in a facility or other placement
4 pursuant to [section 282.19](#), and who does not require special
5 education and who is enrolled in the educational program of
6 the district of residence at the time the child is placed,
7 shall be included in the basic enrollment of the school
8 district in which the child is enrolled. A child who lives in
9 a facility or other placement pursuant to [section 282.19](#), and
10 who does not require special education and who is not enrolled
11 in the educational program of the district of residence of
12 the child, shall be included in the basic enrollment of the
13 school district in which the facility or other placement is
14 located. However, for school budget years beginning on or
15 after July 1, 2019, if a child under this paragraph "b", is
16 living in an agency child care facility, as provided in section
17 282.19, subsection 2, and, following a juvenile court or agency
18 determination under section 282.19, subsection 2, the child is
19 enrolled in the school district where the facility or placement
20 is located, the child shall be assigned a weighting equal to
21 the weighting established in section 256B.9, subsection 1,
22 paragraph "b", as if the child required special education.

23 (2) However, on June 30 of a school year, if the board
24 of directors of a school district determines that the number
25 of children under this paragraph "b" who were counted in the
26 basic enrollment of the school district in that school year
27 in accordance with [section 257.6, subsection 1](#), is fewer than
28 the sum of the number of months all children were enrolled
29 in the school district under this paragraph "b" during the
30 school year divided by nine, the secretary of the school
31 district may submit a claim to the department of education by
32 August 1 following the school year for an amount equal to the
33 district cost per pupil of the district for the previous school
34 year, including any amount attributable to weighting assigned
35 under subparagraph (1), multiplied by the difference between

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H.F. 720

1 the number of children counted and the number of children
2 calculated by the number of months of enrollment. The amount
3 of the claim shall be paid by the department of administrative
4 services to the school district by October 1. The department
5 of administrative services shall transfer the total amount
6 of the approved claim of a school district from the moneys
7 appropriated under [section 257.16](#) and the amount paid shall
8 be deducted monthly from the state foundation aid paid to all
9 school districts in the state during the remainder of the
10 subsequent fiscal year in the manner provided in paragraph "a".
11 Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate
12 importance, takes effect upon enactment.

13 EXPLANATION

14 The inclusion of this explanation does not constitute agreement with
15 the explanation's substance by the members of the general assembly.

16 Current Code section 282.31 provides that a child who lives
17 in certain residential or foster care facilities or placements
18 pursuant to Code section 282.19, and who does not require
19 special education and who is enrolled in the educational
20 program of the district of residence at the time the child
21 is placed, is included in the basic enrollment of the school
22 district in which the child is enrolled. Additionally, such
23 a child who is not enrolled in the educational program of the
24 district of residence of the child is included in the basic
25 enrollment of the school district in which the facility or
26 other placement is located.

27 This bill provides that for school budget years beginning
28 on or after July 1, 2019, if such a child is living in an
29 agency child foster care facility and if the juvenile court
30 or responsible agency has determined that remaining in the
31 child's prior school is not in the best interest of the child,
32 the child shall be assigned a weighting equal to the weighting
33 established in Code section 256B.9(1)(b), as if the child
34 required special education.

35 The bill takes effect upon enactment.

LSB 1674HV (4) 88
md/jh

2/2

Iowa General Assembly
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House File 721 - Introduced

HOUSE FILE 721
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 134)

A BILL FOR

1 An Act relating to the temporary delegation of parental
2 authority by the parent, guardian, or legal custodian of a
3 child.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

TLSB 1251HV (3) 88
hb/rh

Iowa General Assembly
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H.F. 721

1 Section 1. NEW SECTION. 633F.1 Definitions.

2 1. "*Agent*" means a person granted authority to act for a
3 parent, guardian, or legal custodian under a power of attorney
4 created under this chapter.

5 2. "*Child*" means a person under eighteen years of age.

6 3. "*Power of attorney*" means a writing that grants authority
7 to an agent to act in the place of a parent, guardian, or legal
8 custodian regarding the care or custody of a child.

9 Sec. 2. NEW SECTION. 633F.2 Power of attorney — temporary
10 delegation of parental authority.

11 1. A parent, guardian, or legal custodian of a child, by a
12 properly executed power of attorney, may delegate to another
13 person any authority regarding the care or custody of the child
14 except for any of the following powers:

15 a. The power to consent to the child's marriage.

16 b. The power to consent to the child's adoption.

17 c. The power to consent to the performance or inducement of
18 an abortion on or for the child.

19 d. The power to consent to the termination of the parental
20 rights of a parent of the child.

21 e. The power to transfer the power of attorney to another
22 person unless the other person is designated as a successor
23 agent in the power of attorney.

24 2. A power of attorney executed under this chapter must be
25 signed by all parents, guardians, and legal custodians. The
26 power of attorney must be acknowledged before a notary public
27 or other individual authorized by law to take acknowledgments.
28 An agent named in the power of attorney shall not notarize the
29 principal's signature. An acknowledged signature on a power of
30 attorney is presumed to be genuine.

31 3. A parent, guardian, or legal custodian of the child shall
32 have the authority to revoke or terminate a power of attorney
33 created under this chapter at any time by giving notice of the
34 revocation in writing to the agent.

35 4. A power of attorney created under this chapter shall be

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1 for a period of time not to exceed three months. A parent,
2 guardian, or legal custodian of the child may execute a new
3 power of attorney for an additional period of three months, but
4 in no case shall a power of attorney created under this chapter
5 be valid for more than six months. If a parent, guardian, or
6 legal custodian revokes or terminates the power of attorney,
7 the child shall be returned to the care and custody of the
8 parent, guardian, or legal custodian within twenty-four hours
9 of the date of the revocation or termination.

10 5. An agent shall exercise parental or legal authority on a
11 continuous basis without compensation for the duration of the
12 power of attorney and shall not be considered to be a foster
13 parent subject to licensure by the department of human services
14 pursuant to chapter 237.

15 6. A power of attorney executed under this chapter by a
16 parent, guardian, or legal custodian shall not constitute
17 abandonment, abuse, or neglect of the child under chapter 232
18 by the parent, guardian, or legal custodian unless the parent,
19 guardian, or legal custodian fails to take custody of the child
20 upon the expiration of the power of attorney.

21 7. A power of attorney executed under this chapter by a
22 parent, guardian, or legal custodian shall not be valid if the
23 purpose is to avoid the filing of a child in need of assistance
24 petition.

25 8. This chapter shall not apply to a power of attorney
26 created pursuant to section 598C.204.

27 Sec. 3. NEW SECTION. 633F.3 Power of attorney temporary
28 delegation of parental authority — form.

29 A document substantially in the following form may be used
30 to create a power of attorney temporary delegation of parental
31 authority that has the meaning and effect prescribed by this
32 chapter:

33 POWER OF ATTORNEY TEMPORARY DELEGATION OF PARENTAL AUTHORITY
34 FORM

35 1. POWER OF ATTORNEY

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1 This power of attorney authorizes another person (your
2 agent) to make decisions concerning your child or children for
3 you (the principal). Your agent will be able to make decisions
4 and act with respect to your child or children. The meaning
5 of authority over the child or children listed on this form
6 is explained in the Power of Attorney temporary delegation of
7 parental authority, Iowa Code chapter 633F. This power of
8 attorney does not grant the agent the power to consent to a
9 child's marriage or adoption, to the performance or inducement
10 of an abortion on or for a child, or to the termination of
11 parental rights of a parent of a child or to the transfer of the
12 power of attorney to a person other than to a person designated
13 as a successor agent in this power of attorney.

14 You should select someone you trust to serve as your agent.

15 Your agent is not entitled to compensation unless you state
16 otherwise in the optional Special Instructions.

17 This form provides for designation of one agent. If you
18 wish to name more than one agent, you may name a coagent in the
19 optional Special Instructions. Coagents must act by majority
20 rule unless you provide otherwise in the optional Special
21 Instructions.

22 If your agent is unable or unwilling to act for you, your
23 power of attorney will end unless you have named a successor
24 agent. You may also name a second successor agent.

25 This power of attorney becomes effective immediately upon
26 signature and acknowledgment unless you state otherwise in the
27 optional Special Instructions.

28 If you have questions about this power of attorney or the
29 authority you are granting to your agent, you should seek legal
30 advice before signing this form.

31 DESIGNATION OF AGENT

32 I _____ (name of principal) name the
33 following person as my agent:

34 Name of Agent _____

35 Agent's Address _____

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1 Agent's Telephone Number _____

2 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

3 If my agent is unable or unwilling to act for me, I name as
4 my successor agent:

5 Name of Successor Agent _____

6 Successor Agent's Address _____

7 Successor Agent's Telephone Number _____

8 If my successor agent is unable or unwilling to act for me, I
9 name as my second successor agent:

10 Name of Second Successor Agent _____

11 Second Successor Agent's Address _____

12 Second Successor Agent's Telephone Number _____

13 GRANT OF GENERAL AUTHORITY

14 I grant my agent and any successor agent general authority to
15 act for me with respect to my child or my children as defined
16 in the Power of Attorney Temporary Delegation of Parental
17 Authority, Iowa Code chapter 633F.

18 SPECIAL INSTRUCTIONS

19 You may give special instructions including the name and
20 date of birth of the child on the following lines:

21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____
29 _____
30 _____
31 _____
32 _____.

33 EFFECTIVE DATE

34 This power of attorney is effective immediately upon
35 signature and acknowledgment unless I have stated otherwise in

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1 the optional Special Instructions.

2 RELIANCE ON THIS POWER OF ATTORNEY

3 Any person, including my agent, may rely upon the validity of
4 this power of attorney or a copy of it unless that person knows
5 it has terminated or is invalid.

6 SIGNATURE AND ACKNOWLEDGMENT

7 _____
8 Your Signature _____ Date _____

9 _____
10 Your Name Printed _____

11 _____
12 _____

13 Your Address _____
14 _____

15 Your Telephone Number _____
16 State of _____

17 County of _____

18 This document was acknowledged before me on _____
19 (date), by _____ (name of principal)

20 _____ (Seal, if any)

21 Signature of Notary

22 My commission expires _____

23 This document prepared by

24 _____
25 _____

26 2. IMPORTANT INFORMATION FOR AGENT

27 AGENT'S DUTIES

28 When you accept the authority granted under this power of
29 attorney, a special legal relationship is created between the
30 principal and you. This relationship imposes upon you legal
31 duties that continue until you resign or the power of attorney
32 is terminated or revoked. You must do all of the following:

33 Act in good faith.

34 Do nothing beyond the authority granted in this power of
35 attorney.

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1 Disclose your identity as an agent whenever you act for the
2 principal by writing or printing the name of the principal and
3 signing your own name as agent in the following manner:

4 _____ (principal's name) by
5 _____ (your signature) as Agent

6 Unless the Special Instructions in this power of attorney
7 state otherwise, you must also do all of the following:

8 Act loyally for the child's or children's and principal's
9 benefit.

10 Avoid conflicts that would impair your ability to act in the
11 child or children's and principal's best interest.

12 Act with care, competence, and diligence.

13 TERMINATION OF AGENT'S AUTHORITY

14 You must stop acting on behalf of the principal if you learn
15 of any event that terminates this power of attorney or your
16 authority under this power of attorney. Events that terminate
17 a power of attorney or your authority to act under a power of
18 attorney include any of the following:

19 The principal's revocation of the power of attorney or your
20 authority.

21 The occurrence of a termination event stated in the power of
22 attorney.

23 The purpose of the power of attorney is fully accomplished.

24 The time period specified in the power of attorney has
25 expired.

26 The three-month time period permitted under Iowa Code
27 chapter 633F has expired.

28 The three-month extension time period permitted under Iowa
29 Code chapter 633F has expired.

30 LIABILITY OF AGENT

31 The meaning of the authority granted to you is defined in the
32 Power of Attorney Temporary Delegation of parental authority,
33 Iowa Code chapter 633F. If you violate the Power of Attorney
34 Temporary Delegation of parental authority, Iowa Code chapter
35 633F, or act outside the authority granted, you may be liable

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1 for any damages caused by your violation.

2 If there is anything about this document or your duties that
3 you do not understand, you should seek legal advice.

4 Sec. 4. NEW SECTION. 633F.4 Agent's certification —
5 optional form.

6 The following optional form may be used by an agent to
7 certify facts concerning a power of attorney:

8 IOWA STATUTORY POWER OF ATTORNEY TEMPORARY DELEGATION OF
9 PARENTAL AUTHORITY AGENT'S CERTIFICATION FORM
10 AGENT'S CERTIFICATION OF VALIDITY OF POWER OF ATTORNEY AND
11 AGENT'S AUTHORITY

12 State of _____

13 County of _____

14 I, _____ (name of agent), certify
15 under penalty of perjury that _____
16 (name of principal) granted me authority as an agent
17 or successor agent in a power of attorney dated
18 _____.

19 I further certify all of the following to my knowledge:

20 The principal is alive and has not revoked the power of
21 attorney or the Power of Attorney and my authority to act under
22 the Power of Attorney have not terminated.

23 If the power of attorney was drafted to become effective
24 upon the happening of an event or contingency, the event or
25 contingency has occurred.

26 If I was named as a successor agent, the prior agent is no
27 longer able or willing to serve.

28 _____
29 _____
30 _____.

31 (Insert other relevant statements)

32 SIGNATURE AND ACKNOWLEDGMENT

33 _____
34 Agent's Signature Date

35 _____

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1 Agent's Name Printed

2 _____

3 _____

4 Agent's Address

5 _____

6 Agent's Telephone Number

7 This document was acknowledged before me on _____

8 (date), by _____ (name of agent)

9 _____ (Seal, if any)

10 Signature of Notary

11 My commission expires _____

12 This document prepared by

13 _____

14 _____

15 **EXPLANATION**

16 The inclusion of this explanation does not constitute agreement with
17 the explanation's substance by the members of the general assembly.

18 This bill relates to the temporary delegation of parental
19 authority by the parent, guardian, or legal custodian of a
20 child.

21 The bill provides that a parent, guardian, or legal
22 custodian of a child, by a properly executed power of attorney,
23 may delegate to another person any powers regarding the care
24 or custody of the child except the power to consent to the
25 child's marriage, the power to consent to the child's adoption,
26 the power to consent to the performance or inducement of an
27 abortion on or for the child, the power to consent to the
28 termination of the parental rights of a parent of the child,
29 and the power to transfer the power of attorney to another
30 person unless the other person is designated as a successor
31 agent in the power of attorney. A power of attorney executed
32 under the bill must be signed by all parents, guardians, and
33 legal custodians of a child and must be properly acknowledged
34 by a notary. A parent, guardian, or legal custodian shall
35 have the authority to revoke or terminate a power of attorney

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1 created under the bill at any time.

2 A power of attorney created under the bill shall be for
3 a period of time not to exceed three months. The parent,
4 guardian, or legal custodian of the child may execute a new
5 power of attorney for an additional period of three months, but
6 a power of attorney created under the bill cannot exceed six
7 months. If the parent, guardian, or legal custodian revokes or
8 terminates the power of attorney, the child shall be returned
9 to the care and custody of the parent, guardian, or legal
10 custodian within 24 hours of the date of the revocation or
11 termination.

12 An agent (person granted authority to act for a parent,
13 guardian, or legal custodian under a power of attorney
14 created in the bill) is required to exercise parental or legal
15 authority on a continuous basis without compensation for the
16 duration of the power of attorney and shall not be considered
17 to be a foster parent subject to licensure by the department
18 of human services pursuant to Code chapter 237 (child foster
19 care facilities). A power of attorney executed under the bill
20 by a parent, guardian, or legal custodian shall not constitute
21 abandonment, abuse, or neglect of the child under Code chapter
22 232 by the parent, guardian, or legal custodian unless the
23 parent, guardian, or legal custodian fails to take custody of
24 the child or to execute a subsequent power of attorney upon the
25 expiration of the power of attorney.

26 A power of attorney created under the bill is not valid
27 if the purpose is to avoid the filing of a child in need of
28 assistance petition.

29 The bill does not apply to a power of attorney created
30 pursuant to Code section 598C.204 (power of attorney under the
31 uniform deployed parents custody and visitation Act).

32 The bill provides a form for a temporary delegation of a
33 parental authority power of attorney.

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House File 722 - Introduced

HOUSE FILE 722
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO HF 619)

A BILL FOR

1 An Act relating to the voluntary or involuntary commitment or
2 hospitalization of a person with a serious mental impairment
3 or a substance-related disorder.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 125.33, Code 2019, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 5A. If a patient leaves a facility,
4 with or against the advice of the administrator in charge of
5 the facility, the facility shall provide the patient with
6 a discharge report which shall include the patient's name
7 and address, all postdischarge appointments scheduled for
8 the patient, and all information necessary for the patient's
9 postdischarge care.

10 Sec. 2. Section 125.74, Code 2019, is amended to read as
11 follows:

12 **125.74 Preapplication screening assessment — program.**

13 Prior to filing an application pursuant to [section 125.75](#),
14 the clerk of the district court or the clerk's designee shall
15 inform the interested person referred to in [section 125.75](#)
16 about the option of requesting a preapplication screening
17 assessment through a preapplication screening assessment
18 program, which may include a preapplication screening
19 assessment delivered through telehealth, if available. The
20 state court administrator shall prescribe practices and
21 procedures for implementation of the preapplication screening
22 assessment program.

23 Sec. 3. Section 125.85, Code 2019, is amended by adding the
24 following new subsection:

25 NEW SUBSECTION. 3A. Prior to a respondent's discharge from
26 a facility or from treatment, the administrator of the facility
27 shall provide a discharge report to the respondent which shall
28 include the respondent's name and address, all postdischarge
29 appointments scheduled for the respondent, and all information
30 necessary for the respondent's postdischarge care.

31 Sec. 4. Section 125.89, subsection 1, Code 2019, is amended
32 to read as follows:

33 1. If a court orders a respondent placed at a facility
34 for evaluation and treatment under [section 125.83](#) at a time
35 when the respondent has been convicted of a public offense,

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1 or when there is pending against the respondent an unresolved
2 formal charge of a public offense, and the respondent's liberty
3 has therefore been restricted in any manner, the findings of
4 fact required by [section 125.83](#) shall clearly so inform the
5 administrator of the facility where the respondent is placed.
6 The court may order the facility to notify the appropriate law
7 enforcement agency prior to the discharge or transfer of the
8 respondent from the facility.

9 Sec. 5. Section 125.91, subsection 2, paragraphs a and b,
10 Code 2019, are amended to read as follows:

11 a. A peace officer who has reasonable grounds to believe
12 that the circumstances described in [subsection 1](#) are applicable
13 may, without a warrant, take or cause that person to be taken
14 to the nearest available facility referred to in section
15 125.81, subsection 2, paragraph "b" or "c". Such a person
16 with a substance-related disorder due to intoxication or
17 substance-induced incapacitation who also demonstrates a
18 significant degree of distress or dysfunction may also be
19 delivered to a facility by someone other than a peace officer
20 upon a showing of reasonable grounds. Upon delivery of
21 the person to a facility under [this section](#), the attending
22 physician and surgeon or osteopathic physician and surgeon
23 may order treatment of the person, but only to the extent
24 necessary to preserve the person's life or to appropriately
25 control the person's behavior if the behavior is likely to
26 result in physical injury to the person or others if allowed to
27 continue. The peace officer or other person who delivered the
28 person to the facility shall describe the circumstances of the
29 matter to the attending physician and surgeon or osteopathic
30 physician and surgeon. If the person is a peace officer,
31 the peace officer may do so either in person or by written
32 report. If the attending physician and surgeon or osteopathic
33 physician and surgeon has reasonable grounds to believe that
34 the circumstances in [subsection 1](#) are applicable, the attending
35 physician shall at once communicate with the nearest available

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1 magistrate as defined in [section 801.4, subsection 10](#). The
2 magistrate shall, based upon the circumstances described by
3 the attending physician and surgeon or osteopathic physician
4 and surgeon, give the attending physician and surgeon or
5 osteopathic physician and surgeon oral instructions either
6 directing that the person be released forthwith, or authorizing
7 the person's detention in an appropriate facility. A peace
8 officer from the law enforcement agency that took the person
9 into custody, if available, during the communication with the
10 magistrate, may inform the magistrate that an arrest warrant
11 has been issued for or charges are pending against the person
12 and request that any oral or written order issued under this
13 subsection require the facility to notify the law enforcement
14 agency about the discharge or transfer of the person prior to
15 the discharge or transfer. The magistrate may also give oral
16 instructions and order that the detained person be transported
17 to an appropriate facility.

18 **b.** If the magistrate orders that the person be detained, the
19 magistrate shall, by the close of business on the next working
20 day, file a written order with the clerk in the county where it
21 is anticipated that an application may be filed under section
22 125.75. The order may be filed by facsimile if necessary. A
23 peace officer from the law enforcement agency that took the
24 person into custody, if no request was made under paragraph
25 "a", may inform the magistrate that an arrest warrant has
26 been issued for or charges are pending against the person and
27 request that any written order issued under this paragraph
28 require the facility to notify the law enforcement agency
29 about the discharge or transfer of the person prior to the
30 discharge or transfer. The order shall state the circumstances
31 under which the person was taken into custody or otherwise
32 brought to a facility and the grounds supporting the finding
33 of probable cause to believe that the person is a person with a
34 substance-related disorder likely to result in physical injury
35 to the person or others if not detained. The order shall also

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1 include any law enforcement agency notification requirements if
2 applicable. The order shall confirm the oral order authorizing
3 the person's detention including any order given to transport
4 the person to an appropriate facility. A peace officer from
5 the law enforcement agency that took the person into custody
6 may also request an order, separate from the written order,
7 requiring the facility to notify the law enforcement agency
8 about the discharge or transfer of the person prior to the
9 discharge or transfer. The clerk shall provide a copy of that
10 order to the attending physician and surgeon or osteopathic
11 physician and surgeon at the facility to which the person was
12 originally taken, any subsequent facility to which the person
13 was transported, and to any law enforcement department or
14 ambulance service that transported the person pursuant to the
15 magistrate's order.

16 Sec. 6. Section 125.91, subsection 3, Code 2019, is amended
17 to read as follows:

18 3. The attending physician and surgeon or osteopathic
19 physician and surgeon shall examine and may detain the person
20 pursuant to the magistrate's order for a period not to exceed
21 ~~forty-eight~~ seventy-two hours from the time the order is dated,
22 excluding Saturdays, Sundays, and holidays, unless the order is
23 dismissed by a magistrate. The facility may provide treatment
24 which is necessary to preserve the person's life or to
25 appropriately control the person's behavior if the behavior is
26 likely to result in physical injury to the person or others if
27 allowed to continue or is otherwise deemed medically necessary
28 by the attending physician and surgeon or osteopathic physician
29 and surgeon or mental health professional, but shall not
30 otherwise provide treatment to the person without the person's
31 consent. The person shall be discharged from the facility and
32 released from detention no later than the expiration of the
33 ~~forty-eight-hour~~ seventy-two-hour period, unless an application
34 for involuntary commitment is filed with the clerk pursuant to
35 section 125.75. The detention of a person by the procedure

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1 in [this section](#), and not in excess of the period of time
2 prescribed by [this section](#), shall not render the peace officer,
3 attending physician and surgeon or osteopathic physician and
4 surgeon, or facility detaining the person liable in a criminal
5 or civil action for false arrest or false imprisonment if the
6 peace officer, attending physician and surgeon or osteopathic
7 physician and surgeon, mental health professional, or facility
8 had reasonable grounds to believe that the circumstances
9 described in [subsection 1](#) were applicable.

10 Sec. 7. Section 229.3, Code 2019, is amended to read as
11 follows:

12 **229.3 Discharge of voluntary patients.**

13 1. Any voluntary patient who has recovered, or whose
14 hospitalization the chief medical officer of the hospital
15 determines is no longer advisable, shall be discharged. Any
16 voluntary patient may be discharged if to do so would in the
17 judgment of the chief medical officer contribute to the most
18 effective use of the hospital in the care and treatment of that
19 patient and of other persons with mental illness.

20 2. If the chief medical officer of the hospital is informed
21 that an arrest warrant has been issued for or charges are
22 pending against a voluntary patient of the hospital, the chief
23 medical officer may notify the appropriate law enforcement
24 agency about the discharge of the patient prior to the
25 patient's discharge.

26 Sec. 8. Section 229.5A, Code 2019, is amended to read as
27 follows:

28 **229.5A Preapplication screening assessment — program.**

29 Prior to filing an application pursuant to [section 229.6](#),
30 the clerk of the district court or the clerk's designee shall
31 inform the interested person referred to in [section 229.6](#),
32 subsection 1, about the option of requesting a preapplication
33 screening assessment through a preapplication screening
34 assessment program, which may include a preapplication
35 screening assessment delivered through telehealth, if

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1 available.

2 Sec. 9. Section 229.16, Code 2019, is amended to read as
3 follows:

4 **229.16 Discharge and termination of proceeding.**

5 1. When the condition of a patient who is hospitalized
6 pursuant to a report issued under section 229.14, subsection 1,
7 paragraph "b", or is receiving treatment pursuant to a report
8 issued under section 229.14, subsection 1, paragraph "c", or is
9 in full-time care and custody pursuant to a report issued under
10 section 229.14, subsection 1, paragraph "d", is such that in
11 the opinion of the chief medical officer the patient no longer
12 requires treatment or care for serious mental impairment, the
13 chief medical officer shall tentatively discharge the patient
14 and immediately report that fact to the court which ordered the
15 patient's hospitalization or care and custody. Upon receiving
16 the report, the court shall issue an order confirming the
17 patient's discharge from the hospital or from care and custody,
18 as the case may be, and shall terminate the proceedings
19 pursuant to which the order was issued. Copies of the order
20 shall be sent by regular mail to the hospital, the patient,
21 and the applicant if the applicant has filed a written waiver
22 signed by the patient.

23 2. When a patient who is hospitalized pursuant to a report
24 issued under section 229.14, subsection 1, paragraph "b", is
25 receiving treatment pursuant to a report issued under section
26 229.14, subsection 1, paragraph "c", or is in full-time care
27 and custody pursuant to a report issued under section 229.14,
28 subsection 1, paragraph "d", is discharged from the hospital
29 or from care and custody, the patient shall be provided a
30 discharge report which shall include the patient's name and
31 address, all postdischarge appointments scheduled for the
32 patient, and all information necessary for the patient's
33 postdischarge care.

34 Sec. 10. Section 229.22, subsection 2, paragraph b, Code
35 2019, is amended to read as follows:

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1 *b.* If the magistrate orders that the person be detained,
2 the magistrate shall, by the close of business on the next
3 working day, file a written order with the clerk in the county
4 where it is anticipated that an application may be filed
5 under [section 229.6](#). The order may be filed by facsimile if
6 necessary. A peace officer from the law enforcement agency
7 that took the person into custody, if no request was made
8 under paragraph “a”, may inform the magistrate that an arrest
9 warrant has been issued for or charges are pending against
10 the person and request that any written order issued under
11 this paragraph require the facility or hospital to notify the
12 law enforcement agency about the discharge or transfer of the
13 person prior to discharge or transfer. The order shall state
14 the circumstances under which the person was taken into custody
15 or otherwise brought to a facility or hospital, and the grounds
16 supporting the finding of probable cause to believe that the
17 person is seriously mentally impaired and likely to injure the
18 person’s self or others if not immediately detained. The order
19 shall also include any law enforcement agency notification
20 requirements if applicable. The order shall confirm the oral
21 order authorizing the person’s detention including any order
22 given to transport the person to an appropriate facility or
23 hospital. A peace officer from the law enforcement agency
24 that took the person into custody may also request an order,
25 separate from the written order, requiring the facility
26 or hospital to notify the law enforcement agency about the
27 discharge or transfer of the person prior to discharge or
28 transfer. The clerk shall provide a copy of the written order
29 or any separate order to the chief medical officer of the
30 facility or hospital to which the person was originally taken,
31 to any subsequent facility to which the person was transported,
32 and to any law enforcement department, ambulance service, or
33 transportation service under contract with a mental health
34 and disability services region that transported the person
35 pursuant to the magistrate’s order. A transportation service

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1 that contracts with a mental health and disability services
2 region for purposes of this paragraph shall provide a secure
3 transportation vehicle and shall employ staff that has received
4 or is receiving mental health training.

5 Sec. 11. Section 229.22, subsection 2, paragraph c, Code
6 2019, is amended by adding the following new subparagraphs:

7 NEW SUBPARAGRAPH. (3) Notify the law enforcement agency
8 that employs the peace officer by telephone prior to the
9 transfer of the person from the facility or hospital.

10 NEW SUBPARAGRAPH. (4) Notify the law enforcement agency
11 that employs the peace officer by electronic mail prior to the
12 transfer of the person from the facility or hospital.

13 Sec. 12. Section 229.22, subsection 3, Code 2019, is amended
14 to read as follows:

15 3. The chief medical officer of the facility or hospital
16 shall examine and may detain and care for the person taken
17 into custody under the magistrate's order for a period not
18 to exceed ~~forty-eight~~ seventy-two hours from the time such
19 order is dated, excluding Saturdays, Sundays and holidays,
20 unless the order is sooner dismissed by a magistrate. The
21 facility or hospital may provide treatment which is necessary
22 to preserve the person's life, or to appropriately control
23 behavior by the person which is likely to result in physical
24 injury to the person's self or others if allowed to continue,
25 but may not otherwise provide treatment to the person without
26 the person's consent. The person shall be discharged from
27 the facility or hospital and released from custody not later
28 than the expiration of that period, unless an application is
29 sooner filed with the clerk pursuant to [section 229.6](#). Prior
30 to such discharge the facility or hospital shall, if required
31 by [this section](#), notify the law enforcement agency requesting
32 such notification about the discharge of the person. The law
33 enforcement agency shall retrieve the person no later than
34 six hours after notification from the facility or hospital
35 but in no circumstances shall the detention of the person

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1 exceed the period of time prescribed for detention by this
2 subsection. The detention of any person by the procedure
3 and not in excess of the period of time prescribed by this
4 section shall not render the peace officer, physician, mental
5 health professional, facility, or hospital so detaining that
6 person liable in a criminal or civil action for false arrest
7 or false imprisonment if the peace officer, physician, mental
8 health professional, facility, or hospital had reasonable
9 grounds to believe the person so detained was mentally ill and
10 likely to physically injure the person's self or others if
11 not immediately detained, or if the facility or hospital was
12 required to notify a law enforcement agency by [this section](#),
13 and the law enforcement agency requesting notification prior to
14 discharge retrieved the person no later than six hours after
15 the notification, and the detention prior to the retrieval of
16 the person did not exceed the period of time prescribed for
17 detention by [this subsection](#).

18 Sec. 13. DEPARTMENTS OF HUMAN SERVICES AND PUBLIC HEALTH
19 — COMMITMENT PROCESS REVIEW. The department of human
20 services and the department of public health shall review the
21 commitment processes under chapters 125 and 229 and shall
22 make recommendations for combining the commitment processes
23 into a single chapter. The departments shall consider the
24 recommendations from the report submitted by the commitment
25 process review work group to the general assembly on December
26 31, 2018, when reviewing the commitment processes. The
27 departments shall submit recommendations including proposed
28 legislation to the governor and the general assembly by
29 November 15, 2019.

30 Sec. 14. SUPREME COURT TRAINING — INVOLUNTARY COMMITMENTS
31 AND HOSPITALIZATIONS OF PERSONS WITH SERIOUS MENTAL IMPAIRMENTS
32 OR SUBSTANCE-RELATED DISORDERS. The supreme court shall
33 establish educational training for judges, clerks of court,
34 and attorneys related to the involuntary commitment of a
35 person with a serious mental impairment or a substance-related

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1 disorder. The supreme court shall develop the training based
2 on recommendations from the report submitted by the commitment
3 process review work group to the general assembly on December
4 31, 2018.

5 EXPLANATION

6 The inclusion of this explanation does not constitute agreement with
7 the explanation's substance by the members of the general assembly.

8 This bill relates to the commitment or hospitalization of a
9 person with a serious mental impairment or a substance-related
10 disorder.

11 POSTDISCHARGE REPORT. The bill provides that a person with
12 a serious mental impairment or a substance-related disorder who
13 is discharged from a voluntary or an involuntary commitment or
14 hospitalization under Code chapter 125 or 229 shall be provided
15 a discharge report which shall include the patient's name and
16 address, all scheduled postdischarge appointments, and all
17 information relevant to the patient's postdischarge care.

18 PREAPPLICATION SCREENING ASSESSMENT. Under current law,
19 prior to filing an application for involuntary hospitalization
20 under Code section 229.6 or involuntary commitment under Code
21 section 125.75, the clerk of the district court or the clerk's
22 designee shall inform the person filing the application about
23 the option of requesting a preapplication screening assessment
24 through a preapplication screening assessment program. The
25 bill expands current law to provide a preapplication screening
26 assessment program may include a preapplication screening
27 assessment delivered through telehealth, if available.

28 EMERGENCY DETENTION AND HOSPITALIZATION — LAW ENFORCEMENT
29 NOTIFICATION AND DETENTION PERIODS. Under Code sections 125.91
30 (emergency detention — substance-related disorders) and 229.22
31 (emergency hospitalization — serious mental impairment), when
32 it appears that a person should be immediately detained due to
33 a substance-related disorder or a serious mental impairment
34 but an involuntary application for hospitalization has not
35 been filed naming the person as the respondent and the person

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1 cannot be ordered into immediate custody and detained, the
2 person may be immediately detained by a peace officer who
3 has reasonable grounds for the detention, and the peace
4 officer, without a warrant, may take or cause that person to
5 be taken to the nearest available facility or hospital. A
6 person who is not a peace officer may also bring a person
7 under similar circumstances to a facility or hospital. If
8 the appropriate examining health care practitioner finds that
9 there is reason to believe that the person suffers from a
10 substance-related disorder or is seriously mentally impaired
11 and is likely to physically injure the person's self or others
12 if not immediately detained, the health care practitioner is
13 required to immediately communicate with the nearest available
14 magistrate.

15 The bill provides that if a magistrate authorizes a person
16 with a substance-related disorder, under the circumstances
17 described in Code section 125.91, to be detained in an
18 appropriate facility, a peace officer from the law enforcement
19 agency that took the person into custody may inform the
20 magistrate that an arrest warrant has been issued for or
21 charges are pending against the person and request that any
22 oral or written order issued require the facility or hospital
23 to notify the law enforcement agency about the discharge
24 or transfer of the person prior to the person's discharge
25 or transfer. The bill amends the same law enforcement
26 notification provisions currently in Code section 229.22 to
27 allow such law enforcement notification when a person with a
28 serious mental impairment is transferred from a facility or
29 hospital.

30 Under current law, a hospital or facility may detain a
31 person with a substance-related disorder pursuant to Code
32 section 125.91 or a serious mental impairment pursuant to
33 Code section 229.22, under a magistrate's order for a period
34 not to exceed 48 hours from the time such an order is dated,
35 excluding Saturdays, Sundays, and holidays, unless the order is

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1 dismissed earlier by a magistrate. The bill extends the period
2 a hospital or facility may detain such persons to 72 hours
3 from the time such an order is dated, excluding Saturdays,
4 Sundays, and holidays, unless the order is dismissed earlier by
5 a magistrate.

6 DEPARTMENTS OF HUMAN SERVICES AND PUBLIC HEALTH —
7 COMMITMENT PROCESS REVIEW. The bill directs the department of
8 human services and the department of public health to review
9 the commitment processes under Code chapters 125 and 229 and
10 make recommendations and propose legislation for combining
11 the Code chapters to the governor and the general assembly by
12 November 15, 2019.

13 SUPREME COURT — EDUCATIONAL TRAINING. The bill directs
14 the supreme court to develop and provide educational training
15 relating to involuntary commitments and hospitalizations of
16 persons with serious mental impairments and substance-related
17 disorders for judges, clerks of court, and attorneys. The bill
18 provides that the supreme court shall develop the training
19 based upon recommendations from the December 30, 2018, report
20 submitted by the commitment process review work group.

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House File 723 - Introduced

HOUSE FILE 723
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 209)

A BILL FOR

1 An Act relating to business entities, by providing for
2 different types of limited liability companies and the
3 dissolution of limited liability companies, providing for
4 fees, and including effective date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 includes a protected series.

2 8. *"Protected series"*, except in the phrase *"foreign*
3 *protected series"*, means a protected series established under
4 section 489.12201.

5 9. *"Protected-series manager"* means a person under whose
6 authority the powers of a protected series are exercised
7 and under whose direction the activities and affairs of the
8 protected series are managed under the operating agreement,
9 this part, and this chapter.

10 10. *"Protected-series transferable interest"* means a right to
11 receive a distribution from a protected series.

12 11. *"Protected-series transferee"* means a person to which
13 all or part of a protected-series transferable interest of a
14 protected series of a series limited liability company has
15 been transferred, other than the company. The term includes a
16 person that owns a protected-series transferable interest as
17 a result of ceasing to be an associated member of a protected
18 series.

19 12. *"Series limited liability company"*, except in the phrase
20 *"foreign series limited liability company"*, means a limited
21 liability company that has at least one protected series.

22 Sec. 3. NEW SECTION. 489.12103 **Nature of protected series.**

23 A protected series of a series limited liability company is a
24 person distinct from all of the following:

25 1. The company, subject to section 489.12104, subsection
26 3, section 489.12501, subsection 1, and section 489.12502,
27 subsection 4.

28 2. Another protected series of the company.

29 3. A member of the company, whether or not the member is an
30 associated member of the protected series.

31 4. A protected-series transferee of a protected series of
32 the company.

33 5. A transferee of a transferable interest of the company.

34 Sec. 4. NEW SECTION. 489.12104 **Powers and duration of**
35 **protected series.**

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1 1. A protected series of a series limited liability company
2 has the capacity to sue and be sued in its own name.

3 2. Except as otherwise provided in subsections 3 and 4, a
4 protected series of a series limited liability company has the
5 same powers and purposes as the company.

6 3. A protected series of a series limited liability company
7 ceases to exist not later than when the company completes its
8 winding up.

9 4. A protected series of a series limited liability company
10 shall not do any of the following:

11 a. Be a member of the company.

12 b. Establish a protected series.

13 c. Except as permitted by law of this state other than this
14 part, have a purpose or power that the law of this state other
15 than this part prohibits a limited liability company from doing
16 or having.

17 Sec. 5. NEW SECTION. **489.12105 Governing law.**

18 The law of this state governs all of the following:

19 1. The internal affairs of a protected series of a series
20 limited liability company, including all of the following:

21 a. Relations among any associated members of the protected
22 series.

23 b. Relations among the protected series and any of the
24 following:

25 (1) Any associated member.

26 (2) The protected-series manager.

27 (3) Any protected-series transferee.

28 c. Relations between any associated member and any of the
29 following:

30 (1) The protected-series manager.

31 (2) Any protected-series transferee.

32 d. The rights and duties of a protected-series manager.

33 e. Governance decisions affecting the activities and affairs
34 of the protected series and the conduct of those activities and
35 affairs.

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1 *f.* Procedures and conditions for becoming an associated
2 member or protected-series transferee.

3 2. The relations between a protected series of a series
4 limited liability company and each of the following:

5 *a.* The company.

6 *b.* Another protected series of the company.

7 *c.* A member of the company which is not an associated member
8 of the protected series.

9 *d.* A protected-series manager that is not a protected-series
10 manager of the protected series.

11 *e.* A protected-series transferee that is not a
12 protected-series transferee of the protected series.

13 3. The liability of a person for a debt, obligation, or
14 other liability of a protected series of a series limited
15 liability company if the debt, obligation, or liability is
16 asserted solely by reason of the person being or acting as any
17 of the following:

18 *a.* An associated member, protected-series transferee, or
19 protected-series manager of the protected series.

20 *b.* A member of the company which is not an associated member
21 of the protected series.

22 *c.* A protected-series manager that is not a protected-series
23 manager of the protected series.

24 *d.* A protected-series transferee that is not a
25 protected-series transferee of the protected series.

26 *e.* A manager of the company.

27 *f.* A transferee of a transferable interest of the company.

28 4. The liability of a series limited liability company for
29 a debt, obligation, or other liability of a protected series of
30 the company if the debt, obligation, or liability is asserted
31 solely by reason of the company doing any of the following:

32 *a.* Having delivered to the secretary of state for filing
33 under section 489.12201, subsection 2, a protected series
34 designation pertaining to the protected series or under section
35 489.12201, subsection 4, or section 489.12202, subsection 3,

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1 a statement of designation change pertaining to the protected
2 series.

3 *b.* Being or acting as a protected-series manager of the
4 protected series.

5 *c.* Having the protected series be or act as a manager of the
6 company.

7 *d.* Owning a protected-series transferable interest of the
8 protected series.

9 5. The liability of a protected series of a series limited
10 liability company for a debt, obligation, or other liability of
11 the company or of another protected series of the company if
12 the debt, obligation, or liability is asserted solely by reason
13 of any of the following:

14 *a.* The protected series is any of the following:

15 (1) A protected series of the company or having as a
16 protected-series manager the company or another protected
17 series of the company.

18 (2) Acting as a protected-series manager of another
19 protected series of the company or a manager of the company.

20 *b.* The company owning a protected-series transferable
21 interest of the protected series.

22 Sec. 6. NEW SECTION. 489.12106 **Relation of operating**
23 **agreement, this part, and this chapter.**

24 1. Except as otherwise provided in this section and subject
25 to sections 489.12107 and 489.12108, the operating agreement
26 of a series limited liability company governs all of the
27 following:

28 *a.* The internal affairs of a protected series, including all
29 of the following:

30 (1) Relations among any associated members of the protected
31 series.

32 (2) Relations among the protected series and any of the
33 following:

34 (a) Any associated member.

35 (b) The protected-series manager.

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1 (c) Any protected-series transferee.
2 (3) Relations between any associated member and any of the
3 following:

4 (a) The protected-series manager.
5 (b) Any protected-series transferee.
6 (4) The rights and duties of a protected-series manager.
7 (5) Governance decisions affecting the activities and
8 affairs of the protected series and the conduct of those
9 activities and affairs.

10 (6) Procedures and conditions for becoming an associated
11 member or protected-series transferee.

12 *b.* Relations among the protected series, the company, and
13 any other protected series of the company.

14 *c.* Relations between all of the following:

15 (1) The protected series, its protected-series manager,
16 any associated member of the protected series, or any
17 protected-series transferee of the protected series.

18 (2) A person in the person's capacity as any of the
19 following:

20 (a) A member of the company which is not an associated
21 member of the protected series.

22 (b) A protected-series transferee or protected-series
23 manager of another protected series.

24 (c) A transferee of the company.

25 2. If this chapter otherwise restricts the power of an
26 operating agreement to affect a matter, the restriction
27 applies to a matter under this part in accordance with section
28 489.12108.

29 3. If law of this state other than this part imposes a
30 prohibition, limitation, requirement, condition, obligation,
31 liability, or other restriction on a limited liability
32 company, a member, manager, or other agent of the company, or a
33 transferee of the company, except as otherwise provided in law
34 of this state other than this part, the restriction applies in
35 accordance with section 489.12108.

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1 4. Except as otherwise provided in section 489.12107, if
2 the operating agreement of a series limited liability company
3 does not provide for a matter described in subsection 1 in a
4 manner permitted by this article, the matter is determined in
5 accordance with the following rules:

6 a. To the extent this part addresses the matter, this part
7 governs.

8 b. To the extent this part does not address the matter, the
9 other articles of this chapter governs the matter in accordance
10 with section 489.12108.

11 Sec. 7. NEW SECTION. 489.12107 Additional limitations on
12 operating agreement.

13 1. An operating agreement shall not vary the effect of any
14 of the following:

15 a. This section.

16 b. Section 489.12103.

17 c. Section 489.12104, subsection 1.

18 d. Section 489.12104, subsection 2, to provide a protected
19 series a power beyond the powers this chapter provides a
20 limited liability company.

21 e. Section 489.12104, subsection 3 or 4.

22 f. Section 489.12105.

23 g. Section 489.12106.

24 h. Section 489.12108.

25 i. Section 489.12201, except to vary the manner in which
26 a limited liability company approves establishing a protected
27 series.

28 j. Section 489.12202.

29 k. Section 489.12301.

30 l. Section 489.12302.

31 m. Section 489.12303, subsection 1 or 2.

32 n. Section 489.12304, subsection 3 or 6.

33 o. Section 489.12401, except to decrease or eliminate a
34 limitation of liability stated in section 489.12401.

35 p. Section 489.12402.

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1 *q.* Section 489.12403.
2 *r.* Section 489.12404.
3 *s.* Section 489.12501, subsections 1, 4, and 5.
4 *t.* Section 489.12502, except to designate a different person
5 to manage winding up.
6 *u.* Section 489.12503.
7 *v.* Article 6.
8 *w.* Article 7.
9 *x.* Article 8, except to vary any of the following:
10 (1) The manner in which a series limited liability company
11 may elect under section 489.12803, subsection 1, paragraph "b",
12 to be subject to this part.
13 (2) The person that has the right to sign and deliver to the
14 secretary of state for filing a record under section 489.12803,
15 subsection 2, paragraph "b".
16 *y.* A provision of this part pertaining to any of the
17 following:
18 (1) Registered agents.
19 (2) The secretary of state, including provisions pertaining
20 to records authorized or required to be delivered to the
21 secretary of state for filing under this part.
22 2. An operating agreement shall not unreasonably restrict
23 the duties and rights under section 489.12305 but may impose
24 reasonable restrictions on the availability and use of
25 information obtained under section 489.12305 and may provide
26 appropriate remedies, including liquidated damages, for a
27 breach of any reasonable restriction on use.
28 Sec. 8. NEW SECTION. 489.12108 Rules for applying to
29 specified provisions of this chapter to specified provisions of
30 this part.
31 1. Except as otherwise provided in subsection 2 and section
32 489.12107, the following rules apply in applying section
33 489.12106, section 489.12304, subsections 3 and 6, section
34 489.12501, subsection 4, paragraph "a", section 489.12502,
35 subsection 1, and section 489.12503, subsection 2:

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1 *a.* A protected series of a series limited liability company
2 is deemed to be a limited liability company that is formed
3 separately from the series limited liability company and is
4 distinct from the series limited liability company and any
5 other protected series of the series limited liability company.

6 *b.* An associated member of the protected series is deemed to
7 be a member of the company deemed to exist under paragraph "a".

8 *c.* A protected-series transferee of the protected series is
9 deemed to be a transferee of the company deemed to exist under
10 paragraph "a".

11 *d.* A protected-series transferable interest of the protected
12 series is deemed to be a transferable interest of the company
13 deemed to exist under paragraph "a".

14 *e.* A protected-series manager is deemed to be a manager of
15 the company deemed to exist under paragraph "a".

16 *f.* An asset of the protected series is deemed to be an asset
17 of the company deemed to exist under paragraph "a", whether or
18 not the asset is an associated asset of the protected series.

19 *g.* Any creditor or other obligee of the protected series
20 is deemed to be a creditor or obligee of the company deemed to
21 exist under paragraph "a".

22 2. Subsection 1 does not apply if its application would do
23 any of the following:

24 *a.* Contravene section 489.110.

25 *b.* Authorize or require the secretary of state to do any of
26 the following:

27 (1) Accept for filing a type of record that neither this
28 part nor any of the other articles of this chapter authorizes
29 or requires a person to deliver to the secretary of state for
30 filing.

31 (2) Make or deliver a record that neither this part nor
32 the other articles of this chapter authorizes or requires the
33 secretary of state to make or deliver.

SUBPART B

ESTABLISHING PROTECTED SERIES

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1 Sec. 9. NEW SECTION. **489.12201 Protected series designation**
2 — amendment.

3 1. With the affirmative vote or consent of all members
4 of a limited liability company, the company may establish a
5 protected series.

6 2. To establish a protected series, a limited liability
7 company shall deliver to the secretary of state for filing a
8 protected series designation, signed by the company, stating
9 the name of the company and the name of the protected series to
10 be established.

11 3. A protected series is established when the protected
12 series designation takes effect under section 489.205.

13 4. To amend a protected series designation, a series limited
14 liability company shall deliver to the secretary of state
15 for filing a statement of designation change, signed by the
16 company, that changes the name of the company, the name of the
17 protected series to which the designation applies, or both.
18 The change takes effect when the statement of designation
19 change takes effect under section 489.205.

20 Sec. 10. NEW SECTION. **489.12202 Name.**

21 1. Except as otherwise provided in subsection 2, the name of
22 a protected series must comply with section 489.108.

23 2. The name of a protected series of a series limited
24 liability company must do all of the following:

25 a. Begin with the name of the company, including any word or
26 abbreviation required by section 489.108.

27 b. Contain the phrase "*Protected Series*" or "*protected*
28 *series*" or the abbreviation "P.S." or "PS".

29 3. If a series limited liability company changes its name,
30 the company shall deliver to the secretary of state for filing
31 a statement of designation change for each of the company's
32 protected series, changing the name of each protected series to
33 comply with this section.

34 Sec. 11. NEW SECTION. **489.12203 Registered agent.**

35 1. The registered agent in this state for a series limited

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1 the company of service of the summons and complaint and the
2 contents of the complaint.

3 3. Service of a summons and complaint on a protected series
4 of a series limited liability company is notice to the company
5 and any other protected series of the company of service of the
6 summons and complaint and the contents of the complaint.

7 4. Service of a summons and complaint on a foreign series
8 limited liability company is notice to each foreign protected
9 series of the foreign company of service of the summons and
10 complaint and the contents of the complaint.

11 5. Service of a summons and complaint on a foreign protected
12 series of a foreign series limited liability company is notice
13 to the foreign company and any other foreign protected series
14 of the company of service of the summons and complaint and the
15 contents of the complaint.

16 6. Notice to a person under subsection 2, 3, 4, or 5 is
17 effective whether or not the summons and complaint identify
18 the person if the summons and complaint name as a party and
19 identify any of the following:

20 a. The series limited liability company or a protected
21 series of the company.

22 b. The foreign series limited liability company or a foreign
23 protected series of the foreign company.

24 Sec. 13. NEW SECTION. **489.12205 Certificate of existence**
25 **for protected series.**

26 1. On request of any person, the secretary of state shall
27 issue a certificate of existence for a protected series of a
28 series limited liability company or a certificate of authority
29 for a foreign protected series in the following circumstances:

30 a. In the case of a protected series, if all of the
31 following apply:

32 (1) No statement of dissolution, termination, or relocation
33 pertaining to the protected series has been filed.

34 (2) The company has delivered to the secretary of state
35 for filing the most recent biennial report required by section

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1 489.209 and the report includes the name of the protected
2 series, unless any of the following applies:

3 (a) When the company delivered the report for filing, the
4 protected series designation pertaining to the protected series
5 had not yet taken effect.

6 (b) After the company delivered the report for filing,
7 the company delivered to the secretary of state for filing
8 a statement of designation change changing the name of the
9 protected series.

10 b. In the case of a foreign protected series, it is
11 authorized to do business in this state.

12 2. A certificate issued under subsection 1 must state all
13 of the following:

14 a. In the case of a protected series, all of the following:

15 (1) The name of the protected series of the series limited
16 liability company and the name of the company.

17 (2) That the requirements of subsection 1 are met.

18 (3) The date the protected series designation pertaining to
19 the protected series took effect.

20 (4) If a statement of designation change pertaining to
21 the protected series has been filed, the effective date and
22 contents of the statement.

23 b. In the case of a foreign protected series, that it is
24 authorized to do business in this state.

25 c. That all fees, taxes, interest, and penalties due under
26 this chapter or other law to the secretary of state have been
27 paid if all of the following apply:

28 (1) Payment is reflected in the records of the secretary of
29 state.

30 (2) Nonpayment affects the existence or good standing of the
31 protected series.

32 d. Other facts reflected in the records of the secretary of
33 state pertaining to the protected series or foreign protected
34 series which the person requesting the certificate reasonably
35 requests.

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1 3. Subject to any qualification stated by the secretary
2 of state in a certificate issued under subsection 1, the
3 certificate may be relied on as conclusive evidence of the
4 facts stated in the certificate.

5 Sec. 14. NEW SECTION. 489.12206 Information required in
6 biennial report — effect of failure to provide.

7 1. In the biennial report required by section 489.209, a
8 series limited liability company shall include the name of each
9 protected series of the company for which all of the following
10 applies:

11 a. For which the company has previously delivered to the
12 secretary of state for filing a protected series designation.

13 b. Which has not dissolved and completed winding up.

14 2. A failure by a series limited liability company to comply
15 with subsection 1 with regard to a protected series prevents
16 issuance of a certificate of good standing pertaining to the
17 protected series but does not otherwise affect the protected
18 series.

SUBPART C

19
20 ASSOCIATED ASSET, ASSOCIATED MEMBER, PROTECTED-SERIES
21 TRANSFERABLE INTEREST, MANAGEMENT, AND RIGHT OF INFORMATION

22 Sec. 15. NEW SECTION. 489.12301 Associated asset.

23 1. Only an asset of a protected series may be an associated
24 asset of the protected series. Only an asset of a series
25 limited liability company may be an associated asset of the
26 company.

27 2. An asset of a protected series of a series limited
28 liability company is an associated asset of the protected
29 series only if the protected series creates and maintains
30 records that state the name of the protected series and
31 describe the asset with sufficient specificity to permit
32 a disinterested, reasonable individual to do all of the
33 following:

34 a. Identify the asset and distinguish it from any other
35 asset of the protected series, any asset of the company, and

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1 any asset of any other protected series of the company.

2 *b.* Determine when and from what person the protected series
3 acquired the asset or how the asset otherwise became an asset
4 of the protected series.

5 *c.* If the protected series acquired the asset from the
6 company or another protected series of the company, determine
7 any consideration paid, the payor, and the payee.

8 3. An asset of a series limited liability company is an
9 associated asset of the company only if the company creates
10 and maintains records that state the name of the company and
11 describe the asset with sufficient specificity to permit
12 a disinterested, reasonable individual to do all of the
13 following:

14 *a.* Identify the asset and distinguish it from any other
15 asset of the company and any asset of any protected series of
16 the company.

17 *b.* Determine when and from what person the company acquired
18 the asset or how the asset otherwise became an asset of the
19 company.

20 *c.* If the company acquired the asset from a protected series
21 of the company, determine any consideration paid, the payor,
22 and the payee.

23 4. The records and recordkeeping required by subsections
24 2 and 3 may be organized by specific listing, category,
25 type, quantity, or computational or allocational formula or
26 procedure, including a percentage or share of any asset, or in
27 any other reasonable manner.

28 5. To the extent permitted by this section and law of this
29 state other than this part, a series limited liability company
30 or protected series of the company may hold an associated asset
31 directly or indirectly, through a representative, nominee, or
32 similar arrangement, except that all of the following applies:

33 *a.* A protected series shall not hold an associated asset
34 in the name of the company or another protected series of the
35 company.

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1 *b.* The company shall not hold an associated asset in the
2 name of a protected series of the company.

3 Sec. 16. NEW SECTION. **489.12302 Associated member.**

4 1. Only a member of a series limited liability company may
5 be an associated member of a protected series of the company.

6 2. A member of a series limited liability company becomes an
7 associated member of a protected series of the company if the
8 operating agreement or a procedure established by the agreement
9 states all of the following:

10 *a.* That the member is an associated member of the protected
11 series.

12 *b.* The date on which the member became an associated member.

13 *c.* Any protected-series transferable interest the associated
14 member has in connection with becoming or being an associated
15 member.

16 3. If a person that is an associated member of a protected
17 series of a series limited liability company is dissociated
18 from the company, the person ceases to be an associated member
19 of the protected series.

20 Sec. 17. NEW SECTION. **489.12303 Protected-series**
21 **transferable interest.**

22 1. A protected-series transferable interest of a protected
23 series of a series limited liability company must be owned
24 initially by an associated member of the protected series or
25 the company.

26 2. If a protected series of a series limited liability
27 company has no associated members when established, the
28 company owns the protected-series transferable interests in the
29 protected series.

30 3. In addition to acquiring a protected series transferable
31 series interest under subsection 2, a series limited liability
32 company may acquire a protected-series transferable interest
33 through a transfer from another person or as provided in the
34 operating agreement.

35 4. Except for section 489.12108, subsection 1,

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1 paragraph "c", a provision of this part which applies to
2 a protected-series transferee of a protected series of a
3 series limited liability company applies to the company in
4 its capacity as an owner of a protected-series transferable
5 interest of the protected series. A provision of the operating
6 agreement of a series limited liability company which applies
7 to a protected-series transferee of a protected series of the
8 company applies to the company in its capacity as an owner of a
9 protected-series transferable interest of the protected series.

10 Sec. 18. NEW SECTION. **489.12304 Management.**

11 1. A protected series may have more than one
12 protected-series manager.

13 2. If a protected series has no associated members, the
14 series limited liability company is the protected-series
15 manager.

16 3. Section 489.12108 applies to determine any duties of
17 a protected-series manager of a protected series of a series
18 limited liability company to all of the following:

- 19 a. The protected series.
20 b. Any associated member of the protected series.
21 c. Any protected-series transferee of the protected series.
22 4. Solely by reason of being or acting as a protected-series
23 manager of a protected series of a series limited liability
24 company, a person owes no duty to any of the following:

- 25 a. The company.
26 b. Another protected series of the company.
27 c. Another person in that person's capacity as any of the
28 following:

29 (1) A member of the company which is not an associated
30 member of the protected series.

31 (2) A protected-series transferee or protected-series
32 manager of another protected series.

33 (3) A transferee of the company.

34 5. An associated member of a protected series of a series
35 limited liability company has the same rights as any other

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1 member of the company to vote on or consent to an amendment to
2 the company's operating agreement or any other matter being
3 decided by the members, whether or not the amendment or matter
4 affects the interests of the protected series or the associated
5 member.

6 6. Article 9 applies to a protected series in accordance
7 with section 489.12108.

8 Sec. 19. NEW SECTION. 489.12305 Right of person not
9 associated member of protected series to information concerning
10 protected series.

11 1. A member of a series limited liability company which
12 is not an associated member of a protected series of the
13 company has a right to information concerning the protected
14 series to the same extent, in the same manner, and under
15 the same conditions that a member that is not a manager of
16 a manager-managed limited liability company has a right to
17 information concerning the company under section 489.410,
18 subsection 2.

19 2. A person formerly an associated member of a protected
20 series has a right to information concerning the protected
21 series to the same extent, in the same manner, and under
22 the same conditions that a person dissociated as a member of
23 a manager-managed limited liability company has a right to
24 information concerning the company under section 489.410,
25 subsection 3.

26 3. If an associated member of a protected series dies, the
27 legal representative of the deceased associated member has a
28 right to information concerning the protected series to the
29 same extent, in the same manner, and under the same conditions
30 that the legal representative of a deceased member of a limited
31 liability company has a right to information concerning the
32 company under section 489.504.

33 4. A protected-series manager of a protected series has a
34 right to information concerning the protected series to the
35 same extent, in the same manner, and under the same conditions

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1 that a manager of a manager-managed limited liability company
2 has a right to information concerning the company under section
3 489.410, subsection 2.

4 SUBPART D

5 LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS

6 Sec. 20. NEW SECTION. 489.12401 Limitations on liability.

7 1. A person is not liable, directly or indirectly, by way
8 of contribution or otherwise, for a debt, obligation, or other
9 liability of any of the following:

10 a. A protected series of a series limited liability company
11 solely by reason of being or acting as any of the following:

12 (1) An associated member, protected-series manager, or
13 protected-series transferee of the protected series.

14 (2) A member, manager, or a transferee of the company.

15 b. A series limited liability company solely by reason
16 of being or acting as an associated member, protected-series
17 manager, or protected-series transferee of a protected series
18 of the company.

19 2. Subject to section 489.12404, all of the following rules
20 apply:

21 a. A debt, obligation, or other liability of a series
22 limited liability company is solely the debt, obligation, or
23 liability of the company.

24 b. A debt, obligation, or other liability of a protected
25 series is solely the debt, obligation, or liability of the
26 protected series.

27 c. A series limited liability company is not liable,
28 directly or indirectly, by way of contribution or otherwise,
29 for a debt, obligation, or other liability of a protected
30 series of the company solely by reason of the protected series
31 being a protected series of the company or the company for any
32 of the following:

33 (1) Being or acting as a protected-series manager of the
34 protected series.

35 (2) Having the protected series manage the company.

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1 (3) Owning a protected-series transferable interest of the
2 protected series.

3 d. A protected series of a series limited liability company
4 is not liable, directly or indirectly, by way of contribution
5 or otherwise, for a debt, obligation, or other liability of the
6 company or another protected series of the company solely by
7 reason of any of the following:

8 (1) Being a protected series of the company.

9 (2) Being or acting as a manager of the company or a
10 protected-series manager of another protected series of the
11 company.

12 (3) Having the company or another protected series of
13 the company be or act as a protected-series manager of the
14 protected series.

15 Sec. 21. NEW SECTION. **489.12402 Claim seeking to disregard**
16 **limitation of liability.**

17 1. Except as otherwise provided in subsection 2, a claim
18 seeking to disregard a limitation in section 489.12401 is
19 governed by the principles of law and equity, including a
20 principle providing a right to a creditor or holding a person
21 liable for a debt, obligation, or other liability of another
22 person, which would apply if each protected series of a series
23 limited liability company were a limited liability company
24 formed separately from the series limited liability company
25 and distinct from the series limited liability company and any
26 other protected series of the series limited liability company.

27 2. The failure of a limited liability company or a protected
28 series to observe formalities relating to the exercise of
29 its powers or management of its activities and affairs is
30 not a ground to disregard a limitation in section 489.12401,
31 subsection 1, but may be a ground to disregard a limitation in
32 section 489.12401, subsection 2.

33 3. This section applies to a claim seeking to disregard a
34 limitation of liability applicable to a foreign series limited
35 liability company or foreign protected series and comparable

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1 to a limitation stated in section 489.12401, if any of the
2 following apply:

3 a. The claimant is a resident of this state or doing
4 business or authorized to do business in this state.

5 b. The claim is to establish or enforce a liability arising
6 under law of this state other than this part or from an act or
7 omission in this state.

8 Sec. 22. NEW SECTION. **489.12403 Remedies of judgment**
9 **creditor of associated member or protected-series transferee.**

10 Section 489.503 applies to a judgment creditor of any of the
11 following:

12 1. An associated member or protected-series transferee of a
13 protected series.

14 2. A series limited liability company, to the extent the
15 company owns a protected-series transferable interest of a
16 protected series.

17 Sec. 23. NEW SECTION. **489.12404 Enforcement against**
18 **nonassociated asset.**

19 1. As used in this section:

20 a. *"Enforcement date"* means 12:01 a.m. on the date on which
21 a claimant first serves process on a series limited liability
22 company or protected series in an action seeking to enforce
23 under this section a claim against an asset of the company or
24 protected series by attachment, levy, or the like.

25 b. Subject to section 489.12608, subsection 2, *"incurrence*
26 *date"* means the date on which a series limited liability company
27 or protected series incurred the liability giving rise to a
28 claim that a claimant seeks to enforce under this section.

29 2. If a claim against a series limited liability company or
30 a protected series of the company has been reduced to judgment,
31 in addition to any other remedy provided by law or equity,
32 the judgment may be enforced in accordance with the following
33 rules:

34 a. A judgment against the company may be enforced against
35 an asset of a protected series of the company if any of the

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1 following applies:

2 (1) The asset was a nonassociated asset of the protected
3 series on the incurrence date.

4 (2) The asset is a nonassociated asset of the protected
5 series on the enforcement date.

6 *b.* A judgment against a protected series may be enforced
7 against an asset of the company if any of the following apply:

8 (1) The asset was a nonassociated asset of the company on
9 the incurrence date.

10 (2) The asset is a nonassociated asset of the company on the
11 enforcement date.

12 *c.* A judgment against a protected series may be enforced
13 against an asset of another protected series of the company if
14 any of the following applies:

15 (1) The asset was a nonassociated asset of the other
16 protected series on the incurrence date.

17 (2) The asset is a nonassociated asset of the other
18 protected series on the enforcement date.

19 3. In addition to any other remedy provided by law or
20 equity, if a claim against a series limited liability company
21 or a protected series has not been reduced to a judgment
22 and law other than this part permits a prejudgment remedy by
23 attachment, levy, or the like, the court may apply subsection 2
24 as a prejudgment remedy.

25 4. In a proceeding under this section, the party asserting
26 that an asset is or was an associated asset of a series limited
27 liability company or a protected series of the company has the
28 burden of proof on the issue.

29 5. This section applies to an asset of a foreign series
30 limited liability company or foreign protected series if all of
31 the following applies:

32 *a.* The asset is real or tangible property located in this
33 state.

34 *b.* The claimant is a resident of this state or doing
35 business or authorized to do business in this state, or the

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1 claim under section 489.12404 is to enforce a judgment, or to
2 seek a prejudgment remedy, pertaining to a liability arising
3 from law of this state other than this part or an act or
4 omission in this state.

5 *c.* The asset is not identified in the records of the foreign
6 series limited liability company or foreign protected series
7 in a manner comparable to the manner required by section
8 489.12301.

9

SUBPART E

10 DISSOLUTION AND WINDING UP OF PROTECTED SERIES

11 Sec. 24. NEW SECTION. 489.12501 Events causing dissolution
12 of protected series.

13 A protected series of a series limited liability company is
14 dissolved, and its activities and affairs must be wound up,
15 only on any of the following:

16 1. Dissolution of the company.

17 2. Occurrence of an event or circumstance the operating
18 agreement states causes dissolution of the protected series.

19 3. Affirmative vote or consent of all members.

20 4. Entry by the court of an order dissolving the
21 protected series on application by an associated member or
22 protected-series manager of the protected series subject to all
23 of the following:

24 *a.* In accordance with section 489.12108.

25 *b.* To the same extent, in the same manner, and on the same
26 grounds the court would enter an order dissolving a limited
27 liability company on application by a member or manager of the
28 company.

29 5. Entry by the court of an order dissolving the protected
30 series on application by the company or a member of the company
31 on the ground that the conduct of all or substantially all the
32 activities and affairs of the protected series is illegal.

33 Sec. 25. NEW SECTION. 489.12502 Winding up dissolved
34 protected series.

35 1. Subject to subsections 2 and 3 and in accordance with

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1 section 489.12108 all of the following apply:

2 a. A dissolved protected series shall wind up its activities
3 and affairs in the same manner that a limited liability company
4 winds up its activities and affairs under sections 489.702
5 through 489.704 subject to the same requirements and conditions
6 and with the same effects.

7 b. Judicial supervision or another judicial remedy is
8 available in the winding up of the protected series to the same
9 extent, in the same manner, under the same conditions, and with
10 the same effects that apply under section 489.702, subsection
11 5.

12 2. When a protected series of a series limited liability
13 company dissolves, the company may deliver to the secretary of
14 state for filing a statement of protected series dissolution
15 stating the name of the company and the protected series
16 and that the protected series is dissolved. The filing of
17 the statement by the secretary of state has the same effect
18 as the filing by the secretary of state of a statement of
19 dissolution under section 489.103, subsection 4, paragraph "b",
20 subparagraph (1).

21 3. When a protected series of a series limited liability
22 company has completed winding up, the company may deliver to
23 the secretary of state for filing a statement of designation
24 cancellation stating the name of the company and the protected
25 series and that the protected series is terminated. The filing
26 of the statement by the secretary of state has the same effect
27 as the filing by the secretary of state of a statement of
28 termination under section 489.103, subsection 4, paragraph "b",
29 subparagraph (2).

30 4. A series limited liability company has not completed its
31 winding up until each of the protected series of the company
32 has completed its winding up.

33 Sec. 26. NEW SECTION. 489.12503 **Effect of reinstatement**
34 **of series limited liability company or revocation of voluntary**
35 **dissolution.**

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1 If a series limited liability company that has been
2 administratively dissolved is reinstated, or a series limited
3 liability company that voluntarily dissolved rescinds its
4 dissolution both of the following apply:

- 5 1. Each protected series of the company ceases winding up.
- 6 2. The provisions of section 489.706 apply to each protected
7 series of the company in accordance with section 489.12108.

8 SUBPART F

9 ENTITY TRANSACTIONS RESTRICTED

10 Sec. 27. NEW SECTION. **489.12601 Definitions.**

11 As used in this subpart:

12 1. *"After a merger"* or *"after the merger"* means when a merger
13 under section 489.12604 becomes effective and afterwards.

14 2. *"Before a merger"* or *"before the merger"* means before a
15 merger under section 489.12604 becomes effective.

16 3. *"Continuing protected series"* means a protected series of
17 a surviving company which continues in uninterrupted existence
18 after a merger under section 489.12604.

19 4. *"Merging company"* means a limited liability company that
20 is party to a merger under section 489.12604.

21 5. *"Nonsurviving company"* means a merging company that
22 does not continue in existence after a merger under section
23 489.12604.

24 6. *"Relocated protected series"* means a protected series
25 of a nonsurviving company which, after a merger under section
26 489.12604, continues in uninterrupted existence as a protected
27 series of the surviving company.

28 7. *"Surviving company"* means a merging company that
29 continues in existence after a merger under section 489.12604.

30 Sec. 28. NEW SECTION. **489.12602 Protected series shall not**
31 **be party to entity transaction.**

32 A protected series shall not do any of the following:

33 1. Be an acquiring, acquired, converting, converted,
34 merging, or surviving entity.

35 2. Participate in a domestication.

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1 3. Be a party to or be formed, organized, established, or
2 created in a transaction substantially like a merger, interest
3 exchange, conversion, or domestication.

4 Sec. 29. NEW SECTION. **489.12603 Restriction on entity**
5 **transaction involving protected series.**

6 A series limited liability company shall not be any of the
7 following:

8 1. An acquiring, acquired, converting, converted,
9 domesticating, or domesticated entity.

10 2. Except as otherwise provided in section 489.12604, a
11 party to or the surviving company of a merger.

12 Sec. 30. NEW SECTION. **489.12604 Merger authorized —**
13 **parties restricted.**

14 A series limited liability company may be party to a merger
15 in accordance with sections 489.1001 through 489.1005, this
16 section, and sections 489.12605 through 489.12608 only if all
17 of the following apply:

18 1. Each other party to the merger is a limited liability
19 company.

20 2. The surviving company is not created in the merger.

21 Sec. 31. NEW SECTION. **489.12605 Plan of merger.**

22 In a merger under section 489.12604, the plan of merger must
23 do all of the following:

24 1. Comply with section 489.1002.

25 2. State in a record all of the following:

26 a. For any protected series of a nonsurviving company,
27 whether after the merger the protected series will be a
28 relocated protected series or be dissolved, wound up, and
29 terminated.

30 b. For any protected series of the surviving company
31 which exists before the merger, whether after the merger the
32 protected series will be a continuing protected series or be
33 dissolved, wound up, and terminated.

34 c. For each relocated protected series or continuing
35 protected series all of the following:

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1 (1) The name of any person that becomes an associated member
2 or protected-series transferee of the protected series after
3 the merger, any consideration to be paid by, on behalf of, or
4 in respect of the person, the name of the payor, and the name
5 of the payee.

6 (2) The name of any person whose rights or obligations
7 in the person's capacity as an associated member or
8 protected-series transferee will change after the merger.

9 (3) Any consideration to be paid to a person who before the
10 merger was an associated member or protected-series transferee
11 of the protected series and the name of the payor.

12 (4) If after the merger the protected series will be a
13 relocated protected series, its new name.

14 d. For any protected series to be established by the
15 surviving company as a result of the merger all of the
16 following:

17 (1) The name of the protected series.

18 (2) Any protected-series transferable interest to be
19 owned by the surviving company when the protected series is
20 established.

21 (3) The name of and any protected-series transferable
22 interest owned by any person that will be an associated
23 member of the protected series when the protected series is
24 established.

25 e. For any person that is an associated member of a
26 relocated protected series and will remain a member after
27 the merger, any amendment to the operating agreement of the
28 surviving company which is all of the following:

29 (1) Is or is proposed to be in a record.

30 (2) Is necessary or appropriate to state the rights and
31 obligations of the person as a member of the surviving company.

32 Sec. 32. NEW SECTION. **489.12606 Articles of merger.**

33 In a merger under section 489.12604, the articles of merger
34 must do all of the following:

35 1. Comply with section 489.1004.

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1 2. Include as an attachment the following records, each to
2 become effective when the merger becomes effective upon any of
3 the following:

4 a. For a protected series of a merging company being
5 terminated as a result of the merger, a statement of
6 termination signed by the company.

7 b. For a protected series of a nonsurviving company which
8 after the merger will be a relocated protected series all of
9 the following:

10 (1) A statement of relocation signed by the nonsurviving
11 company which contains the name of the company and the name of
12 the protected series before and after the merger.

13 (2) A statement of protected series designation signed by
14 the surviving company.

15 c. For a protected series being established by the
16 surviving company as a result of the merger, a protected series
17 designation signed by the company.

18 Sec. 33. NEW SECTION. 489.12607 Effect of merger.

19 When a merger under section 489.12604 becomes effective, in
20 addition to the effects stated in section 489.1005, all of the
21 following apply:

22 1. As provided in the plan of merger, each protected series
23 of each merging company which was established before the merger
24 is any of the following:

25 a. Is a relocated protected series or continuing protected
26 series.

27 b. Is dissolved, wound up, and terminated.

28 2. Any protected series to be established as a result of the
29 merger is established.

30 3. Any relocated protected series or continuing protected
31 series is the same person without interruption as it was before
32 the merger.

33 4. All property of a relocated protected series or
34 continuing protected series continues to be vested in the
35 protected series without transfer, reversion, or impairment.

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1 5. All debts, obligations, and other liabilities of a
2 relocated protected series or continuing protected series
3 continue as debts, obligations, and other liabilities of the
4 protected series.

5 6. Except as otherwise provided by law or the plan of
6 merger, all the rights, privileges, immunities, powers,
7 and purposes of a relocated protected series or continuing
8 protected series remain in the protected series.

9 7. The new name of a relocated protected series may be
10 substituted for the former name of the protected series in any
11 pending action or proceeding.

12 8. If provided in the plan of merger all of the following
13 apply:

14 a. A person becomes an associated member or protected-series
15 transferee of a relocated protected series or continuing
16 protected series.

17 b. A person becomes an associated member of a protected
18 series established by the surviving company as a result of the
19 merger.

20 c. Any change in the rights or obligations of a person
21 in the person's capacity as an associated member or
22 protected-series transferee of a relocated protected series or
23 continuing protected series take effect.

24 d. Any consideration to be paid to a person that before the
25 merger was an associated member or protected-series transferee
26 of a relocated protected series or continuing protected series
27 is due.

28 9. Any person that is a member of a relocated protected
29 series becomes a member of the surviving company, if not
30 already a member.

31 Sec. 34. NEW SECTION. **489.12608 Application of section**
32 **489.12404 after merger.**

33 1. A creditor's right that existed under section 489.12404
34 immediately before a merger under section 489.12604 may
35 be enforced after the merger in accordance with all of the

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1 following:

2 *a.* A creditor's right that existed immediately before the
3 merger against the surviving company, a continuing protected
4 series, or a relocated protected series continues without
5 change after the merger.

6 *b.* A creditor's right that existed immediately before the
7 merger against a nonsurviving company all of the following
8 apply:

9 (1) May be asserted against an asset of the nonsurviving
10 company which vested in the surviving company as a result of
11 the merger.

12 (2) Does not otherwise change.

13 *c.* Subject to subsection 2, all of the following apply:

14 (1) In addition to the remedy stated in paragraph "a", a
15 creditor with a right under section 489.12404 which existed
16 immediately before the merger against a nonsurviving company or
17 a relocated protected series may assert the right against any
18 of the following:

19 (a) An asset of the surviving company, other than an asset
20 of the nonsurviving company which vested in the surviving
21 company as a result of the merger.

22 (b) An asset of a continuing protected series.

23 (c) An asset of a protected series established by the
24 surviving company as a result of the merger.

25 (d) If the creditor's right was against an asset of the
26 nonsurviving company, an asset of a relocated series.

27 (e) If the creditor's right was against an asset of a
28 relocated protected series, an asset of another relocated
29 protected series.

30 (2) In addition to the remedy stated in paragraph "b",
31 a creditor with a right that existed immediately before the
32 merger against the surviving company or a continuing protected
33 series may assert the right against any of the following:

34 (a) An asset of a relocated protected series.

35 (b) An asset of a nonsurviving company which vested in the

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1 surviving company as a result of the merger.

2 2. For the purposes of subsection 1, paragraph "c", and
3 section 489.12404, subsection 2, paragraph "a", subparagraph
4 (1); section 489.12404, subsection 2, paragraph "b",
5 subparagraph (1); and section 489.12404, subsection 2,
6 paragraph "c", subparagraph (1), the incurrence date is deemed
7 to be the date on which the merger becomes effective.

8 3. A merger under section 489.12604 does not affect the
9 manner in which section 489.12404 applies to a liability
10 incurred after the merger.

11 SUBPART G

12 FOREIGN PROTECTED SERIES

13 Sec. 35. NEW SECTION. **489.12701 Governing law.**

14 The law of the jurisdiction of formation of a foreign series
15 limited liability company governs all of the following:

16 1. The internal affairs of a foreign protected series of the
17 company, including all of the following:

18 a. Relations among any associated members of the foreign
19 protected series.

20 b. Relations between the foreign protected series and any
21 of the following:

22 (1) Any associated member.

23 (2) The protected-series manager.

24 (3) Any protected-series transferee.

25 c. Relations between any associated member and any of the
26 following:

27 (1) The protected-series manager.

28 (2) Any protected-series transferee.

29 d. The rights and duties of a protected-series manager.

30 e. Governance decisions affecting the activities and affairs
31 of the foreign protected series and the conduct of those
32 activities and affairs.

33 f. Procedures and conditions for becoming an associated
34 member or protected-series transferee.

35 2. Relations between the foreign protected series and all

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1 of the following:

2 *a.* The company.

3 *b.* Another foreign protected series of the company.

4 *c.* A member of the company which is not an associated member
5 of the foreign protected series.

6 *d.* A foreign protected-series manager that is not a
7 protected-series manager of the protected series.

8 *e.* A foreign protected-series transferee that is not a
9 foreign protected-series transferee of the protected series.

10 *f.* A transferee of a transferable interest of the company.

11 3. Except as otherwise provided in sections 489.12402 and
12 489.12404, the liability of a person for a debt, obligation,
13 or other liability of a foreign protected series of a foreign
14 series limited liability company if the debt, obligation, or
15 liability is asserted solely by reason of the person being or
16 acting as any of the following:

17 *a.* An associated member, protected-series transferee, or
18 protected-series manager of the foreign protected series.

19 *b.* A member of the company which is not an associated member
20 of the foreign protected series.

21 *c.* A protected-series manager of another foreign protected
22 series of the company.

23 *d.* A protected-series transferee of another foreign
24 protected series of the company.

25 *e.* A manager of the company.

26 *f.* A transferee of a transferable interest of the company.

27 4. Except as otherwise provided in sections 489.12402 and
28 489.12404 all of the following apply:

29 *a.* The liability of the foreign series limited liability
30 company for a debt, obligation, or other liability of a foreign
31 protected series of the company if the debt, obligation, or
32 liability is asserted solely by reason of the foreign protected
33 series being a foreign protected series of the company or the
34 company as a consequence of any of the following:

35 (1) Being or acting as a foreign protected-series manager of

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1 the foreign protected series.

2 (2) Having the foreign protected series manage the company.

3 (3) Owning a protected-series transferable interest of the
4 foreign protected series.

5 b. The liability of a foreign protected series for a
6 debt, obligation, or other liability of the company or
7 another foreign protected series of the company if the debt,
8 obligation, or liability is asserted solely by reason of
9 the foreign protected series as a consequence of any of the
10 following:

11 (1) Being a foreign protected series of the company or
12 having the company or another foreign protected series of the
13 company be or act as foreign protected-series manager of the
14 foreign protected series.

15 (2) Managing the company or being or acting as a foreign
16 protected-series manager of another foreign protected series
17 of the company.

18 Sec. 36. NEW SECTION. 489.12702 No attribution of
19 activities constituting doing business or for establishing
20 jurisdiction.

21 In determining whether a foreign series limited liability
22 company or foreign protected series of the company does
23 business in this state or is subject to the personal
24 jurisdiction of the courts of this state all of the following
25 apply:

26 1. The activities and affairs of the company are not
27 attributable to a foreign protected series of the company
28 solely by reason of the foreign protected series being a
29 foreign protected series of the company.

30 2. The activities and affairs of a foreign protected
31 series are not attributable to the company or another foreign
32 protected series of the company solely by reason of the foreign
33 protected series being a foreign protected series of the
34 company.

35 Sec. 37. NEW SECTION. 489.12703 Authorization of foreign

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1 **protected series.**

2 1. Except as otherwise provided in this section and
3 subject to sections 489.12402 and 489.12404, the law of this
4 state governing the filing of a certificate of authority of
5 a foreign limited liability company to do business in this
6 state, including the consequences of not complying with that
7 law, applies to a foreign protected series of a foreign series
8 limited liability company as if the foreign protected series
9 were a foreign limited liability company formed separately
10 from the foreign series limited liability company and distinct
11 from the foreign series limited liability company and any
12 other foreign protected series of the foreign series limited
13 liability company.

14 2. An application by a foreign protected series of a foreign
15 series limited liability company for a certificate of authority
16 to do business in this state must include all of the following:

17 a. The name and jurisdiction of formation of the foreign
18 series limited liability company.

19 b. If the company has other foreign protected series,
20 the name and street and mailing address of an individual who
21 knows the name and street and mailing address of all of the
22 following:

23 (1) Each other foreign protected series of the foreign
24 series limited liability company.

25 (2) The foreign protected-series manager of and agent for
26 service of process for each other foreign protected series of
27 the foreign series limited liability company.

28 2A. If the jurisdiction under whose law the foreign
29 protected series was organized does not provide for the
30 protected series to obtain a certificate of existence,
31 the foreign protected series shall attach a certificate of
32 existence for the series limited liability company of which
33 it is a protected series. In that case, a foreign protected
34 series of the foreign series limited liability company will
35 be deemed to be in existence and good standing as long as the

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1 series limited liability company is in existence and good
2 standing.

3 3. The name of a foreign protected series applying for a
4 certificate of authority or authorized to do business in this
5 state must comply with section 489.12202 and may do so using a
6 fictitious name pursuant to section 489.108, if the fictitious
7 name complies with section 489.12202.

8 4. A foreign protected series that has in effect a
9 certificate of authority pursuant to this section shall file
10 with the secretary of state an amendment to its application if
11 there is any change in the information required by subsection
12 2.

13 Sec. 38. NEW SECTION. 489.12704 Disclosure required when
14 foreign series limited liability company or foreign protected
15 series party to proceeding.

16 1. Not later than thirty days after becoming a party
17 to a proceeding before a civil, administrative, or other
18 adjudicative tribunal of or located in this state or a tribunal
19 of the United States located in this state all of the following
20 apply:

21 a. A foreign series limited liability company shall disclose
22 to each other party the name and street and mailing address of
23 all of the following:

24 (1) Each foreign protected series of the company.

25 (2) Each foreign protected-series manager of and a
26 registered agent for service of process for each foreign
27 protected series of the company.

28 b. A foreign protected series of a foreign series limited
29 liability company shall disclose to each other party the name
30 and street and mailing address of all of the following:

31 (1) The company and each manager of the company and an agent
32 for service of process for the company.

33 (2) Any other foreign protected series of the company and
34 each foreign protected-series manager of and an agent for
35 service of process for the other foreign protected series.

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1 2. If a foreign series limited liability company or foreign
2 protected series challenges the personal jurisdiction of
3 the tribunal, the requirement that the foreign company or
4 foreign protected series make disclosure under subsection 1 is
5 tolled until the tribunal determines whether it has personal
6 jurisdiction.

7 3. If a foreign series limited liability company or foreign
8 protected series does not comply with subsection 1, a party to
9 the proceeding may do any of the following:

10 *a.* Request the tribunal to treat the noncompliance as a
11 failure to comply with the tribunal's discovery rules.

12 *b.* Bring a separate proceeding in the court to enforce
13 subsection 1.

SUBPART H

TRANSITIONAL PROVISIONS

16 Sec. 39. NEW SECTION. 489.12803 Transitional provisions.

17 1. Before January 1, 2021, this part governs only the
18 following:

19 *a.* A series limited liability company formed, or a protected
20 series established, on or after January 1, 2020.

21 *b.* A limited liability company that is a series limited
22 liability company before January 1, 2020, and elects, in the
23 manner provided in its operating agreement or by law for
24 amending the operating agreement, to be subject to this part.

25 2. If a series limited liability company elects under
26 subsection 1, paragraph "b", to be subject to this part:

27 *a.* The election applies to each protected series of the
28 company, whenever established.

29 *b.* A manager of the company has the right to sign and
30 deliver to the secretary of state for filing any record
31 necessary to comply with this part, whether the record pertains
32 to the company, a protected series of the company, or both.

33 3. On and after January 1, 2021, this part governs all
34 series limited liability companies and protected series.

35 4. Until January 1, 2021, sections 489.12402 and 489.12404

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1 do not apply to a foreign protected series that was established
2 before January 1, 2020, or a foreign limited liability company
3 that became a foreign series limited liability company before
4 January 1, 2020.

5 5. This section is repealed on January 1, 2021.

6 Sec. 40. NEW SECTION. 489.12804 Savings clause.

7 This part does not affect an action commenced, proceeding
8 brought, or right accrued before January 1, 2020.

9 Sec. 41. EFFECTIVE DATE. This division of this Act takes
10 effect January 1, 2020.

11 DIVISION II

12 UNIFORM PROTECTED SERIES ACT — CONFORMING AMENDMENTS

13 Sec. 42. Section 10.1, subsections 9 and 17, Code 2019, are
14 amended to read as follows:

15 9. a. *"Farmers cooperative limited liability company"*
16 means a limited liability company organized under chapter 489,
17 if cooperative associations hold one hundred percent of all
18 membership interests in the limited liability company. Farmers
19 cooperative associations must hold at least seventy percent
20 of all membership interests in the limited liability company.
21 If more than one type of membership interest is established,
22 ~~including any series as provided in section 489.1201 or~~
23 ~~any class or group as provided in section 489.1201,~~ farmers
24 cooperative associations must hold at least seventy percent of
25 all membership interests of each type.

26 b. As used in paragraph "a", a type of membership interest
27 in a limited liability company includes any of the following:

28 (1) (a) A series as provided in chapter 489, article 12.

29 (b) This subparagraph is repealed on January 1, 2021.

30 (2) A protected series as provided in chapter 489, article
31 12.

32 17. *"Networking farmers limited liability company"* means a
33 limited liability company, other than a family farm limited
34 liability company as defined in section 9H.1, organized under
35 chapter 489 if all of the following conditions are satisfied:

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1 a. (1) Qualified farmers must hold at least fifty-one
2 percent of all membership interests in the limited liability
3 company. If more than one type of membership interest is
4 established, ~~including any series as provided in section~~
5 ~~489.1201 or any class or group as provided in section 489.1201,~~
6 qualified farmers must hold at least fifty-one percent of all
7 membership interests of each type.

8 ~~b.~~ (2) Qualified persons must hold at least seventy percent
9 of all membership interests in the limited liability company.
10 If more than one type of membership interest is established,
11 ~~including any series as provided in section 489.1201 or any~~
12 ~~class or group as provided in section 489.1201,~~ qualified
13 persons must hold at least seventy percent of all membership
14 interests of each type.

15 b. As used in paragraph "a", a type of membership interest
16 in a limited liability company includes any of the following:

17 (1) (a) A series as provided in chapter 489, article 12.

18 (b) This subparagraph is repealed on January 1, 2021.

19 (2) A protected series of a series limited liability company
20 as provided in chapter 489, article 12.

21 Sec. 43. Section 10.10, subsection 1, paragraph c, Code
22 2019, is amended to read as follows:

23 c. (1) Less than fifty percent of the interest in the
24 farmers cooperative limited liability company is held by
25 members which are parties to intra-company loan agreements.
26 If more than one type of membership interest is established,
27 ~~including any series as provided in section 489.1201 or any~~
28 ~~class or group as provided in section 489.1201,~~ less than
29 fifty percent of the interest in each type of membership shall
30 be held by members which are parties to intra-company loan
31 agreements.

32 (2) As used in subparagraph (1), a type of membership
33 interest in a limited liability company includes any of the
34 following:

35 (a) (i) A series as provided in chapter 489, article 12.

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1 (ii) This subparagraph division is repealed on January 1,
2 2021.

3 (b) A protected series of a series limited liability company
4 as provided in chapter 489, article 12.

5 Sec. 44. Section 489.101, Code 2019, is amended to read as
6 follows:

7 **489.101 Short title.**

8 1. This chapter may be cited as the "*Revised Uniform Limited*
9 *Liability Company Act*".

10 2. In addition, article 12, part 1, of this chapter may be
11 cited as provided in section 489.1201.

12 Sec. 45. Section 489.801, subsection 1, Code 2019, is
13 amended to read as follows:

14 1. The Subject to sections 489.12402 and 489.12404, the
15 law of the state or other jurisdiction under which a foreign
16 limited liability company is formed governs all of the
17 following:

18 a. The internal affairs of the company.

19 b. The liability of a member as member and a manager as
20 manager for the debts, obligations, or other liabilities of the
21 company.

22 Sec. 46. Section 489.1201, Code 2019, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 8. This section is repealed on January 1,
25 2021.

26 Sec. 47. Section 489.1202, Code 2019, is amended by adding
27 the following new subsection:

28 NEW SUBSECTION. 7. This section is repealed on January 1,
29 2021.

30 Sec. 48. Section 489.1203, Code 2019, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. 14. This section is repealed on January 1,
33 2021.

34 Sec. 49. Section 489.1204, Code 2019, is amended to read as
35 follows:

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1 **489.1204 Dissociation from a series.**

2 1. Unless otherwise provided in the operating agreement,
3 a member shall cease to be associated with a series and to
4 have the power to exercise any rights or powers of a member
5 with respect to such series upon the assignment of all of the
6 member's transferable interest with respect to such series.
7 Except as otherwise provided in an operating agreement,
8 an event under this chapter or identified in an operating
9 agreement that causes a member to cease to be associated with
10 a series, by itself, shall not cause such member to cease to
11 be associated with any other series or terminate the continued
12 membership of a member in the limited liability company.

13 2. This section is repealed on January 1, 2021.

14 Sec. 50. Section 489.1205, Code 2019, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 4. This section is repealed on January 1,
17 2021.

18 Sec. 51. Section 489.1206, Code 2019, is amended to read as
19 follows:

20 **489.1206 Foreign series.**

21 1. A foreign limited liability company that is authorized
22 to do business in this state under article 8 which is governed
23 by an operating agreement that establishes or provides for the
24 establishment of designated series of transferable interests
25 having separate rights, powers, or duties with respect to
26 specified property or obligations of the foreign limited
27 liability company, or profits and losses associated with the
28 specified property or obligations, shall indicate that fact on
29 the application for a certificate of authority as a foreign
30 limited liability company. In addition, the foreign limited
31 liability company shall state on the application whether the
32 debts, liabilities, and obligations incurred, contracted for,
33 or otherwise existing with respect to a particular series, if
34 any, are enforceable against the assets of such series only,
35 and not against the assets of the foreign limited liability

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1 company generally.

2 2. This section is repealed on January 1, 2021.

3 Sec. 52. CODE EDITOR DIRECTIVE.

4 1. The Code editor is directed to make the following
5 transfers:

6 a. Section 489.1201, as amended by this division of this
7 Act, to section 489.12901.

8 b. Section 489.1202, as amended by this division of this
9 Act, to section 489.12902.

10 c. Section 489.1203, as amended by this division of this
11 Act, to section 489.12903.

12 d. Section 489.1204, as amended by this division of this
13 Act, to section 489.12904.

14 e. Section 489.1205, as amended by this division of this
15 Act, to section 489.12905.

16 f. Section 489.1206, as amended by this division of this
17 Act, to section 489.12906.

18 2. The Code editor shall codify the sections described in
19 subsection 1 as new part 2 of article 12 of chapter 489.

20 3. The Code editor shall correct internal references in the
21 Code and in any enacted legislation as necessary due to the
22 enactment of this section.

23 Sec. 53. EFFECTIVE DATE. This division of this Act takes
24 effect January 1, 2020.

25 DIVISION III

26 MANAGEMENT OF LIMITED LIABILITY COMPANIES

27 Sec. 54. Section 489.407, subsection 2, paragraph f, Code
28 2019, is amended by striking the paragraph.

29 DIVISION IV

30 DISSOLUTION

31 Sec. 55. Section 489.105, subsection 2, paragraph a, Code
32 2019, is amended to read as follows:

33 a. Delivering to the secretary of state for filing a
34 statement of change under [section 489.114](#), an amendment to the
35 certificate under [section 489.202](#), a statement of correction

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1 under [section 489.206](#), a biennial report under [section 489.209](#),
2 a statement of withdrawal or a statement of rescission under
3 section 489.701A, or a statement of termination under section
4 489.702, subsection 2, paragraph "b", subparagraph (6).

5 Sec. 56. Section 489.117, subsection 1, Code 2019, is
6 amended by adding the following new paragraphs:

7 NEW PARAGRAPH. 0a. Statement of rescission No fee

8 NEW PARAGRAPH. 00a. Statement of withdrawal ... No fee

9 Sec. 57. NEW SECTION. 489.701A Rescinding dissolution.

10 1. A limited liability company may rescind its dissolution,
11 unless a statement of termination applicable to the company has
12 become effective, a district court has entered an order under
13 section 489.701, subsection 1, paragraph "d", dissolving the
14 company, or the secretary of state has dissolved the company
15 under section 489.705.

16 2. Rescinding dissolution under this section requires all
17 of the following:

18 a. The affirmative vote or consent of each member.

19 b. If the limited liability company has delivered to the
20 secretary of state for filing a statement of dissolution and
21 any of the following applies:

22 (1) The statement has not become effective, delivery
23 to the secretary of state for filing of a statement of
24 withdrawal under section 489.205 applicable to the statement
25 of dissolution.

26 (2) If the statement of dissolution has become effective,
27 delivery to the secretary of state for filing of a statement of
28 rescission stating the name of the company and that dissolution
29 has been rescinded under this section.

30 3. If a limited liability company rescinds its dissolution
31 all of the following apply:

32 a. The company resumes carrying on its activities and
33 affairs as if the dissolution had never occurred.

34 b. Subject to paragraph "c", any liability incurred by the
35 company after the dissolution and before the rescission has

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EXPLANATION

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1 associated with for-profit corporations (Code chapter 490) and
2 partnerships (Code chapter 486A). When adequately capitalized
3 and operating pursuant to its operating agreement, an LLC
4 resembles a corporation operating under its articles of
5 incorporation and bylaws, by shielding its members (equity
6 holders) from the organization's liabilities (debts). It
7 also resembles a partnership in that business income passes
8 through the organization to its members who report their
9 respective share of profits or losses on individual rather
10 than the organization's (corporate) tax returns. An LLC
11 is formed by filing a certificate of organization with the
12 secretary of state (comparable to a corporation's articles
13 of incorporation), while many of its powers and duties are
14 governed by contract (referred to as an operating agreement
15 and generally comparable to a partnership agreement). The
16 operating agreement may control the LLC's governance (e.g.,
17 whether it is member-managed or manager-managed) and the rights
18 and duties of its members and managers. A member's interest
19 refers to the member's proportionate equity position in the LLC
20 and associated control of its business decisions (affairs and
21 internal activities). A transferable interest refers to the
22 right of a member or former member to receive distributions
23 from the LLC in accordance with the LLC's operating agreement.
24 Absent a provision in the operating agreement to the contrary,
25 a transferable interest does not include a unilateral
26 transfer of control rights. Dissociation occurs when a member
27 withdraws from an LLC which may be on either a voluntary or an
28 involuntary basis.

29 GENERAL — IOWA SERIES (ARTICLE 12). Under Code chapter 489,
30 article 12, an LLC's operating agreement may provide for the
31 establishment of a designated series. Under this arrangement,
32 an LLC acts as an umbrella organization for any number of
33 segregated transferable interests. The term commonly used to
34 describe the umbrella organization is a series LLC. So long
35 as certain conditions are satisfied, the liabilities (e.g.,

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1 debts) and obligations (e.g., contractual promises) by one
2 series cannot be imputed to either the series LLC or another
3 series under its umbrella (Code section 489.1201). Likewise,
4 as far as income, any gain or loss of a series may be allocated
5 directly to the members of the series rather than to the series
6 LLC or another series. Because a series is a component of a
7 series LLC it cannot be completely independent. The article
8 includes special provisions for a series LLC, including for its
9 formation (Code section 489.1201), management (Code section
10 489.1202), distributions conducted as part of a dissolution
11 (Code section 489.1203), a member's dissociation (Code section
12 489.1204), its termination (Code section 489.1205), and a
13 foreign series LLC (Code section 489.1206).

14 DIVISION I — UNIFORM PROTECTED SERIES ACT — GENERAL.
15 Division I enacts the UPSA adopted by the ULC which in time
16 will entirely replace current article 12. The provisions of
17 the UPSA are codified and fit within the other provisions of
18 the RULLCA. The article as amended contains two parts: part 1
19 includes the sections of the UPSA taking the place of current
20 Iowa series LLC sections and part 2 includes the current Iowa
21 series sections temporarily transferred to another part of
22 article 12 until repealed on January 1, 2021.

23 PART 1, SUBPART A — GENERAL PROVISIONS. This subpart
24 includes definitions, a description of the nature of a
25 protected series; its power, purpose, and duration; how the
26 protected series is governed by the LLC's operating agreement;
27 and rules for applying certain provisions of an existing LLC to
28 a protected series. Specifically, it includes the article's
29 short title (new Code section 489.12101), describes terms used
30 in the article (new Code sections 489.12102 and 489.12103),
31 including defining "protected series" which replaces the term
32 "series" (new Code section 489.12102(18)). It defines "series
33 limited liability company" to mean a LLC that has at least one
34 protected series (or is structured to have a protected series)
35 under its umbrella (new Code section 489.12102(12)). The bill

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1 defines a number of other terms such as "asset" which includes
2 property in which a series LLC or protected series holds title
3 and therefore may exercise certain rights including transfer
4 (new Code section 489.12102(1)). An "associated asset" of a
5 series LLC belongs only to (i.e., is "associated with") the
6 series LLC and an "associated asset" of a protected series
7 belongs only to (i.e., is "associated with") that protected
8 series (new Code sections 489.12102(2) and 489.12301(1)).
9 A "protected-series transferable interest" is a type of
10 transferable interest in which an associated member has a
11 right to receive a distribution (share of an asset) from a
12 protected series under an operating agreement (Code section
13 489.12101(10)). A "protected-series manager" (new Code section
14 489.12102(9)) is a type of manager (Code section 489.102) who
15 exercises all powers necessary to direct the activities and
16 affairs of the protected series (Code section 489.12102(9)). A
17 protected series may sue and be sued in its own name (new Code
18 section 489.12104(1)) and has the same powers and purposes as
19 the series LLC (new Code section 489.12104(2)). Generally, a
20 protected series cannot survive the termination of its umbrella
21 series (new Code section 489.12104(3)). A protected series
22 cannot be a member of another series LLC or establish another
23 protected series (new Code section 489.12104(4)). A protected
24 series is subject to choice of law rules in cases where a
25 dispute arises between parties from different states (new Code
26 section 489.12105). A series LLC is governed by an operating
27 agreement (new Code section 489.12106). In certain cases,
28 the UPSA controls the series LLC and any protected series
29 regardless of the terms of an operating agreement (new Code
30 section 489.12107(1)). Various provisions govern how the UPSA
31 and the RULLCA are to be interpreted in harmony.
32 PART 1, SUBPART B — ESTABLISHING PROTECTED SERIES. This
33 subpart provides for how a protected series is established.
34 First, it requires a vote of the series LLC's membership (new
35 Code section 489.12201(1)). A protected series designation

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1 must be filed with the secretary of state (new Code section
2 489.12201(2)). The name of a protected series must comply with
3 the naming conventions applicable to an ordinary LLC but have
4 a "protected series" or "PS" designation (new Code section
5 489.12202). A series LLC (acting through its own registered
6 agent) serves as the recipient for service for all its umbrella
7 protected series (new Code section 489.12203(1)). A number
8 of provisions govern how a protected series receives service
9 of process (new Code sections 489.12203 and 489.12204). A
10 protected series may obtain a certificate of existence from
11 the secretary of state (new Code section 489.12205). An LLC
12 is required to file a biennial report with the secretary of
13 state under Code section 489.209. The report must include
14 information regarding its series (new Code section 489.12206).

15 PART 1, SUBPART C — ASSETS, MEMBERS, MANAGEMENT, AND
16 INFORMATION. Unless provided otherwise in an operating
17 agreement, the owner of an asset is responsible for meeting
18 the record-keeping requirements for that asset. An asset
19 is only associated with a protected series or series LLC
20 if there are adequate records describing the asset (new
21 Code section 489.12301(2)). Only a member of a series LLC
22 may be an associated member of a protected series holding
23 a transferrable interest in the protected series (new Code
24 section 489.12302(1)). A transferable interest in a protected
25 series must initially be owned either by the series LLC or
26 by an associated member of the protected series (new Code
27 section 489.12303(1)). A protected series may have multiple
28 managers (new Code section 489.12304(1)) in the same manner as
29 an ordinary LLC under Code section 489.407. A manager of a
30 protected series owes a fiduciary duty to the protected series
31 rather than to the series LLC or any other protected series
32 unless the manager also manages that protected series (new
33 Code section 489.12304(4)). Any derivative claim under RULLCA
34 (article 9) applies to such claim brought against a protected
35 series (Code section 489.12304(6)). The bill does not include

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1 a provision in the UPSA that states an associated member of a
2 protected series has the same power to act as an agent and may
3 bind the protected series in the same manner as a member of
4 an ordinary LLC (presumably member-managed under Code section
5 489.407). Various parties have a limited right to acquire
6 information regarding a protected series, including a member
7 of the series LLC, a former associated member of a protected
8 series, the legal representative of an associated member of a
9 protected series, and a protected-series manager of a protected
10 series (new Code section 489.12305).

11 PART 1, SUBPART D — LIABILITY LIMITATIONS AND CLAIMS.
12 This subpart limits the liability of certain persons and the
13 enforcement of claims, by creating two types of liability
14 shields: vertical and horizontal. A vertical shield applies
15 to members and managers from liability in the same manner as
16 an ordinary LLC. A horizontal shield applies to a protected
17 series of a series LLC and its associated assets from liability
18 for the debts or obligations of the series LLC or another
19 protected series. A person is not liable for the debts and
20 obligations of a protected series or a series LLC solely
21 because the person is an associated member, protected-series
22 manager, or protected-series transferee of a protected series
23 (new Code section 489.12401(1)). However, notwithstanding
24 these shields, a claimant could bring an action against a
25 protected series under certain circumstances if the same
26 action could be brought against an ordinary LLC (new Code
27 section 489.12402(1)). Remedies afforded a judgment creditor
28 of an associated member, protected-series transferee, or
29 series limited liability company holding a protected-series
30 transferable interest are the same as afforded to a judgment
31 creditor in the case of an ordinary LLC under Code section
32 489.503 (new Code section 489.12403). Creditors are provided
33 different rights to assets if they are asserting a claim to
34 pierce the organization's veil under principles of equity (new
35 Code section 489.12402) or are asserting a claim to reach

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1 "nonassociated assets" meaning that the series LLC or protected
2 series has not acquired title (new Code section 489.12404).

3 PART 1, SUBPART E — DISSOLUTION AND WINDING UP AFFAIRS.

4 If a series LLC dissolves then each protected series under
5 its umbrella dissolves simultaneously (new Code section
6 489.12501(1)). The dissolution of a protected series occurs
7 due to a provision in its operating agreement, the unanimous
8 action of its members, or pursuant to court order (new Code
9 section 489.12501(2)-(5)). Once the protected series is to be
10 dissolved, its activities and affairs are to be wound up in the
11 same manner as an ordinary LLC (new Code section 489.12502(1))
12 referring to Code sections 489.702 through 489.704. In the
13 case of the dissolution of a series LLC, it cannot wind up
14 until each of its protected series has wound up (new Code
15 section 489.12502(4)). If a series LLC is administratively
16 dissolved by the secretary of state, and later reinstated,
17 its protected series ceases winding up (new Code section
18 489.12503).

19 PART 1, SUBPART F — CHANGING TRANSACTIONS. This subpart
20 restricts mergers and other changing transactions involving
21 LLCs and protected series. A number of new definitions apply.
22 A "continuing protected series" refers to a protected series
23 that continues as part of the surviving series LLC (new Code
24 section 489.12601(3)). A "relocated protected series" refers
25 to a protected series which was part of a nonsurviving series
26 LLC and becomes part of the surviving series LLC (new Code
27 section 489.12601(6)). A protected series is prohibited from
28 being a direct party to an acquisition, conversion, or merger
29 (new Code section 489.12602(1)). It also cannot be a direct
30 party to a domestication (a business organization formed in
31 multiple states) (new Code section 489.12602(2)). One type of
32 allowed merger involves two existing LLCs, even if one LLC is
33 not a series LLC (new Code sections 489.12603 and 489.12604).
34 A plan of merger must comply with the same requirements
35 applicable to an ordinary LLC under Code sections 489.1001

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1 through 489.1005 as well as a number of other requirements
2 stated in a plan of merger (new Code section 489.12605) and
3 articles of merger (new Code section 489.12606). A plan of
4 merger sets forth the management and affairs or affairs of the
5 protected series, including its termination, establishment, or
6 relocation, assets and liabilities, powers and rights, and name
7 (new Code section 489.12607). Generally, a creditor that has a
8 right against an LLC or protected series that was terminated
9 because of a merger may retain rights against the surviving
10 series LLC or protected series (new Code section 489.12608(1)).
11 In other cases, a creditor's rights are not affected so long as
12 the liability was incurred after the merger (new Code section
13 489.12608(3)).

14 PART 1, SUBPART G — FOREIGN PROTECTED SERIES. The law where
15 a foreign (out-of-state) series LLC is created (referred to as
16 the "law of the jurisdiction of formation") generally governs
17 its protected series, including its formation and governance,
18 as well as the rights and duties of its associated members,
19 protected series managers, or protected-series transferees
20 (new Code section 489.12701(1)). A foreign protected series
21 doing business in another state cannot assert that its law
22 governs another foreign protected series not doing business
23 in that state (new Code section 489.12702). Generally, a
24 foreign protected series is to be treated like a foreign LLC
25 for purposes of registering to do in-state business (new Code
26 section 489.12703). In the case of litigation, within 30 days
27 after becoming a party, a foreign series LLC or a foreign
28 protected series must disclose to any adverse party identifying
29 information regarding the foreign series LLC and each of its
30 foreign series (new Code section 489.12704(1)).

31 PART 1, SUBPART H — TRANSITIONAL PROVISIONS. This subpart
32 does not include two sections of the UPSA that are already
33 included in Code chapter 489, article 13, including section
34 801 that addresses uniformity of application (Code section
35 489.1301) and section 802 that addresses the federal Electronic

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1 Signatures in Global and National Commerce Act (Code section
2 489.1302). It also does not include a severability clause
3 (that would provide for the retention of other provisions
4 in the part if one provision were held invalid) since that
5 provision already applies throughout the Code (Code section
6 4.12).

7 The provisions of UPSA, codified as new sections in article
8 12, part 1, take effect on January 1, 2020, and applies only
9 to a series LLC formed or a protected series established on or
10 after that date. One exception applies if a series LLC formed
11 prior to that date elects to be governed under the new part
12 (new Code section 489.12803(1)). Otherwise on or after January
13 1, 2021, all series LLCs and each protected series are governed
14 under the new part (new Code section 489.12803(1)). However,
15 until January 1, 2021, certain claims authorized under new
16 Code sections 489.12402 and 489.12404 cannot proceed against a
17 foreign series LLC formed prior to January 1, 2020, or foreign
18 LLC series that became a foreign series before that date (new
19 Code section 489.12803(4)).

20 DIVISION II — UNIFORM PROTECTED SERIES ACT — CONFORMING
21 AMENDMENTS. The bill amends the sections currently codified
22 in article 12 (Iowa series) to provide for their repeal on
23 January 1, 2021, the date when all series LLC and umbrella
24 series must comply with the new Code sections codified in
25 part 1 (UPSA). It also provides for the transfer of current
26 sections to new part 2. It amends other provisions in the
27 Code to conform with part 1, including sections that restrict
28 agricultural landholding by LLCs (Code chapter 10). It also
29 amends provisions relating to the law governing foreign LLCs by
30 referencing foreign series LLCs (Code section 489.801). The
31 division takes effect January 1, 2020.

32 DIVISION III — DISASSOCIATION — MANAGEMENT. The bill
33 eliminates a provision which provides for member-managed
34 limited liability companies, by removing a reference to
35 approving a merger, conversion, or domestication (Code section

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1 489.407(2)(f)). There are two different methods of managing
2 a LLC. By statutory default (Code section 489.407(1)), a
3 LLC is member-managed, meaning that all members participate
4 in decisions managing the activities and affairs to the
5 organization (a partnership model). Alternatively, a
6 manager-managed LLC, formed and governed under an operating
7 agreement, provides that certain members or nonmembers are
8 designated to take such actions while the remaining members act
9 as passive investors (corporate model).

10 DIVISION IV — DISSOLUTION. The bill provides that an LLC
11 may rescind a voluntary dissolution (new Code section 489.701A)
12 and consequently the winding up of its affairs and activities
13 (Code section 489.702). A dissolution is a fundamental
14 change transaction that triggers the LLC's termination. It is
15 accomplished by a provision in the operating agreement, the
16 unanimous consent of its members, by district court order in
17 an action for dissolution, or by an administrative declaration
18 issued by the secretary of state (e.g., for nonpayment of
19 a fee). The bill provides that in cases of a voluntary
20 dissolution in which a statement of dissolution is filed, an
21 LLC may rescind such a statement by filing with the secretary
22 of state a statement of rescission. Generally, once an LLC
23 rescinds its dissolution, the LLC carries on its affairs as if
24 the dissolution had never occurred. One exception applies to
25 protect a person (creditor) who would be adversely affected by
26 the retroactive effect of the statement of rescission.

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House File 724 - Introduced

HOUSE FILE 724

BY ISENHART, BEARINGER, STAED,
KRESSIG, WESSEL-KROESCHELL,
BROWN-POWERS, GAINES,
COHOON, BENNETT, HUNTER,
ABDUL-SAMAD, KACENA,
B. MEYER, BRECKENRIDGE,
GASKILL, WINCKLER, DONAHUE,
KURTH, MASCHER, SUNDE,
DERRY, LENSING, KURTZ,
KONFRST, MATSON, ANDERSON,
PRICHARD, JAMES, EHLERT,
WILLIAMS, FORBES, THEDE,
McCONKEY, STECKMAN, WOLFE,
M. SMITH, and JACOBY

A BILL FOR

1 An Act establishing an agriculture climate adaptation advisory
2 task force and providing for an agriculture climate
3 adaptation report.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. AGRICULTURE CLIMATE ADAPTATION ADVISORY TASK
2 FORCE.

3 1. a. The general assembly expressly recognizes the
4 impact of climatic change on ecosystem processes that support
5 agricultural productivity, including an increase in the
6 frequency, duration, and intensity of floods and droughts,
7 pest infestations, and extreme temperatures that compromise
8 this state's soil, water resources, the health of crops and
9 livestock, and the health and well-being of human populations.
10 b. It is the objective of this state to reduce the impact of
11 factors associated with climatic change on ecosystem processes
12 that support agricultural productivity and adopt strategies to
13 ameliorate the effects of such climate change on a short-term
14 and long-term basis.

15 2. There is created an agriculture climate adaptation
16 advisory task force housed within the department of agriculture
17 and land stewardship.

18 a. The voting members of the task force shall include all
19 of the following:

20 (1) The secretary of agriculture or a designee appointed by
21 the secretary of agriculture.

22 (2) The director of the department of natural resources or a
23 designee appointed by the director.

24 (3) A person appointed by the president of the university of
25 northern Iowa who shall represent the Iowa center for energy
26 and environmental education.

27 (4) A person appointed by the president of Iowa state
28 university of science and technology who is associated with the
29 Iowa water center.

30 (5) A person appointed by the president of Iowa state
31 university of science and technology who is associated with the
32 college of agriculture and life sciences.

33 (6) A person appointed by the president of Iowa state
34 university of science and technology who is associated with
35 extension and outreach programs as part of the agriculture and

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1 natural resources department.

2 (7) A person appointed by the president of the university of
3 Iowa who is associated with the Iowa flood center.

4 (8) A person appointed by the president of the university of
5 Iowa who is associated with the center for global and regional
6 environmental research.

7 (9) The director of the Leopold center or a designee
8 appointed by the director. The director or the director's
9 designee shall serve as the chairperson of the task force.

10 (10) (a) The following persons interested in agriculture
11 and the effects of climate change, or their designees, shall
12 be appointed by the governor:

13 (i) The chair of the Iowa chapter of the sierra club.

14 (ii) The executive director of the practical farmers of
15 Iowa.

16 (iii) The executive director of the women, food and
17 agriculture network.

18 (iv) The executive director to the Iowa organic
19 association.

20 (v) The president of the Iowa farmers union.

21 (vi) The executive director of the Izaak Walton league.

22 (vii) The executive director of the Iowa environmental
23 council.

24 (viii) The executive director of the center for rural
25 affairs.

26 (ix) The executive director of the Iowa interfaith power and
27 light.

28 (x) The president of the environmental law and policy
29 center.

30 (xi) The president of the Iowa farm bureau federation.

31 (xii) The president of the Iowa soybean association.

32 (xiii) The president of the Iowa corn growers association.

33 (xiv) The president of the Iowa pork producers.

34 (xv) The president of the Iowa poultry association.

35 (xvi) The president of the Iowa cattlemen's association.

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1 (xvii) The chief executive officer of the Iowa agribusiness
2 association.

3 (b) Of the governor's appointees, at least nine must be
4 actively engaged in farming. Of those persons actively engaged
5 in farming, at least one must be a woman, at least one must
6 belong to an ethnic or racial minority group, one must be
7 engaged in pasture-based livestock production, and one must
8 have received a majority of the person's annual income from
9 agricultural production for less than five years.

10 b. The ex officio, nonvoting members of the task force shall
11 include all of the following:

12 (1) Two members of the senate. One senator shall be
13 appointed by the majority leader of the senate and one senator
14 shall be appointed by the minority leader of the senate.

15 (2) Two members of the house of representatives. One
16 member shall be appointed by the speaker of the house of
17 representatives and one member shall be appointed by the
18 minority leader of the house of representatives.

19 3. A majority of the voting members then appointed
20 constitutes a quorum, and the affirmative vote of a majority of
21 the voting members present is necessary for any action taken by
22 the task force, except that a lesser number of voting members
23 may adjourn a meeting.

24 4. A voting member appointed by the governor shall receive
25 actual expenses for their services. A member is not eligible
26 to receive compensation as provided in section 7E.6.

27 5. The appointments of voting members shall comply with the
28 political party affiliation and gender balance requirements of
29 sections 69.16 and 69.16A.

30 6. A vacancy in the membership shall not impair the right of
31 the task force to exercise all the rights and perform all the
32 duties of the task force.

33 7. The department of agriculture and land stewardship shall
34 provide office space, staff assistance, and necessary supplies
35 and equipment for the task force. Upon request, the task force

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1 shall receive assistance from state and local governments and
2 other entities, including but not limited to the department
3 of agriculture and land stewardship, department of natural
4 resources, the university of Iowa, Iowa state university of
5 science and technology, and the university of northern Iowa.

6 8. The task force shall meet on a regular basis and at the
7 call of the chairperson or upon the written request to the
8 chairperson of five or more voting members.

9 9. In order to achieve the objective provided in subsection
10 1, the task force shall prepare an agriculture climate
11 adaptation report. The report shall do all of the following:

12 a. Identify factors and trends attributable to climate
13 change that are projected to impact ecosystem processes that
14 support agricultural productivity.

15 b. Identify and evaluate available methods and technologies
16 that are proven to assist in mitigating the effects of climate
17 change on such processes.

18 c. Respond in detail to findings regarding the cumulative
19 effects of climate change on human activities and natural
20 processes regarding agriculture as provided in Volume II of
21 the publication entitled "Impacts, Risks, and Adaption in the
22 United States Fourth National Climate Assessment" as prepared
23 by the U.S. global change research program, and published
24 pursuant to the U.S. Global Research Act of 1990, Pub. L. No.
25 101-606.

26 10. The report may address the degree to which actions
27 further achieve the objective provided in subsection 1,
28 including but not limited to all of the following:

29 a. Practices that are environmentally sustainable that do
30 any of the following:

31 (1) Promote the health and preservation of soils, including
32 but not limited to cover crops, no-till planting, ridge-till
33 planting, contouring, and contour strip-cropping.

34 (2) Reduce and control the use of phosphorus and fertilizers
35 or nutrients which may include selection and rotation of crops

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1 and the planting of perennial plants

2 (3) Increase the use of pastures.

3 b. Practices that modify or manage the landscape, including
4 by the installation and maintenance of carbon sinks and carbon
5 sequestration systems; the establishment or restoration of
6 native prairies, wildlife or riparian habitats, wetlands, and
7 forests; and the production of alternative, specialty, and
8 perennial crops.

9 c. Methods to prevent or resist crop damage caused by
10 pathogens or pests, which may include the implementation of
11 integrated pest management practices or participation in
12 organic food production, including as provided in chapter 190C.

13 11. The report shall include recommendations necessary to
14 achieve the objective provided in subsection 1, including all
15 of the following:

16 a. Methods to provide technical and financial assistance
17 to agricultural producers seeking to improve agricultural
18 operations in a profitable, cost-effective, and timely manner.

19 b. Funding mechanisms that take into account all fiscal
20 matters related to implementing the report during the following
21 five-year period, including allocations to state agencies
22 responsible for administering actions recommended by the task
23 force.

24 c. Any proposed amendments to statutes or administrative
25 rules required to meet the objective provided in subsection 1.

26 12. Not later than December 13, 2019, the task force,
27 in cooperation with the department of agriculture and land
28 stewardship and the Leopold center, shall submit the report to
29 the governor and general assembly.

30 EXPLANATION

31 The inclusion of this explanation does not constitute agreement with
32 the explanation's substance by the members of the general assembly.

33 This bill provides that it is the objective of this state to
34 reduce the impact of factors associated with climatic change
35 on ecosystem processes that support agricultural productivity.

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1 The bill establishes an agriculture climate adaptation task
2 force housed within the department of agriculture and land
3 stewardship and composed of voting members representing a
4 number of state agencies and private organizations interested
5 in agriculture and the environment. It also includes four
6 ex officio, nonvoting members of the general assembly. The
7 task force is charged to achieve the objective by preparing an
8 agriculture climate adaptation report (report). The purpose
9 of the report is to identify factors and trends attributable
10 to climate change that are projected to impact agricultural
11 productivity. The report must identify and evaluate available
12 methods and technologies to ameliorate the effects of climate
13 change on agriculture and include recommendations necessary to
14 achieve the objectives. The report must be submitted to the
15 governor and general assembly by December 13, 2019.

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House Resolution 13 - Introduced

HOUSE RESOLUTION NO. 13

BY MASCHER

1 A Resolution recognizing the cities and counties in the
2 state of Iowa that have achieved gender balance on
3 their boards, commissions, committees, and councils.

4 WHEREAS, Iowa law requires, with some exceptions,
5 that all appointive boards, commissions, committees,
6 and councils of the state and all appointive boards,
7 commissions, committees, and councils of political
8 subdivisions of the state achieve gender balance in
9 their membership; and

10 WHEREAS, Iowa's cities and counties have
11 made a concerted effort to meet gender balance
12 requirements; and

13 WHEREAS, maintaining gender balance on appointive
14 boards, commissions, committees, and councils at
15 the state and local government level facilitates the
16 ability of Iowans to participate in government; NOW
17 THEREFORE,

18 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES,
19 That the House of Representatives recognizes and
20 congratulates those cities and counties that have
21 achieved gender balance on their appointive boards,
22 commissions, committees, and councils.

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House Resolution 14 - Introduced

HOUSE RESOLUTION NO. 14

BY GUSTAFSON, LANDON, MAXWELL, PRICHARD, and THOMPSON

1 A Resolution recognizing the centennial of the
2 six-month formation period of the American Legion in
3 Iowa.

4 WHEREAS, the formation of the American Legion is
5 traditionally regarded as beginning with the Paris
6 caucus held in Paris, France, on March 15-17, 1919,
7 where Iowa was represented by two individuals, Sergeant
8 Thomas Rowe of the 42nd Infantry Division and Wagoner
9 Dale Shaw of the 88th Infantry Division; and

10 WHEREAS, in May 1919, two Iowans, Sergeant Charles
11 A. Doxsee of Monticello and Major H. H. Polk of Des
12 Moines represented Iowa on the planning committee for
13 the St. Louis caucus held in St. Louis, Missouri, on
14 May 8-10, 1919, where a delegation of 38 Iowans were
15 present; and

16 WHEREAS, the creation of the American Legion in
17 Iowa began with the appointment of John MacVicar as
18 temporary adjutant and the chartering of local posts
19 beginning on May 28, 1919; and

20 WHEREAS, the first Department Convention of the
21 American Legion in Iowa was held at the Hotel Fort
22 Des Moines, in Des Moines, Iowa, on September 4-5,
23 1919; and

24 WHEREAS, the United States Congress authorized the
25 issuance of a federal charter to the American Legion
26 on September 16, 1919; and

27 WHEREAS, the six-month period from March 15, 1919,
28 through September 16, 1919, can be described as the

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1 formation period of the American Legion in Iowa; and
2 WHEREAS, the centennial of the commencement of
3 that six-month formation period will begin in March
4 2019; NOW THEREFORE,

5 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES, That
6 the House of Representatives hereby recognizes the
7 centennial of the six-month formation period of the
8 American Legion in Iowa; and

9 BE IT FURTHER RESOLVED, That copies of this
10 Resolution be transmitted to Iowa Governor Kim Reynolds
11 for appropriate proclamation and execution and to
12 Iowa Secretary of State Paul Pate for appropriate
13 publication and preservation.

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House Resolution 15 - Introduced

HOUSE RESOLUTION NO. 15

BY SALMON, GUSTAFSON, KURTH, M. SMITH, BROWN-POWERS,
KACENA, OURTH, BRECKENRIDGE, LUNDGREN, SORENSEN,
THOMPSON, HITE, BENNETT, JENEARY, GAINES, A. MEYER,
McCONKEY, and JACOBSEN

1 A Resolution designating the twenty-seventh day of June
2 as Post-Traumatic Stress Injury Awareness Day and
3 the month of June as Post-Traumatic Stress Injury
4 Awareness Month.

5 WHEREAS, all citizens of the United States possess
6 the basic human right to life, liberty, and the pursuit
7 of happiness; and

8 WHEREAS, the right to life, liberty, and the pursuit
9 of happiness includes the opportunity for citizens to
10 enjoy physical, mental, and emotional well-being; and

11 WHEREAS, the diagnosis known as post-traumatic
12 stress disorder was first defined by the American
13 Psychiatric Association in 1980 to more accurately
14 understand and treat veterans who had endured severe
15 operational combat stress; and

16 WHEREAS, invisible wounds have historically been
17 unjustly portrayed as a mental illness caused by a
18 preexisting flaw of character or ability, and the word
19 "disorder" carries a stigma that perpetuates this
20 misconception which can discourage the injured from
21 seeking proper and timely medical treatment; and

22 WHEREAS, continuing to refer to invisible wounds as
23 a disorder perpetuates the stigma of and bias against
24 mental illness; and

25 WHEREAS, it has been shown through electro-magnetic

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1 imaging that the invisible wound is more accurately
2 described as an injury to the brain which can develop
3 into a disorder; and

4 WHEREAS, severe post-traumatic stress injury is a
5 disabling wound to the brain which can occur following
6 exposure to extremely traumatic events such as, but
7 not exclusive to, interpersonal violence, combat,
8 life-threatening accidents, or natural disasters; and

9 WHEREAS, referring to the condition as
10 post-traumatic stress injury is less stigmatizing
11 and viewed as more honorable, and this designation
12 can favorably influence those affected and encourage
13 them to seek treatment without fear of retribution or
14 shame; and

15 WHEREAS, all citizens suffering post-traumatic
16 stress injuries deserve our compassion and
17 consideration and those brave men and women of the
18 United States Armed Forces who have received these
19 wounds in operational action against an enemy of the
20 United States further deserve our special tribute and
21 acknowledgment; and

22 WHEREAS, post-traumatic stress injury is a disabling
23 yet reversible wound that is treatable, and timely
24 treatment can diminish complications and prevent
25 suicides among the injured; NOW THEREFORE,

26 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES,
27 That the Iowa House of Representatives designates the
28 twenty-seventh day of June each year as Post-Traumatic
29 Stress Injury Awareness Day; and

30 BE IT FURTHER RESOLVED, That the Iowa House of

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H.R. 15

1 Representatives designates the month of June as
2 Post-Traumatic Stress Injury Awareness Month; and
3 BE IT FURTHER RESOLVED, That the Iowa House of
4 Representatives urges the Iowa Department of Public
5 Health and the Department of Veterans Affairs to
6 continue working to educate victims of interpersonal
7 violence, combat, life-threatening accidents, or
8 natural disasters and their families, as well as
9 the general public, about the causes, symptoms, and
10 treatment of post-traumatic stress injuries; and
11 BE IT FURTHER RESOLVED, That copies of this
12 Resolution be transmitted to Iowa Governor Kim Reynolds
13 for appropriate proclamation and execution and to
14 Iowa Secretary of State Paul Pate for appropriate
15 publication and preservation.

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House Resolution 16 - Introduced

HOUSE RESOLUTION NO. 16

BY KERR

1 A Resolution congratulating Iowa Public Television on
2 the auspicious occasion of the statewide educational
3 network's 50th anniversary.

4 WHEREAS, Governor Robert D. Ray signed into law
5 in 1969 legislation appropriating moneys for the
6 construction, equipping, administration, and operation
7 of the state's educational television network; and

8 WHEREAS, today Iowa Public Television is an Emmy
9 award-winning television network serving 2 million
10 viewers each month with four unique programming
11 channels, a 24 hours, seven days a week IPTV KIDS
12 livestream, and 36 million minutes viewed on IPTV's
13 YouTube channels last year alone; and

14 WHEREAS, Iowa Public Television's educational
15 services and programs spark curiosity and create a
16 love of learning and interest in science, technology,
17 engineering, arts, and math (STEAM) fields in
18 hundreds of thousands of Iowa children, provide Iowa's
19 caregivers, teachers, and educators with free resources
20 and professional development, and nurture STEAM and
21 future-ready skills in our next generation; and

22 WHEREAS, Iowa Public Television brings coverage of
23 Iowa's talented students including girls' high school
24 athletic and dance championships, the All-State Music
25 Festival, the Terrace Hill Piano Competition, and more,
26 free to all Iowans and the world via broadcast and
27 livestreams each year; and

28 WHEREAS, Iowa Public Television's Iowa Press has set

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1 the standard for public affairs programming in Iowa
2 since 1971, and its Market to Market, first broadcast
3 in 1975, is the longest-running program of its kind,
4 airing in 24 markets across 10 states; and

5 WHEREAS, Iowa Public Television is a true public and
6 private partnership supported through state and federal
7 dollars, grants, gifts, underwriting, and the support
8 of more than 60,000 households through the Friends of
9 IPTV Foundation; and

10 WHEREAS, Iowa Public Television remains a beacon
11 of thought-provoking media and Iowa's only statewide
12 television network; NOW THEREFORE,

13 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES, That
14 the House of Representatives commends and congratulates
15 Iowa Public Television on the past 50 years of telling
16 Iowa's stories while building and utilizing the latest
17 technology to expand public access for an even brighter
18 future.

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Senate File 237

S-3020

1 Amend Senate File 237 as follows:

2 1. Page 2, after line 1 by inserting:

3 <Sec. _____. NEW SECTION. 46.1A Appointment of state judicial
4 nominating commissioner by supreme court.

5 1. The supreme court, by majority vote, shall appoint one
6 eligible elector to the state judicial nominating commission.

7 2. The appointment made by the supreme court shall be for a
8 term of six years and shall be made in the month of January for
9 a term commencing February 1.

10 3. The commissioner shall be chosen without reference to
11 political affiliation.

12 4. The supreme court shall give due consideration to area
13 representation on the commission when making an appointment.

14 5. A person appointed to replace a commissioner in the
15 middle of a term must be of the same gender as the commissioner
16 being replaced. A person appointed to replace a commissioner
17 upon the end of a term shall be of a different gender than the
18 commissioner being replaced.

19 6. A commissioner who has served a full six-year term on the
20 state judicial nominating commission, whether the commissioner
21 was appointed or elected, shall be ineligible to be appointed
22 to a second six-year term.

23 7. No person may be appointed who holds an office of
24 profit of the United States or of the state at the time of
25 appointment.>

26 2. Page 4, after line 10, by inserting:

27 <5. The supreme court shall appoint one commissioner of any
28 gender with an initial term expiring on January 31, 2021.>

29 3. Page 4, line 11, by striking <5.> and inserting <5. 6.>

30 4. Page 5, line 6, by striking <7. 6.> and inserting <7.>

31 5. Page 5, line 7, after <members> by inserting <new>

32 6. Page 5, line 9, after <terms> by inserting <, by the
33 supreme court as provided in section 46.1A,>

34 7. Page 5, line 11, by striking <7.> and inserting <8.>

35 8. Page 5, by striking line 13 and inserting <the governor

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1 prior to the effective date of this Act, any scheduled meeting
2 of the commission shall be postponed until the newly appointed
3 commission holds its first organizational meeting properly
4 noticed under section 46.13. The>

5 9. Page 5, line 24, by striking <five four> and inserting
6 <five>

7 10. Page 5, line 31, by striking <a ~~simple majority~~ half>
8 and inserting <a simple majority>

9 11. Page 6, line 4, by striking <~~or elected~~> and inserting
10 <or elected>

11 12. By striking page 6, line 12, through page 7, line 13,
12 and inserting:

13 <Sec. _____. **NEW SECTION. 46.3A Appointment of district**
14 **judicial nominating commissioner by supreme court.**

15 1. The supreme court, by majority vote, shall appoint one
16 eligible elector of each judicial election district to the
17 district judicial nominating commission.

18 2. The appointments made by the supreme court shall be for
19 terms of six years and shall be made in the month of January for
20 terms commencing February 1 of odd-numbered years.

21 3. The commissioners shall be chosen without reference to
22 political affiliation.

23 4. The supreme court shall give due consideration to area
24 representation on the commission when making an appointment.

25 5. A person appointed to replace a commissioner in the
26 middle of a term must be of the same gender as the commissioner
27 being replaced. A person appointed to replace a commissioner
28 upon the end of a term shall be of a different gender than the
29 commissioner being replaced.

30 6. A commissioner who has served a full six-year term
31 on the district judicial nominating commission, whether the
32 commissioner was appointed or elected, shall be ineligible to
33 be appointed to a second six-year term.

34 7. No person may be appointed who holds an office of
35 profit of the United States or of the state at the time of

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1 appointment.

2 Sec. _____. Section 46.4, Code 2019, is amended by adding the
3 following new subsections:

4 NEW SUBSECTION. 3. A commissioner who has served a full
5 six-year term on the district judicial nominating commission,
6 whether the commissioner was appointed or elected, shall be
7 ineligible to be elected to a second six-year term.

8 NEW SUBSECTION. 4. No person may be elected who holds an
9 office of profit of the United States or of the state at the
10 time of appointment.>

11 13. By striking page 7, line 16, through page 9, line 11,
12 and inserting:

13 <1. The initial term of the commissioners appointed by the
14 supreme court shall be as follows:

15 a. In judicial election districts 1A, 2A, 3A, 5A, 5C, 8A,
16 and the seventh judicial district, the supreme court shall
17 appoint one male commissioner with a term expiring on January
18 31, 2021.

19 b. In judicial election district 1B, 2B, 3B, 5B, 8B, and the
20 fourth and sixth judicial districts, the supreme court shall
21 appoint one female commissioner with a term expiring on January
22 31, 2025.

23 2. After the initial term is served pursuant to subsection
24 1, new commissioners shall be appointed to six-year terms by
25 the supreme court as provided in section 46.3A.

26 3. If a district judicial nominating commission has
27 received notice of a vacancy and has not yet submitted nominees
28 to the governor prior to the effective date of this Act, any
29 scheduled meeting of the commission shall be postponed until
30 any new commissioner is appointed pursuant to this section and
31 the commission holds a new organizational meeting properly
32 noticed under section 46.13. The commission may choose to
33 continue with its currently scheduled nomination process,
34 extend its nomination process, or conduct a new nomination
35 process. In any such pending vacancy, notwithstanding section

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1 46.14, subsection 1, the commission must certify to the
2 governor and the chief justice the proper number of nominees
3 within sixty days of the effective date of this Act.>

4 14. By striking page 9, line 15, through page 11, line 3,
5 and inserting:

6 <1. When a vacancy occurs in the office of an appointive
7 judicial nominating commissioner, the chairperson of
8 the particular commission or the governor shall promptly
9 notify the governor appointing authority in writing of such
10 fact. Vacancies in the office of an appointive judicial
11 nominating commissioner shall be filled by appointment by
12 the governor same appointing authority that appointed the
13 previous commissioner where the vacancy occurred, consistent
14 with eligibility requirements. ~~The term of state judicial~~
15 ~~nominating commissioners so appointed shall commence upon~~
16 ~~their appointment pending confirmation by the senate at the~~
17 ~~then session of the general assembly or at its next session~~
18 ~~if it is not then in session.~~ The term of district judicial
19 nominating commissioners so appointed shall commence upon their
20 appointment.

21 2. ~~Except where the term has less than ninety days~~
22 ~~remaining, vacancies in the office of elective member of the~~
23 ~~state judicial nominating commission shall be filled consistent~~
24 ~~with eligibility requirements by a special election within the~~
25 ~~congressional district where the vacancy occurs, such election~~
26 ~~to be conducted as provided in sections 46.9 and 46.10. An~~
27 appointive commissioner shall be deemed to have submitted a
28 resignation if the commissioner fails to attend a meeting of
29 the commission that is properly noticed under section 46.13
30 and at which the commission conducts interviews or selects
31 nominees for judicial office. The appointing authority of
32 the commissioner in the appointing authority's discretion may
33 accept or reject the resignation. If the appointing authority
34 accepts the resignation, the appointing authority shall notify
35 the commissioner and the chairperson of the commission in

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1 writing and shall then make another appointment.

2 3. Vacancies in the office of elective district judicial
3 nominating commissioner ~~of district judicial nominating~~
4 ~~commissions~~ shall be filled consistent with eligibility
5 requirements ~~and by majority vote of the authorized number of~~
6 ~~elective members of the particular commission, at a meeting of~~
7 ~~such members called in the manner provided in section 46.13.~~
8 ~~The term of judicial nominating commissioners so chosen shall~~
9 ~~commence upon their selection by a special election within the~~
10 ~~judicial election district where the vacancy occurs unless the~~
11 ~~term has less than ninety days remaining, in which case the~~
12 ~~office shall remain vacant. The special election shall be~~
13 ~~completed within ninety days of the vacancy arising and shall~~
14 ~~be conducted as provided in sections 46.9, 46.9A, and 46.10.~~

15 4. If a vacancy occurs in the office of chairperson of
16 a judicial nominating commission, ~~or in the members of the~~
17 ~~particular commission shall elect a new chairperson as provided~~
18 ~~in section 46.6. In the absence of the chairperson, the~~
19 ~~members of the particular commission shall elect a temporary~~
20 ~~chairperson from their own number.~~

21 5. ~~When a vacancy in an office of an elective judicial~~
22 ~~nominating commissioner occurs, the state court administrator~~
23 ~~shall cause to be mailed to each member of the bar whose name~~
24 ~~appears on the certified list prepared pursuant to section 46.8~~
25 ~~for the district or districts affected, a notice stating the~~
26 ~~existence of the vacancy, the requirements for eligibility,~~
27 ~~and the manner in which the vacancy will be filled. Other~~
28 ~~items may be included in the same mailing if they are on sheets~~
29 ~~separate from the notice. The election of a district judicial~~
30 ~~nominating commissioner or the close of nominations for a state~~
31 ~~judicial nominating commissioner shall not occur until thirty~~
32 ~~days after the mailing of the notice. Notwithstanding section~~
33 ~~69.1A, appointed and elected commissioners on the state and~~
34 ~~district judicial nominating commissions shall not hold over~~
35 ~~until their successor is elected and qualified.>~~

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1 15. Page 11, by striking lines 11 through 20 and inserting
2 ~~<nominating commission> The commissioners of a particular~~
3 ~~judicial nominating commission shall elect a chairperson from~~
4 ~~their own number. The chairperson shall serve a two-year~~
5 ~~term that expires on January 31 of odd-numbered years. A~~
6 ~~commissioner may be reelected for a second or third term~~
7 ~~as chairperson. If a chairperson of a judicial nominating~~
8 ~~commission desires to be relieved of the duties of chairperson~~
9 ~~while retaining the status of commissioner, the chairperson~~
10 ~~shall notify the governor and the other commissioners of~~
11 ~~the commission. At the next meeting of the commission, the~~
12 ~~commissioners shall elect a new chairperson for the remainder~~
13 ~~of the two-year term.~~

14 Sec. _____. Section 46.7, Code 2019, is amended to read as
15 follows:

16 **46.7 Eligibility to vote.**

17 To be eligible to vote in elections of district judicial
18 nominating commissioners, a member of the bar must be eligible
19 to practice and must be a resident of the state of Iowa and of
20 the appropriate ~~congressional district or~~ judicial election
21 ~~district as shown by the member's most recent filing with the~~
22 ~~supreme court for the purposes of showing compliance with~~
23 ~~the court's continuing legal education requirements, or for~~
24 ~~members of the bar eligible to practice who are not required~~
25 ~~to file such compliance, any paper on file by July 1 with the~~
26 ~~state court administrator, for the purpose of establishing~~
27 ~~eligibility to vote under this section, which the court~~
28 ~~determines to show the requisite residency requirements at the~~
29 ~~time the member votes in the election. The member's residency~~
30 ~~shall be determined by the home address shown on the member's~~
31 ~~most recent electronic or paper submission to the commission~~
32 ~~on continuing education and the client security commission or~~
33 ~~on the member's bar admission records. A judge who has been~~
34 ~~admitted to the bar of the state of Iowa shall be considered a~~
35 ~~member of the bar.~~

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1 Sec. _____. Section 46.8, Code 2019, is amended to read as
2 follows:

3 **46.8 Certified list.**

4 ~~Each year the~~ The state court administrator shall ~~certify a~~
5 maintain a certified list of the names, addresses, and years
6 of admission of members of the bar who are eligible to vote for
7 ~~state and~~ district judicial nominating commissioners.

8 Sec. _____. Section 46.9, Code 2019, is amended to read as
9 follows:

10 **46.9 Conduct of elections.**

11 When an election of judicial nominating commissioners is
12 to be held, the state court administrator shall administer
13 the voting. The state court administrator may administer
14 the voting by electronic notification and voting or by paper
15 ballot mailed to each eligible attorney. The state court
16 administrator shall mail paper ballots to eligible attorneys or
17 electronically notify and enable eligible attorneys to vote.
18 The elector receiving the most votes shall be elected. When
19 more than one commissioner is to be elected, the electors
20 receiving the most votes shall be elected, in the same number
21 as the offices to be filled. The election results, including
22 the number of votes cast for each elector and the total number
23 of members of the bar eligible to vote in each election, shall
24 be made publicly available on the judicial branch internet
25 site and shall be reported to the governor and to the general
26 assembly within ten days after the conclusion of the election.

27 Sec. _____. Section 46.9A, Code 2019, is amended to read as
28 follows:

29 **46.9A Notice preceding nomination of elective district**
30 **judicial nominating commissioners.**

31 At least sixty days prior to the expiration of the term of an
32 elective ~~state or~~ district judicial nominating commissioner or
33 the expiration of the period within which a special election
34 must be held, the state court administrator shall ~~mail paper~~
35 ~~ballots to eligible attorneys or electronically notify and~~

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1 ~~enable eligible attorneys to vote. An eligible attorney is~~
2 ~~a member of the bar whose name appears on the certified list~~
3 ~~prepared pursuant to section 46.8 for the district or districts~~
4 ~~affected provide notice of the current or upcoming vacancy~~
5 ~~and the nomination and election process by making the notice~~
6 ~~publicly available on the judicial branch internet site,~~
7 ~~issuing a press release, and electronically notifying members~~
8 ~~of the bar. The election shall not commence until at least~~
9 ~~thirty days after the issuance of the notice required by this~~
10 ~~section.~~

11 Sec. _____. Section 46.10, Code 2019, is amended to read as
12 follows:

13 **46.10 Nomination of elective district judicial nominating**
14 **commissioners.**

15 1. In order to have an eligible elector's name printed
16 on the ballot for ~~state or~~ district judicial nominating
17 commissioner, the eligible elector must file in the office of
18 the state court administrator at least thirty days prior to
19 expiration of the period within which the election must be
20 held a nominating petition signed by ~~at least fifty resident~~
21 ~~members of the bar of the congressional district in case of a~~
22 ~~candidate for state judicial nominating commissioner, or at~~
23 ~~least ten resident members of the bar~~ eligible electors of the
24 ~~judicial district in case of a candidate for district judicial~~
25 ~~nominating commissioner. No member of the bar may sign more~~
26 ~~nominating petitions for state or district judicial nominating~~
27 ~~commissioner than there are such commissioners to be elected.~~

28 2. Ballots or electronic voting forms for state and district
29 judicial nominating commissioners shall contain blank lines
30 equal to the number of such commissioners to be elected, where
31 names may be written in. Any electronic voting form must
32 permit a voter to write in the name of any eligible elector.>

33 16. Page 11, line 25, after ~~<respectively>~~ by inserting <
34 the supreme court,>

35 17. Page 11, lines 28 and 29, by striking ~~<chairperson~~

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1 of the respective nominating commissions.> and inserting
2 ~~<chairperson of the respective nominating commissions~~
3 governor. Upon the completion of an election, the state
4 court administrator shall certify the names and addresses of
5 the elected judicial nominating commissioners to the state
6 commissioner of elections and the governor.>

7 18. By striking page 11, line 35, through page 12, line
8 4, and inserting <forthwith so notify the ~~chairperson of~~
9 ~~the proper judicial nominating commission~~ governor. The
10 ~~chairperson~~ governor shall call a meeting of the proper
11 judicial nominating commission within ten days after such
12 notice; if the ~~chairperson~~ governor fails to do so, the chief
13 justice shall call such meeting.>

14 19. Page 12, line 8, before <chairperson> by inserting
15 <governor or>

16 20. Page 12, after line 30 by inserting:

17 <4. The state judicial nominating commission shall adopt
18 uniform rules for the state and district judicial nominating
19 commissions that shall be consistent with this chapter
20 and shall provide for a uniform and fair process for the
21 commissions to consider applicants and select nominees. The
22 state judicial nominating commission shall provide for a public
23 comment period of at least thirty days on its proposed uniform
24 rules prior to adopting the rules and shall adopt the rules
25 within six months of the effective date of this Act. Such
26 rules shall be made publicly available on the judicial branch
27 internet site.>

28 21. Page 13, line 13, after ~~<commission>~~ by inserting
29 <Nominees to the district court must reside in the judicial
30 election district to which they are nominated or in another
31 judicial election district in the same judicial district as the
32 judicial election district to which they are nominated.>

33 22. Page 14, after line 3 by inserting:

34 <Sec. ____. **NEW SECTION. 46.15A Severability and judicial**
35 **review.**

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1 1. If any provision or clause of this chapter or any
2 application of this chapter to any person or circumstances
3 is held invalid, such invalidity shall not affect other
4 provisions, clauses, or applications of this chapter which can
5 be given effect without the invalid provision or application,
6 and to this end the provisions and clauses of this chapter are
7 declared to be severable.

8 2. Notwithstanding any provision of law to the contrary, if
9 section 46.2A, subsection 2, as amended by this Act, is held
10 invalid, the appointed and elected commissioners currently
11 serving six-year terms on the state judicial nominating
12 commission on the effective date of this Act shall continue to
13 serve until the expiration of their six-year terms, in addition
14 to the new members appointed pursuant to section 46.2A, as
15 amended by this Act. Upon the expiration of the currently
16 serving commissioners or upon their office becoming vacant
17 prior to the expiration of their terms, the offices shall not
18 be filled.

19 3. Notwithstanding any provision of law to the contrary,
20 if any provision of this chapter is preliminarily enjoined,
21 no judicial nominating commission shall meet to nominate
22 persons to serve as a judge or justice while the preliminary
23 injunction is in effect or while any appeal of the preliminary
24 injunction or a related permanent injunction is pending unless
25 the injunction is subsequently stayed or otherwise lifted.>

26 23. Page 14, by striking lines 4 through 26 and inserting:

27 <Sec. _____. REPEAL. Section 602.11111, Code 2019, is
28 repealed.>

29 24. Page 15, lines 3 and 4, by striking <proper judicial
30 nominating commission> and inserting <governor>

31 25. Page 15, line 13, by striking <chairperson of the
32 district judicial nominating commission> and inserting
33 <governor>

34 26. Page 15, line 22, by striking <chairperson of the
35 district judicial nominating commission> and inserting

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1 <governor>

2 27. Page 17, lines 34 and 35, by striking <chairperson
3 of the proper district judicial nominating commission. The
4 chairperson> and inserting <governor. The governor>

5 28. Page 18, by striking line 2 and inserting <governor
6 fails to do so, the chief justice shall call such>

7 29. Page 18, line 15, after <commission-> by inserting
8 <Nominees to the office of district associate judge must reside
9 in the judicial election district to which they are nominated
10 or in another judicial election district in the same judicial
11 district as the judicial election district to which they are
12 nominated.>

13 30. Page 21, lines 10 and 11, by striking <chairperson
14 of the proper district judicial nominating commission. The
15 chairperson> and inserting <governor. The governor>

16 31. Page 21, by striking line 13 and inserting <the governor
17 fails to do so, the chief justice shall call such>

18 32. Page 21, line 26, after <commission-> by inserting
19 <Nominees to the office of full-time associate juvenile judge
20 must reside in the judicial election district to which they are
21 nominated or in another judicial election district in the same
22 judicial district as the judicial election district to which
23 they are nominated.>

24 33. Page 24, lines 6 and 7, by striking <chairperson of
25 the proper district judicial nominating commission. The
26 chairperson> and inserting <governor. The governor>

27 34. Page 24, by striking line 9 and inserting <the governor
28 fails to do so, the chief justice shall call such>

29 35. Page 24, line 22, after <commission-> by inserting
30 <Nominees to the office of full-time associate probate judge
31 must reside in the judicial election district to which they are
32 nominated or in another judicial election district in the same
33 judicial district as the judicial election district to which
34 they are nominated.>

35 36. By renumbering, redesignating, and correcting internal

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1 references as necessary.

DAN DAWSON

Iowa General Assembly
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Senate File 533

S-3021

1 Amend Senate File 533 as follows:

2 1. Page 1, by striking lines 1 through 4 and inserting:

3 <Section 1. Section 123.3, Code 2019, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 24A. "*Institutional investor*" means a
6 person who maintains a>

7 2. Page 2, line 1, by striking <manufacturer> and inserting
8 <person>

9 3. Page 3, line 14, after <premises> by inserting <to a
10 licensee or permittee authorized under this chapter to sell
11 beer at retail>

12 4. By renumbering as necessary.

JAKE CHAPMAN

Iowa General Assembly
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Senate File 346

S-3022

1 Amend Senate File 346 as follows:

2 1. Page 1, by striking line 5 and inserting <commits an
3 aggravated misdemeanor.>

4 2. Page 1, line 20, after <minor> by inserting <within or>

5 3. Page 1, by striking line 23 and inserting <state, commits
6 an aggravated misdemeanor.>

AMY SINCLAIR

Iowa General Assembly
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Senate File 346

S-3023

- 1 Amend the amendment, S-3022, to Senate File 346 as follows:
- 2 1. Page 1, by striking lines 2 and 3.
- 3 2. Page 1, by striking lines 5 and 6.

JAKE CHAPMAN

Iowa General Assembly
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Senate File 346

S-3024

1 Amend Senate File 346 as follows:

2 1. Page 1, after line 23 by inserting:

3 <Sec. _____. EDUCATION CAMPAIGN — HEALTH RISKS AND
4 PROHIBITION — FEMALE GENITAL MUTILATION. The department
5 of public health and the department of human rights shall
6 collaboratively initiate an education campaign to increase
7 awareness regarding the health risks of, the prohibitions
8 against, and the criminal penalties associated with female
9 genital mutilation as specified in this Act.>

JANET PETERSEN

Iowa General Assembly
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Senate File 237

S-3025

1 Amend Senate File 237 as follows:

2 1. Page 1, after line 16 by inserting:

3 <3. The appointments made by the governor shall be subject
4 to approval by the senate by a two-thirds majority.>

5 2. Page 2, after line 15 by inserting:

6 <3. The appointments made by the legislative leaders shall
7 be subject to approval by the senate by a two-thirds majority.>

8 3. By renumbering, redesignating, and correcting internal
9 references as necessary.

ROBERT M. HOGG

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Senate File 237

S-3026

- 1 Amend the amendment, S-3020, to Senate File 237 as follows:
- 2 1. Page 10, by striking lines 18 through 25 and inserting
- 3 <be filled.>>

ROBERT M. HOGG

Iowa General Assembly
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Senate File 331

S-3027

1 Amend Senate File 331 as follows:

2 1. Page 1, line 18, by striking <1.>

3 2. Page 1, by striking lines 28 through 30.

JAKE CHAPMAN

SF331.808 (2) 88

(amending this SF 331 to CONFORM to HF 426)

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ko/rn

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House File 426

S-3028

- 1 Amend House File 426, as passed by the House, as follows:
- 2 1. Page 1, line 18, before <An> by inserting <1.>
- 3 2. Page 1, after line 27 by inserting:
- 4 <2. The commissioner shall dedicate a minimum of two
- 5 insurance fraud bureau investigators to the investigation of
- 6 suspected workers' compensation fraud.>

JAKE CHAPMAN

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Senate File 593 - Introduced

SENATE FILE 593
BY SWEENEY

A BILL FOR

1 An Act relating to the exclusion from the individual income tax
2 of certain net capital gains from the sale of real property
3 used in a business, and including applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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jm/jh

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1 DIVISION I

2 CAPITAL GAINS TAXATION — MATERIAL PARTICIPATION

3 Section 1. Section 422.7, subsection 21, paragraph a, Code
4 2019, is amended by adding the following new subparagraph:

5 NEW SUBPARAGRAPH. (3) (a) For purposes of determining
6 the material participation of a taxpayer under this paragraph
7 with regard to a partnership, subchapter S corporation, limited
8 liability company, estate, or trust whose capital gain flows
9 through to the owners or beneficiaries for federal income tax
10 purposes, material participation shall be determined at the
11 owner or beneficiary level according to the activities of each
12 owner or beneficiary.

13 (b) For purposes of determining material participation of a
14 taxpayer under this paragraph with regard to the sale of real
15 property used in a business or rental arrangement by an estate
16 or trust, all beneficiaries or owners of the estate or trust
17 shall be treated as materially participating in the business or
18 rental arrangement if one or more of the executors or trustees
19 of the estate or trust are materially participating in the
20 business, or if the real property is leased to another person,
21 the executor or trustee is materially participating in the
22 lessee's business that uses the real property. The ten-year
23 period described in paragraph "a", subparagraph (1), is deemed
24 to be met by any combination of material participation by the
25 decedent or settlor or one or more executors or trustees, in
26 the aggregate, over the ten-year period.

27 Sec. 2. APPLICABILITY. This Act applies to tax years
28 beginning on or after January 1, 2020.

29 DIVISION II

30 CAPITAL GAINS TAXATION — MATERIAL PARTICIPATION — FUTURE
31 INCOME TAX CHANGES

32 Sec. 3. 2018 Iowa Acts, chapter 1161, section 113,
33 subsection 21, paragraph a, subparagraph (3), is amended to
34 read as follows:

35 (3) "*Materially participated*" or "*material participation*"

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1 means the same as ~~"material participation"~~ defined in section
2 469(h) of the Internal Revenue Code, except under the
3 following circumstances:

4 (a) For purposes of determining the material participation
5 of a taxpayer with regard to a partnership, subchapter S
6 corporation, limited liability company, estate, or trust whose
7 capital gain flows through to the owners or beneficiaries for
8 federal income tax purposes, material participation shall be
9 determined at the owner or beneficiary level according to the
10 activities of each owner or beneficiary.

11 (b) For purposes of determining material participation
12 of a taxpayer with regard to the sale of real property used
13 in a business or rental arrangement by an estate or trust,
14 all beneficiaries or owners of the estate or trust shall
15 be treated as materially participating in the business or
16 rental arrangement if one or more of the executors or trustees
17 of the estate or trust are materially participating in the
18 business, or if the real property is leased to another person,
19 the executor or trustee is materially participating in the
20 lessee's business that uses the real property. The ten-year
21 period described in paragraph "b", is deemed to be met by
22 any combination of material participation by the decedent or
23 settlor or one or more executors or trustees, in the aggregate,
24 over the ten-year period.

25 EXPLANATION

26 The inclusion of this explanation does not constitute agreement with
27 the explanation's substance by the members of the general assembly.

28 DIVISION I — CAPITAL GAINS TAXATION — MATERIAL
29 PARTICIPATION. Under current law, a taxpayer's net capital
30 gain from the sale of a business, or from the sale of real
31 property used in a business, is exempt from the individual
32 income tax if the taxpayer held the real property or the
33 business for a minimum of 10 years, and materially participated
34 in the business for 10 years. "Material participation" refers
35 to the level of involvement a taxpayer has in the operations

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1 of a business, and whether or not any particular taxpayer
2 materially participates in a business is determined under the
3 Internal Revenue Code.

4 This bill requires that for purposes of determining material
5 participation of a taxpayer for the capital gain tax exemption
6 with regard to a partnership, S corporation, limited liability,
7 estate, or trust whose capital gain flows through to the owners
8 or beneficiaries for federal income tax purposes, material
9 participation shall be determined at the owner or beneficiary
10 level according to the activities of each owner or beneficiary.

11 The bill also provides an exception to this material
12 participation requirement for the sale of real property used
13 in a business or rental arrangement which, under certain
14 circumstances, attributes the material participation of certain
15 representatives of an estate or trust to the beneficiaries or
16 owners of that estate or trust. For purposes of determining
17 material participation of a taxpayer with regard to the sale
18 of an estate's or trust's real property used in a business or
19 rental arrangement, all the beneficiaries or owners of the
20 estate or trust shall be treated as materially participating in
21 a business or rental arrangement for any year if an executor or
22 trustee of the estate or trust is materially participating in
23 the estate's or trust's business or, if the real property is
24 leased to another person, the executor or trustee is materially
25 participating in the lessee's business that uses the real
26 property. The bill also provides that the 10-year material
27 participation requirement under Code section 422.7(21)(a)(1)
28 can be satisfied by any combination of years of material
29 participation attributable to decedent, settlor, or one or more
30 executors or trustees, aggregated over the 10 years preceding
31 the sale.

32 Division I applies to tax years beginning on or after January
33 1, 2020.

34 DIVISION II — CAPITAL GAINS TAXATION — MATERIAL
35 PARTICIPATION — FUTURE INCOME TAX CHANGES. The bill amends

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1 2018 Iowa Acts, chapter 1161, section 113, to align future
2 income tax changes with the changes in Division I of the bill.
3 By operation of law, the changes in Division II will begin
4 in tax year 2023 or in a later tax year, contingent upon the
5 satisfaction of certain net general fund revenue amount and
6 growth targets.

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Senate File 594 - Introduced

SENATE FILE 594
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1136)

(COMPANION TO LSB 1258HV BY
COMMITTEE ON JUDICIARY)

A BILL FOR

1 An Act relating to postconviction DNA profiling procedure.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 81.1, Code 2019, is amended to read as
2 follows:

3 **81.1 Definitions.**

4 As used in [this chapter](#), unless the context otherwise
5 requires:

6 1. "*Aggravated misdemeanor*" means an offense classified as
7 an aggravated misdemeanor committed by a person eighteen years
8 of age or older on or after July 1, 2014, other than any of the
9 following offenses:

10 a. A violation of [chapter 321](#).

11 b. A second offense violation of [section 321J.2](#), unless
12 the person has more than one previous revocation as determined
13 pursuant to [section 321J.2](#), subsection 8, within the
14 twelve-year period immediately preceding the commission of the
15 offense in question.

16 c. A violation of [chapter 716B](#).

17 d. A violation of [chapter 717A](#).

18 e. A violation of [section 725.7](#).

19 2. "*DNA*" means deoxyribonucleic acid.

20 3. "*DNA data bank*" means the repository for DNA samples
21 obtained pursuant to [section 81.4](#).

22 4. "*DNA database*" means the collection of DNA profiles and
23 DNA records.

24 5. "*DNA profile*" means the objective form of the results of
25 DNA analysis performed on a forensic sample or an individual's
26 DNA sample. The results of all DNA identification analysis on
27 an individual's DNA sample are also collectively referred to
28 as the DNA profile of an individual. "DNA profile" also means
29 the objective form of the results of DNA analysis performed on
30 a forensic sample.

31 6. "*DNA profiling*" means the procedure ~~established by~~
32 ~~the division of criminal investigation, department of public~~
33 ~~safety,~~ for determining a person's genetic identity or for
34 testing a forensic sample, including analysis that might not
35 result in the establishment of a complete DNA profile.

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1 7. *"DNA record"* means the DNA sample and DNA profile, and
2 other records in the DNA database and DNA data bank used to
3 identify a person.

4 8. *"DNA sample"* means a biological sample provided by
5 any person required to submit a DNA sample or a DNA sample
6 submitted for any other purpose under [section 81.4](#).

7 9. *"Forensic sample"* means an evidentiary item that
8 potentially contains DNA relevant to a crime.

9 10. *"Keyboard search"* means a keyboard search as defined in
10 the national DNA index system operational procedures manual.

11 11. *"National DNA index system"* means a national, searchable
12 DNA database created and maintained by the federal bureau of
13 investigation where DNA profiles are stored and searched at a
14 local, state, or national level.

15 9. 12. *"Person required to submit a DNA sample"* means a
16 person convicted, adjudicated delinquent, receiving a deferred
17 judgment, or found not guilty by reason of insanity of an
18 offense requiring DNA profiling pursuant to [section 81.2](#).
19 *"Person required to submit a DNA sample"* also means a person
20 determined to be a sexually violent predator pursuant to
21 section 229A.7.

22 13. *"State DNA index system"* means a state searchable DNA
23 database created and maintained by the department of public
24 safety where DNA profiles are stored and searched at the state
25 level.

26 Sec. 2. Section 81.10, Code 2019, is amended to read as
27 follows:

28 81.10 Application requirements for DNA profiling after
29 conviction.

30 1. A defendant who has been convicted of a felony or
31 aggravated misdemeanor ~~and who has not been required to submit~~
32 ~~a DNA sample for DNA profiling~~ may make a motion an application
33 to the court for an order to require that DNA analysis
34 profiling be performed on evidence a forensic sample collected
35 in the case for which the person stands convicted.

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1 2. The ~~motion~~ application shall state the following:

2 a. The specific crimes for which the defendant stands
3 convicted in this case.

4 b. The facts of the underlying case, as proven at trial or
5 admitted to during a guilty plea proceeding.

6 c. Whether any of the charges include sexual abuse or
7 involve sexual assault, and if so, whether a sexual assault
8 examination was conducted and evidence forensic samples were
9 preserved, if known.

10 d. Whether identity was at issue or contested by the
11 defendant.

12 e. Whether the defendant offered an alibi, and if so,
13 testimony corroborating the alibi and, from whom.

14 f. Whether eyewitness testimony was offered, and if so from
15 whom.

16 g. Whether any issues of police or prosecutor misconduct
17 have been raised in the past or are being raised by the motion.

18 h. The type of inculpatory evidence admitted into evidence
19 at trial or admitted to during a guilty plea proceeding.

20 i. Whether blood testing or other biological evidence
21 testing was conducted previously in connection with the case
22 and, if so, by whom and the result, if known.

23 j. What biological evidence exists and, if known, the agency
24 or laboratory storing the evidence forensic sample that the
25 defendant seeks to have tested.

26 k. Why the requested ~~analysis of DNA evidence~~ DNA profiling
27 of the forensic sample is material to the issue in the case and
28 not merely cumulative or impeaching.

29 l. Why the DNA evidence profiling results would have
30 changed the outcome of the trial or invalidated a guilty plea
31 if the requested DNA profiling had been conducted prior to the
32 conviction.

33 3. a. A ~~motion~~ proceeding for relief filed under this
34 section shall be filed in the county where the defendant was
35 convicted, ~~and~~. The proceeding is commenced by filing an

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1 application for relief with the district court in which the
2 conviction took place, without paying a filing fee. The notice
3 of the motion application shall be served by certified mail
4 upon the county attorney and, if known, upon the state, local
5 agency, or laboratory holding evidence described in subsection
6 2, paragraph "k". The county attorney shall have sixty days to
7 file an answer to the motion.

8 b. The application shall be heard in, and before any judge
9 or the court in which the defendant's conviction or sentence
10 took place. A record of the proceedings shall be made.

11 4. Any DNA profiling of the defendant or other biological
12 evidence testing conducted by the state or by the defendant
13 shall be disclosed and the results of such profiling or testing
14 described in the motion or answer.

15 5. If the evidence forensic sample requested to be tested
16 was previously subjected to DNA or other biological analysis
17 by either party, the court may order the disclosure of the
18 results of such testing, including laboratory reports, notes,
19 and underlying data, to the court and the parties.

20 6. The court may order a hearing on the motion to determine
21 if evidence the forensic sample should be subjected to DNA
22 analysis profiling.

23 ~~7. The court shall grant the motion if all of the following~~
24 ~~apply:~~

25 ~~a. The evidence subject to DNA testing is available and in a~~
26 ~~condition that will permit analysis.~~

27 ~~b. A sufficient chain of custody has been established for~~
28 ~~the evidence.~~

29 ~~c. The identity of the person who committed the crime for~~
30 ~~which the defendant was convicted was a significant issue in~~
31 ~~the crime for which the defendant was convicted.~~

32 ~~d. The evidence subject to DNA analysis is material to, and~~
33 ~~not merely cumulative or impeaching of, evidence included in~~
34 ~~the trial record or admitted to at a guilty plea proceeding.~~

35 ~~e. DNA analysis of the evidence would raise a reasonable~~

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1 ~~probability that the defendant would not have been convicted if~~
2 ~~DNA profiling had been available at the time of the conviction~~
3 ~~and had been conducted prior to the conviction.~~

4 8. ~~Upon the court granting a motion filed pursuant to this~~
5 ~~section, DNA analysis of evidence shall be conducted within the~~
6 ~~guidelines generally accepted by the scientific community. The~~
7 ~~defendant shall provide DNA samples for testing if requested~~
8 ~~by the state.~~

9 9. ~~Results of DNA analysis conducted pursuant to this~~
10 ~~section shall be reported to the parties and to the court~~
11 ~~and may be provided to the board of parole, department of~~
12 ~~corrections, and criminal and juvenile justice agencies,~~
13 ~~as defined in [section 692.1](#), for use in the course of~~
14 ~~investigations and prosecutions, and for consideration in~~
15 ~~connection with requests for parole, pardon, reprieve, and~~
16 ~~commutation. DNA samples obtained pursuant to this section~~
17 ~~may be included in the DNA data bank, and DNA profiles and DNA~~
18 ~~records developed pursuant to [this section](#) may be included in~~
19 ~~the DNA database.~~

20 10. ~~A criminal or juvenile justice agency, as defined in~~
21 ~~[section 692.1](#), shall maintain DNA samples and evidence that~~
22 ~~could be tested for DNA for a period of three years beyond the~~
23 ~~limitations for the commencement of criminal actions as set~~
24 ~~forth in [chapter 802](#). [This section](#) does not create a cause of~~
25 ~~action for damages or a presumption of spoliation in the event~~
26 ~~evidence is no longer available for testing.~~

27 11. ~~If the court determines a defendant who files a motion~~
28 ~~under [this section](#) is indigent, the defendant shall be entitled~~
29 ~~to appointment of counsel as provided in [chapter 815](#).~~

30 12. ~~If the court determines after DNA analysis ordered~~
31 ~~pursuant to [this section](#) that the results indicate conclusively~~
32 ~~that the DNA profile of the defendant matches the profile from~~
33 ~~the analyzed evidence used against the defendant, the court~~
34 ~~may order the defendant to pay the costs of these proceedings,~~
35 ~~including costs of all testing, court costs, and costs of~~

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1 ~~court-appointed counsel, if any.~~

2 Sec. 3. NEW SECTION. 81.11 **Application for DNA profiling.**

3 1. The court shall grant an application for DNA profiling
4 if all of the following apply:

5 a. The forensic sample subject to DNA profiling is available
6 and either DNA profiling has not been performed on the forensic
7 sample or DNA profiling has been previously performed on the
8 forensic sample and the defendant is requesting DNA profiling
9 using a new method or technology that is substantially more
10 probative than the DNA profiling previously performed.

11 b. A sufficient chain of custody has been established for
12 the forensic sample.

13 c. The identity of the person who committed the crime for
14 which the defendant was convicted was a significant issue in
15 the crime for which the defendant was convicted.

16 d. The forensic sample subject to DNA profiling is material
17 to, and not merely cumulative or impeaching of, evidence
18 included in the trial record or admitted to at a guilty plea
19 proceeding.

20 e. The DNA profiling results would raise a reasonable
21 probability that the defendant would not have been convicted if
22 such results had been introduced at trial.

23 2. Upon the court granting an application filed pursuant
24 to this section, DNA profiling of a forensic sample shall be
25 conducted within the guidelines generally accepted by the
26 scientific community if the testing type or resulting profile
27 is not eligible to be uploaded or searched in the national DNA
28 index system database. The defendant shall provide DNA samples
29 for testing if requested by the state.

30 Sec. 4. NEW SECTION. 81.12 **When DNA database comparisons**
31 **may be ordered.**

32 1. If DNA profiling ordered under section 81.11 produces
33 an unidentified DNA profile, after notice to the parties,
34 including the department of public safety, the court may order
35 the department of public safety to do any of the following:

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1 a. Compare the DNA profile to the national DNA index
2 system. The profile shall only be compared to the national DNA
3 index system if the combined DNA index system administrator
4 determines all of the following:

5 (1) The forensic sample is collected contemporaneously from
6 the crime scene, has a nexus to the crime scene, is probative,
7 and is suitable for analysis.

8 (2) The DNA profile was generated through a technology that
9 complies with all requirements in the national DNA index system
10 operational procedures manual.

11 (3) The DNA profile meets all the requirements in the
12 national DNA index system operational procedures manual for
13 either uploading the profile or conducting a keyboard search.

14 b. Compare the DNA profile to the state DNA index system if
15 the profile meets all applicable state requirements.

16 2. If any provision of a court order under this section
17 results in a violation of federal law, the federal bureau
18 of investigation's national DNA index system operational
19 procedures manual, or the memorandum of understanding between
20 the federal bureau of investigation laboratory division and
21 the Iowa division of criminal investigation criminalistics
22 laboratory for participation in the national DNA index system,
23 that portion of the order shall be considered unenforceable.
24 The remaining provisions of the order shall remain in effect.

25 Sec. 5. NEW SECTION. 81.13 **Additional DNA profiling**
26 **provisions.**

27 1. The results of DNA profiling conducted pursuant to this
28 section shall be provided to the court, the defendant, the
29 state, and the federal bureau of investigation. DNA samples
30 obtained pursuant to this section may be included in the DNA
31 data bank, and DNA profiles and DNA records developed pursuant
32 to this section may be included in the DNA database.

33 2. A criminal or juvenile justice agency, as defined in
34 section 692.1, shall maintain DNA samples and forensic samples
35 that could be tested for DNA for a period of three years beyond

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1 the limitations for the commencement of criminal actions as set
2 forth in chapter 802. This section does not create a cause of
3 action for damages or a presumption of spoliation in the event
4 a forensic sample is no longer available for testing.

5 3. If the court determines a defendant who files an
6 application under this section is indigent, the defendant shall
7 be entitled to appointment of counsel as provided in chapter
8 815.

9 4. If the court determines after DNA profiling ordered
10 pursuant to the motion filed under section 81.10 that the
11 results indicate conclusively that the DNA profile of the
12 defendant matches the profile from the analyzed evidence used
13 against the defendant, the court may order the defendant to pay
14 the costs of these proceedings, including costs of all testing,
15 court costs, and costs of court-appointed counsel, if any.

16 Sec. 6. NEW SECTION. **81.14 Compliance with applicable laws.**

17 A court shall not enter an order under this chapter that
18 would result in a violation of state or federal law or loss of
19 access to a federal system or database.

20 Sec. 7. Section 822.2, subsection 1, Code 2019, is amended
21 by adding the following new paragraph:

22 NEW PARAGRAPH. *h.* The results of DNA profiling ordered
23 pursuant to a motion filed under section 81.10 would have
24 changed the outcome of the trial or void the factual basis of
25 a guilty plea had the profiling been conducted prior to the
26 conviction.

27 Sec. 8. Section 822.3, Code 2019, is amended to read as
28 follows:

29 **822.3 How to commence proceeding — limitation.**

30 A proceeding is commenced by filing an application verified
31 by the applicant with the clerk of the district court in
32 which the conviction or sentence took place. However, if the
33 applicant is seeking relief under [section 822.2, subsection 1](#),
34 paragraph “f”, the application shall be filed with the clerk
35 of the district court of the county in which the applicant

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1 is being confined within ninety days from the date the
2 disciplinary decision is final. All other applications must
3 be filed within three years from the date the conviction or
4 decision is final or, in the event of an appeal, from the date
5 the writ of procedendo is issued. However, this limitation
6 does not apply to a ground of fact or law that could not have
7 been raised within the applicable time period. For purposes
8 of this section, a ground of fact includes the results of DNA
9 profiling ordered pursuant to a motion filed under section
10 81.10. Facts within the personal knowledge of the applicant
11 and the authenticity of all documents and exhibits included in
12 or attached to the application must be sworn to affirmatively
13 as true and correct. The supreme court may prescribe the form
14 of the application and verification. The clerk shall docket
15 the application upon its receipt and promptly bring it to
16 the attention of the court and deliver a copy to the county
17 attorney and the attorney general.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to a defendant filing an application for
22 an order to require that DNA analysis be performed on evidence
23 after conviction.

24 The bill modifies or adds numerous definitions under Code
25 chapter 81 (DNA profiling).

26 The bill defines "national DNA index system" to mean a
27 national, searchable DNA database created and maintained by the
28 federal bureau of investigation where DNA profiles are stored
29 and searched at a local, state, or national level.

30 The bill expands the definition of "DNA profile" to include
31 the objective form of the results of DNA analysis performed on
32 a forensic sample or an individual's DNA sample. Currently,
33 "DNA profile" means the objective form of the results of DNA
34 analysis performed on a DNA sample, and the results of all DNA
35 identification analysis on an individual's DNA sample are also

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1 collectively referred to as the DNA profile of an individual.

2 The bill defines "forensic sample" to mean an evidentiary
3 item that potentially contains DNA relevant to a crime.

4 The bill defines "keyboard search" to mean a keyboard
5 search as defined in the national DNA index system operational
6 procedures manual.

7 The bill defines "state DNA index system" to mean a
8 state searchable DNA database created and maintained by the
9 department of public safety where DNA profiles are stored and
10 searched at the state level.

11 The bill provides that a defendant who has been convicted of
12 a felony or an aggravated misdemeanor may make an application
13 to the court for an order to require that DNA profiling be
14 performed on a forensic sample collected in the case for which
15 the defendant stands convicted. Current law provides that such
16 a defendant who has not previously been required to submit a
17 DNA sample for DNA profiling may make such an application.

18 The bill requires the defendant's application for an order
19 to require DNA profiling be performed on a forensic sample
20 collected in the case to include a statement detailing why
21 the DNA profiling results would have changed the outcome of
22 the trial or invalidated a guilty plea if the requested DNA
23 profiling had been conducted prior to the conviction. Current
24 law requires such application to state why DNA evidence would
25 have changed the outcome of the trial or invalidated a guilty
26 plea if DNA profiling had been conducted prior to conviction.

27 The bill specifies that the defendant's application shall
28 be served upon the county attorney and upon the laboratory, if
29 known by the defendant, holding the biological evidence.

30 Subject to the confidentiality provisions of Code section
31 81.8, the bill requires that any DNA profiling of the defendant
32 or an unknown person, or other biological evidence conducted
33 by the state or by the defendant shall be disclosed and the
34 results of such profiling or other testing be described in
35 the motion or answer. Current law requires DNA profiling,

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1 not DNA testing results, to be disclosed and does not require
2 disclosure when the DNA profiling results in the DNA profile of
3 an unknown person.

4 The bill specifies that the court shall grant the
5 defendant's application for an order to require that DNA
6 profiling be performed on a forensic sample collected in the
7 case for which the person stands convicted when either DNA
8 profiling has not been performed on the forensic sample or when
9 DNA profiling has been previously performed on the forensic
10 sample and the defendant is requesting DNA profiling using a
11 new method or technology that is substantially more probative
12 than the DNA profiling previously performed.

13 Additionally, the bill specifies that the defendant's
14 application shall be granted if a sufficient chain of custody
15 has been established for the forensic sample; the identity of
16 the person who committed the crime for which the defendant
17 was convicted was a significant issue in the crime for which
18 the defendant was convicted; the forensic sample is material
19 to evidence included in the trial record or admitted to at a
20 guilty plea proceeding; and the DNA profiling results would
21 raise a reasonable probability that the defendant would not
22 have been convicted if such results had been introduced at
23 trial.

24 Upon the court granting a defendant's application under the
25 bill, DNA profiling of a forensic sample shall be conducted
26 within the guidelines generally accepted by the scientific
27 community if the testing type or resulting profile is not
28 eligible to be uploaded or searched in the national DNA index
29 system database. If court-ordered DNA profiling produces an
30 unidentified DNA profile, after notice to the parties, the
31 court may order the department of public safety to either: (1)
32 compare the DNA profile to the national DNA index system if the
33 combined DNA index system administrator determines that the
34 forensic sample is collected contemporaneously from the crime
35 scene, has a nexus to the crime scene, is probative, and is

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1 suitable for analysis; the DNA profile was generated through a
2 technology that complies with all requirements in the national
3 DNA index system operational procedures manual; and the DNA
4 profile meets all the requirements in the national DNA index
5 system operational procedures manual for either uploading the
6 profile or conducting a keyboard search or (2) compare the DNA
7 profile to the state DNA index system if the profile meets all
8 applicable state requirements.

9 The bill provides that if any provision of the court order
10 results in a violation of federal law, the federal bureau
11 of investigation's national DNA index system operational
12 procedures manual, or the memorandum of understanding between
13 the federal bureau of investigation laboratory division and
14 the Iowa division of criminal investigation criminalistics
15 laboratory for participation in the national DNA index system,
16 that portion of the order shall be considered unenforceable.

17 The bill provides that the results of DNA profiling shall
18 be provided to the court, the defendant, the state, and
19 the federal bureau of investigation. DNA samples obtained
20 pursuant to the bill may be included in the DNA data bank,
21 and DNA profiles and DNA records may be included in the
22 DNA database. A criminal or juvenile justice agency shall
23 maintain DNA samples and forensic samples that could be tested
24 for DNA for a period of three years beyond the limitations
25 for the commencement of criminal actions under Code chapter
26 802. Failure to maintain DNA samples and forensic samples as
27 specified in the bill does not create a cause of action for
28 damages or a presumption of spoliation in the event a forensic
29 sample is no longer available for testing.

30 If the court determines a defendant who files an application
31 under the bill is indigent, the defendant shall be entitled to
32 appointment of counsel as provided in Code chapter 815.

33 If the court determines after DNA profiling was ordered that
34 the results indicate conclusively that the DNA profile of the
35 defendant matches the profile from the analyzed evidence used

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1 against the defendant, the court may order the defendant to pay
2 the costs of the proceedings as specified in the bill.

3 The bill provides that a court shall not enter an order under
4 Code chapter 81 that would result in a violation of state or
5 federal law or loss of access to a federal system or database.

6 The bill provides that a finding that the results of DNA
7 profiling ordered would have changed the outcome of the trial
8 or would void the factual basis of a guilty plea had the
9 profiling been conducted prior to the conviction can form the
10 basis for a postconviction proceeding, and such results are
11 considered a ground of fact which could not have been raised
12 within the applicable time period for bringing a postconviction
13 relief proceeding.

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Senate File 595 - Introduced

SENATE FILE 595
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1223)

(COMPANION TO HF 665 BY
COMMITTEE ON COMMERCE)

A BILL FOR

1 An Act modifying provisions applicable to certain service
2 contract providers regulated by the commissioner of
3 insurance, providing fees, making penalties applicable,
4 making an appropriation, and including effective date
5 provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 523C.1, Code 2019, is amended to read as
2 follows:

3 **523C.1 Definitions.**

4 As used in [this chapter](#), unless the context otherwise
5 requires:

6 1. *"Commissioner"* means the commissioner of insurance.

7 ~~2. *"Custodial account"* means an account established by~~
8 ~~agreement between a licensed service company and a custodian~~
9 ~~under [section 523C.5](#).~~

10 ~~3. *"Custodial agreement"* means an agreement entered into~~
11 ~~between a licensed service company and a custodian under~~
12 ~~[section 523C.5](#).~~

13 ~~4. *"Custodian"* means an institution meeting the requirements~~
14 ~~established by the commissioner which institution has entered~~
15 ~~into a custodial agreement or reserve account agreement with a~~
16 ~~licensed service company.~~

17 ~~5. *"Depository"* means an institution designated by the~~
18 ~~commissioner as an authorized custodian for purposes of~~
19 ~~[sections 523C.5](#) and [523C.11](#).~~

20 ~~6.~~ 2. *"Licensed service company"* means a service company
21 which is licensed by the commissioner pursuant to [this chapter](#).

22 3. *"Maintenance agreement"* means a contract of any duration
23 that provides for scheduled maintenance to property.

24 4. *"Motor vehicle"* means any self-propelled vehicle subject
25 to registration under chapter 321.

26 5. *"Motor vehicle manufacturer"* means any of the following:

27 a. A person who manufactures or produces motor vehicles
28 and sells the motor vehicles under the person's trade name or
29 label.

30 b. A person who is a wholly owned subsidiary of any person
31 who manufactures or produces motor vehicles.

32 c. A person who holds a one hundred percent ownership
33 interest in another person who manufactures or produces motor
34 vehicles.

35 d. A person who does not manufacture or produce motor

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1 vehicles, but for which motor vehicles are sold under the
2 person's trade name or label.

3 e. A person who manufactures or produces motor vehicles,
4 but the motor vehicles are sold under the trade name or label
5 of another person.

6 f. A person who does not manufacture or produce motor
7 vehicles, but who licenses the use of the person's trade name
8 or label to another person pursuant to a written contract, who
9 then sells motor vehicles under the trade name or label of the
10 licensor.

11 6. "Motor vehicle service contract" means a contract or
12 agreement given for consideration over and above the lease
13 or purchase price of a new or used motor vehicle having a
14 gross vehicle weight rating of less than sixteen thousand
15 pounds, that undertakes to perform the repair, replacement,
16 or maintenance of the motor vehicle, or indemnification for
17 such repair, replacement, or maintenance, for the operation
18 or structural failure of the motor vehicle due to a defect
19 in materials, workmanship, or normal wear and tear, with or
20 without additional provisions for the incidental payment
21 of indemnity under limited circumstances, including but
22 not limited to motor vehicle towing, rental, emergency road
23 service, and road hazard protection. "Motor vehicle service
24 contract" also includes a contract or agreement sold for
25 separate consideration for a specific duration that provides
26 for any of the following services or products:

27 a. The repair or replacement of motor vehicle tires or
28 wheels that are damaged as a result of contact with road
29 hazards, including but not limited to potholes, rocks, wood
30 debris, metal parts, glass, plastic, curbs, or composite
31 scraps.

32 b. The removal of dents or creases on a motor vehicle
33 under a process that does not use paint or affect the existing
34 paint finish, and without sanding, bonding, or replacing motor
35 vehicle body panels.

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1 c. The repair or replacement of motor vehicle windshields
2 that are damaged as a result of contact with road hazards.

3 d. The replacement of motor vehicle keys or key fobs in the
4 event that such device becomes inoperable, lost, or stolen.

5 e. Any other service or product approved by the
6 commissioner.

7 7. "Premium" means the consideration paid to an insurer for
8 a reimbursement insurance policy.

9 ~~7.~~ 8. "Record" means the same as defined in section 516E.1
10 information stored or preserved in any medium, including in
11 an electronic or paper format. A "record" includes but is
12 not limited to documents, books, publications, accounts,
13 correspondence, memoranda, agreements, computer files, film,
14 microfilm, photographs, and audio or visual tapes.

15 9. "Reimbursement insurance policy" means a contractual
16 liability insurance policy issued to a service company that
17 either provides reimbursement to a service company under the
18 terms of insured service contracts issued or sold by the
19 service company or, in the event of nonperformance by the
20 service company, pays, on behalf of the service company, all
21 covered contractual obligations incurred by the service company
22 under the terms of the insured service contracts issued or sold
23 by the service company.

24 ~~8. "Reserve account agreement" means an agreement entered~~
25 ~~into between a licensed service company and a depository under~~
26 ~~section 523C.11.~~

27 ~~9.~~ 10. "Residential service contract" means a contract or
28 agreement between a residential customer and a service company
29 which undertakes, for a predetermined fee and for a specified
30 any period of time, to service, maintain, repair, or replace,
31 or indemnify expenses for all or any part of the operational or
32 structural components, appliances, or electrical, mechanical,
33 plumbing, heating, cooling, or air-conditioning systems of
34 residential property containing not more than four dwelling
35 units in the state which fails due to normal wear or tear or

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1 inherent defect. "Residential service contract" also includes
2 a contract which provides for the service, repair, replacement,
3 or maintenance of property for damage resulting from power
4 surges, roof leakage, and accidental damage from repair work.

5 ~~10. 12. "Service company" means a person who issues and~~
6 ~~performs, or arranges to perform, is contractually obligated to~~
7 ~~perform services pursuant to a motor vehicle service contract~~
8 ~~or residential service contract.~~

9 13. "Service contract" means a motor vehicle service
10 contract or residential service contract.

11 14. "Warranty" means a statement made solely by the
12 manufacturer, importer, or seller of property or services
13 without consideration, that is not negotiated or separated from
14 the sale of the product and is incidental to the sale of the
15 product, and that guarantees indemnity for defective parts,
16 mechanical or electrical breakdown, and labor or other remedial
17 measures, such as repair or replacement of the property or
18 repetition of services.

19 Sec. 2. Section 523C.2, Code 2019, is amended to read as
20 follows:

21 **523C.2 License required.**

22 1. A person shall not issue a, offer for sale, or sell a
23 motor vehicle service contract or residential service contract
24 or undertake or arrange to perform services pursuant to a
25 residential service contract in this state unless the person
26 is a corporation or other form of organization approved by the
27 commissioner by rule and is a licensed as a service company
28 under this chapter.

29 2. The licensure requirements of this chapter shall not
30 apply to any person who provides support services or works
31 under the direction of a licensed service company in connection
32 with the issuance, offer for sale, or sale of a service
33 contract in this state, including but not limited to a person
34 who provides marketing, administrative, or technical support.

35 Sec. 3. Section 523C.3, Code 2019, is amended to read as

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1 follows:

2 **523C.3 Application for license.**

3 1. Application for a license as a service company shall
4 be made to and filed with the commissioner on forms approved
5 by the commissioner and shall include all of the following
6 information:

7 *a.* The name and principal address of the applicant.

8 *b.* The state of incorporation of the applicant.

9 *c.* The name and address of the applicant's registered agent
10 for service of process within Iowa.

11 *d.* A certificate of good standing for the applicant issued
12 by the secretary of state and dated not more than thirty days
13 prior to the date of the application.

14 *e.* Evidence of compliance with section 523C.5.

15 *f.* A copy of each motor vehicle service contract form to be
16 used or issued in this state, if applicable.

17 *g.* A copy of each residential service contract form to be
18 used or issued in this state, if applicable.

19 2. The application shall be accompanied by all of the
20 following:

21 ~~*a.* A certificate of good standing for the applicant issued~~
22 ~~by the secretary of state and dated not more than thirty days~~
23 ~~prior to the date of the application.~~

24 ~~*b.* A surety bond, a copy of the receipt from the treasurer~~
25 ~~of state that a cash deposit has been made, or a copy of a~~
26 ~~custodial agreement as provided in [section 523C.5](#).~~

27 ~~*c.* A copy of the most recent financial statement, including~~
28 ~~balance sheets and related statements of income, of the~~
29 ~~applicant, prepared in accordance with generally accepted~~
30 ~~accounting principles, audited by a certified public accountant~~
31 ~~and dated not more than twelve months prior to the date of the~~
32 ~~application.~~

33 ~~*d.* An affidavit of an authorized officer of the service~~
34 ~~company stating the number of contracts issued by the service~~
35 ~~company in the preceding calendar year, and stating that the~~

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1 ~~net worth of the service company satisfies the requirements of~~
2 ~~section 523C.6.~~

3 ~~e.~~ a. A license fee in the amount of ~~two~~ five hundred fifty
4 dollars.

5 b. If applicable, a fee in the amount of fifty dollars
6 for each motor vehicle service contract form submitted in an
7 application as provided in subsection 1, paragraph "f".

8 3. If the application contains the required information and
9 is accompanied by the items set forth in subsection 2, ~~and if~~
10 ~~the net worth requirements of section 523C.6 are satisfied, as~~
11 ~~evidenced by the audited financial statements,~~ the commissioner
12 shall issue the license. If the form of application is not
13 properly completed or if the required accompanying documents
14 are not furnished or in proper form, the commissioner shall
15 not issue the license and shall give the applicant written
16 notice of the grounds for not issuing the license. A notice
17 of license denial shall be accompanied by a refund of fifty
18 percent of the fee submitted with the application.

19 4. Fees collected under this section shall be deposited as
20 provided in section 505.7 523C.24.

21 Sec. 4. Section 523C.4, Code 2019, is amended to read as
22 follows:

23 **523C.4 License expiration and renewal.**

24 1. Each license issued under this chapter shall ~~expire~~
25 ~~on June 30 next~~ be valid for a period of one year and shall
26 be renewed by August 31 of each year following the date of
27 issuance. ~~If the service company maintains in force the surety~~
28 ~~bond described in section 523C.5 and if its license is not~~
29 ~~subject to or under suspension or revocation under section~~
30 ~~523C.9, its license shall be renewed by the commissioner upon~~
31 ~~receipt by the commissioner on or before the expiration date~~
32 ~~of a renewal application accompanied by the items required by~~
33 section 523C.3, subsection 2, paragraphs ~~"b", "c", "d", and "e",~~
34 ~~and section 523C.15.~~

35 2. An application for renewal shall include the information

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1 required for an initial license as described in section 523C.3,
2 subsection 1.

3 3. The renewal application shall be accompanied by all of
4 the following:

5 a. A license renewal fee in the amount of five hundred
6 dollars.

7 b. If applicable, a fee in the amount of three percent of
8 the aggregate amount of payments the licensee received for the
9 sale or issuance of residential service contracts in this state
10 during the preceding fiscal year, provided that such fee shall
11 be no less than one hundred dollars and no greater than fifty
12 thousand dollars.

13 c. If applicable, a fee in the amount of fifty dollars
14 for each motor vehicle service contract form submitted in a
15 renewal application as provided in section 523C.3, subsection
16 1, paragraph "f".

17 d. Information regarding the number of motor vehicle service
18 contracts or residential service contracts issued during the
19 preceding fiscal year, the number canceled or expired during
20 the preceding fiscal year, the number in effect at the end of
21 the preceding fiscal year, and the amount of service contract
22 fees received during the preceding fiscal year.

23 4. If the commissioner denies renewal of the license, the
24 denial shall be in writing setting forth the grounds for denial
25 and shall be accompanied by a refund of fifty percent of the
26 license renewal fee.

27 5. In addition to the annual license renewal requirements
28 as provided in this section, a licensee shall report to the
29 commissioner any material change in information submitted by
30 the licensee in its initial license application which has
31 not been reported to the commissioner, including a change in
32 contact information, a change in ownership, or any other change
33 which substantially affects the licensee's operations in this
34 state.

35 Sec. 5. Section 523C.5, Code 2019, is amended by striking

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1 the section and inserting in lieu thereof the following:

2 **523C.5 Financial responsibility — demonstration**
3 **requirements.**

4 In order to assure the faithful performance of a service
5 company's obligations to its contract holders in this state,
6 a licensed service company shall demonstrate financial
7 responsibility to the commissioner by satisfying one of the
8 following, as evidenced by the service company:

9 1. Insuring all motor vehicle service contracts and
10 residential service contracts offered for sale in this state
11 under a reimbursement insurance policy that complies with
12 section 523C.6.

13 2. Doing both of the following:

14 a. Maintaining a funded reserve account for the service
15 company's obligations under any issued and outstanding service
16 contracts in this state, in an amount no less than forty
17 percent of gross consideration received, less claims paid, for
18 the sale of all service contracts issued and in force in this
19 state. The reserve account shall be subject to examination and
20 review by the commissioner.

21 b. Placing in trust with the commissioner a financial
22 security deposit in an amount no less than five percent of
23 the gross consideration received by the service company,
24 less claims paid, for the sale of all motor vehicle service
25 contracts and residential service contracts issued and in force
26 in this state, but not less than twenty-five thousand dollars,
27 consisting of one of the following:

28 (1) Cash.

29 (2) Securities of the type eligible for deposit by insurers
30 authorized to transact business in this state.

31 (3) Certificates of deposit.

32 (4) A surety bond issued by an authorized surety company.

33 (5) Another form of security as prescribed by the
34 commissioner by rule.

35 3. Doing both of the following:

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1 *a.* Maintaining, on its own or together with a parent
2 company, a minimum net worth or stockholders' equity of one
3 hundred million dollars or more.

4 *b.* Upon request from the commissioner, providing either:

5 (1) A copy of the service company's financial statements.

6 (2) If the service company's financial statements are
7 consolidated with those of its parent company, a copy of the
8 parent company's most recent form 10-K or form 20-F filed with
9 the federal securities and exchange commission within the last
10 calendar year, or if the parent company does not file with
11 the federal securities and exchange commission, a copy of the
12 parent company's audited financial statements showing a net
13 worth of at least one hundred million dollars. If the service
14 company's financial statements are consolidated with those of
15 its parent company, the service company shall also provide a
16 copy of a written agreement by the parent company guaranteeing
17 the obligations of the service company under motor vehicle
18 service contracts and residential service contracts issued and
19 outstanding by the service company in this state.

20 Sec. 6. Section 523C.6, Code 2019, is amended by striking
21 the section and inserting in lieu thereof the following:

22 **523C.6 Reimbursement insurance policy requirements — insurer**
23 **qualifications.**

24 1. *Requirements.* A reimbursement insurance policy insuring
25 a motor vehicle service contract or residential service
26 contract issued, sold, or offered for sale in this state shall
27 provide for all of the following:

28 *a.* The reimbursement insurance policy shall obligate the
29 insurer that issued such policy to reimburse or pay on behalf
30 of the service company any covered sums that the service
31 company is legally obligated to pay according to the terms of
32 the contract or, in the event of nonperformance by the service
33 company, provide the service which the service company is
34 legally obligated to perform according to the terms of the
35 service contract, which shall be conspicuously stated in the

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1 reimbursement insurance policy.

2 *b.* The reimbursement insurance policy shall entitle a
3 service contract holder to make a claim directly against the
4 insurance policy if the service company fails to pay or provide
5 service on a claim within sixty days after proof of loss is
6 filed with the service company.

7 *c.* The insurer that issued a reimbursement insurance policy
8 shall be deemed to have received the premiums upon the payment
9 of the total purchase price of the service contract by the
10 service contract holder.

11 2. *Termination.* As applicable, an insurer that issued a
12 reimbursement insurance policy shall not terminate the policy
13 unless a written notice has been received by the commissioner
14 and by each applicable service company. The notice shall
15 fix the date of termination at a date no earlier than ten
16 days after receipt of the notice by the commissioner. The
17 termination of a reimbursement insurance policy shall not
18 reduce the issuer's responsibility for a service contract
19 issued by an insured service company prior to the date of
20 termination.

21 3. *Indemnification or subrogation.* This section does
22 not prevent or limit the right of an insurer that issued a
23 reimbursement insurance policy to seek indemnification from or
24 subrogation against a service company if the insurer pays or
25 is obligated to pay a service contract holder sums that the
26 service company was obligated to pay pursuant to the provisions
27 of a service contract or pursuant to a contractual agreement.

28 4. *Premium tax liability.* Payments for the purchase price
29 of a service contract by a service contract holder shall be
30 exempt from premium tax. However, premiums shall be subject
31 to premium tax.

32 5. *Qualifications of insurer.* An insurer issuing a
33 reimbursement insurance policy under this chapter shall be
34 authorized, registered, or otherwise permitted to transact
35 business in this state and shall meet one of the following

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1 requirements:

2 a. At the time the policy is filed with the commissioner,
3 and continuously thereafter, the insurer maintains surplus
4 as to policyholders and paid-in capital of at least fifteen
5 million dollars and annually files copies of the insurer's
6 financial statements, national association of insurance
7 commissioners annual statement, and actuarial certification, if
8 required and filed in the insurer's state of domicile.

9 b. At the time the policy is filed with the commissioner and
10 continuously thereafter, the insurer does all of the following:

11 (1) Maintains surplus as to policyholders and paid-in
12 capital of less than fifteen million dollars but at least ten
13 million dollars.

14 (2) Demonstrates to the satisfaction of the commissioner
15 that the insurer maintains a ratio of net written premiums,
16 wherever written, to surplus as to policyholders and paid-in
17 capital of not greater than three to one.

18 (3) Files copies annually of the insurer's financial
19 statements, national association of insurance commissioners
20 annual statement, and actuarial certification, if required and
21 filed in the insurer's state of domicile.

22 Sec. 7. Section 523C.7, Code 2019, is amended by striking
23 the section and inserting in lieu thereof the following:

24 **523C.7 Disclosure to service contract holders — contract**
25 **form — required provisions.**

26 1. A motor vehicle service contract or residential service
27 contract shall not be issued, sold, or offered for sale in this
28 state unless the service company does all of the following:

29 a. Provides a receipt for the purchase of the service
30 contract to the service contract holder.

31 b. Provides a copy of the service contract to the service
32 contract holder within a reasonable period of time after the
33 date of purchase of the service contract.

34 c. Provides a complete sample copy of the terms and
35 conditions of the service contract to the service contract

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1 holder prior to the date of purchase. A service company may
2 comply with this paragraph by providing the service contract
3 holder with a complete sample copy of the terms or conditions
4 of the service contract, or directing the service contract
5 holder to an internet site containing a complete sample copy of
6 the terms and conditions of the service contract.

7 2. A motor vehicle service contract or residential service
8 contract issued, sold, or offered for sale in this state shall
9 comply with all of the following, as applicable:

10 a. A service contract shall be written in clear,
11 understandable language in at least eight point font.

12 b. (1) A service contract insured by a reimbursement
13 insurance policy as provided in section 523C.5, subsection 1,
14 shall include a statement in substantially the following form:

15 Obligations of the service company under this service
16 contract are guaranteed under a reimbursement insurance policy.
17 If the service company fails to pay or provide service on a
18 claim within sixty days after proof of loss has been filed with
19 the service company, the service contract holder is entitled
20 to make a claim directly against the reimbursement insurance
21 policy.

22 (2) A service contract insured by a reimbursement insurance
23 policy shall conspicuously state the name and address of the
24 issuer of the reimbursement insurance policy for that service
25 contract. A claim against a reimbursement insurance policy
26 shall also include a claim for return of the unearned service
27 company fee paid for the service contract.

28 c. A service contract not insured under a reimbursement
29 insurance policy shall contain a statement in substantially the
30 following form:

31 Obligations of the service company under this service
32 contract are backed by the full faith and credit of the service
33 company and are not guaranteed under a reimbursement insurance
34 policy.

35 d. A service contract shall state the name and address of

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1 the service company obligated to perform services under the
2 contract, and shall conspicuously identify the service company,
3 any third-party administrator, and the service contract holder
4 to the extent that the name and address of the service contract
5 holder has been furnished. The identities of such parties are
6 not required to be printed on the contract in advance and may
7 be added to the contract at the time of sale.

8 *e.* A service contract shall clearly state the total purchase
9 price of the service contract and the terms under which the
10 service contract is sold. The total purchase price is not
11 required to be printed on the contract in advance and may be
12 added to the contract at the time of sale.

13 *f.* If prior approval of repair work is required, a service
14 contract shall conspicuously describe the procedure for
15 obtaining prior approval and for making a claim, including a
16 toll-free telephone number for claim service, and the procedure
17 for obtaining emergency repairs performed outside of normal
18 business hours.

19 *g.* A service contract shall clearly state the existence of
20 any deductible amount.

21 *h.* A service contract shall specify the merchandise
22 or services, or both, to be provided and any limitations,
23 exceptions, or exclusions.

24 *i.* A service contract shall clearly state the conditions on
25 which the use of substitute parts or services will be allowed.
26 Such conditions shall comply with applicable state and federal
27 laws.

28 *j.* A service contract shall clearly state any terms,
29 restrictions, or conditions governing the transferability of
30 the service contract.

31 *k.* A service contract shall clearly state the terms and
32 conditions governing the cancellation of the contract prior
33 to the termination or expiration date of the contract by the
34 service company or the service contract holder. If the service
35 company cancels the contract, the service company shall mail a

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1 written notice of termination to the service contract holder
2 at least fifteen days before the date of the termination.
3 Prior notice of cancellation by the service company is not
4 required if the reason for cancellation is nonpayment of the
5 purchase price, a material misrepresentation by the service
6 contract holder to the service company or its administrator, or
7 a substantial breach of duties by the service contract holder
8 relating to the covered product or its use. The notice of
9 cancellation shall state the effective date of the cancellation
10 and the reason for the cancellation. If a service contract
11 is canceled by the service company for any reason other than
12 nonpayment of the purchase price, the service company shall
13 refund the service contract holder in an amount equal to one
14 hundred percent of the unearned purchase price paid, less any
15 claims paid. The service company may also charge a reasonable
16 administrative fee in an amount no greater than ten percent of
17 the total purchase price.

18 1. (1) A service contract shall permit the original
19 service contract holder that purchased the contract to cancel
20 and return the service contract within at least twenty days
21 of the date of mailing the service contract to the service
22 contract holder or within at least ten days after delivery of
23 the service contract if the service contract is delivered at
24 the time of sale of the service contract, or within a longer
25 period of time as permitted under the service contract. If no
26 claim has been made under the service contract prior to its
27 return, the service contract is void and the full purchase
28 price of the service contract shall be refunded to the service
29 contract holder. A ten percent penalty shall be added each
30 month to a refund that is not paid to a service contract holder
31 within thirty days of the return of the service contract to the
32 service company.

33 (2) If the service contract holder cancels the service
34 contract outside of the applicable time as provided in
35 subparagraph (1) or after a claim is made under the service

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1 contract, the service company shall refund the service
2 contract holder in an amount equal to one hundred percent of
3 the unearned purchase price paid, less any claims paid. The
4 service company may also charge a reasonable administrative fee
5 in an amount no greater than ten percent of the total purchase
6 price.

7 *m.* A service contract shall set forth all of the obligations
8 and duties of the service contract holder, including but not
9 limited to the duty to protect against any further damage,
10 and the obligation to follow an owner's manual or any other
11 required service or maintenance.

12 *n.* A service contract shall clearly state whether or not
13 the contract provides for or excludes consequential damages
14 or preexisting conditions, if applicable. A service contract
15 may, but is not required to, cover damage resulting from rust,
16 corrosion, or damage caused by a part or system which is not
17 covered under the service contract.

18 *o.* A service contract shall clearly state the fee, if any,
19 charged on the service contract holder for making a service
20 call.

21 *p.* A service contract shall state the name and address of
22 the commissioner.

23 Sec. 8. Section 523C.9, Code 2019, is amended to read as
24 follows:

25 **523C.9 Suspension or revocation of license.**

26 ~~1. In addition to the license revocation provisions of~~
27 ~~section 523C.5, the~~ The commissioner may suspend or revoke or
28 refuse to renew the license of a service company for any of the
29 following grounds:

30 ~~a. 1.~~ The service company violated a lawful order of the
31 commissioner or any provision of [this chapter](#).

32 ~~b. 2.~~ The service company failed to pay any final judgment
33 rendered against it in this state within sixty days after the
34 judgment became final.

35 ~~c. 3.~~ The service company has without just cause refused

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1 to perform or negligently or incompetently performed services
2 required to be performed under its ~~residential~~ service
3 contracts and the refusal, or negligent or incompetent
4 performance has occurred with such frequency, as the
5 commissioner determines, as to indicate the general business
6 practices of the service company.

7 ~~d.~~ 4. The service company violated [section 523C.13](#).

8 ~~e.~~ 5. The service company failed to maintain the net worth
9 required by [section 523C.6](#) demonstrate financial responsibility
10 pursuant to section 523C.5.

11 ~~f.~~ The service company failed to maintain the reserve
12 account required by [section 523C.11](#).

13 ~~g.~~ 6. The service company failed to maintain its corporate
14 certificate of good standing with the secretary of state.

15 2. If the license of a service company is terminated
16 under [section 523C.5](#) because of failure to maintain bond, the
17 commissioner shall give written notice of termination to the
18 service company. The notice shall include the effective date
19 of the termination.

20 Sec. 9. Section 523C.12, Code 2019, is amended to read as
21 follows:

22 **523C.12 Optional examination.**

23 The commissioner or a designee of the commissioner may
24 make an examination of the books and records of a service
25 company, including copies of contracts and records of claims
26 and expenditures, and verify its assets, liabilities, and
27 reserves. The actual costs of the examination shall be borne
28 by the service company. The costs of an examination under this
29 section shall not exceed an amount equal to ten percent of the
30 service company's reported net income in the previous fiscal
31 year.

32 Sec. 10. Section 523C.13, Code 2019, is amended to read as
33 follows:

34 **523C.13 Prohibited acts or practices — penalty.**

35 1. A licensed service company which offers motor

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1 vehicle service contracts for sale in this state, or its
2 representative, shall not, directly or indirectly, represent in
3 any manner, whether by written solicitation or telemarketing, a
4 false, deceptive, or misleading statement with respect to any
5 of the following:

6 a. Statements regarding the service company's affiliation
7 with a motor vehicle manufacturer or importer.

8 b. Statements regarding the validity or expiration of a
9 warranty.

10 c. Statements regarding a motor vehicle service contract
11 holder's coverage under a motor vehicle service contract,
12 including statements suggesting that the service contract
13 holder must purchase a new service contract in order to
14 maintain coverage under the existing service contract or
15 warranty.

16 2. The commissioner shall may adopt rules which regulate
17 motor vehicle service contracts and residential service
18 contracts to prohibit misrepresentation, false advertising,
19 defamation, boycotts, coercion, intimidation, false statements
20 and entries and unfair discrimination or practices. If the
21 commissioner finds that a person has violated the rules adopted
22 under this section, the commissioner may order any or all of
23 the following:

24 1- a. Payment of a civil penalty of not more than one
25 thousand dollars for each and every act or violation, but not
26 to exceed an aggregate of ten thousand dollars, unless the
27 person knew or reasonably should have known the person was in
28 violation of this section, in which case the penalty shall be
29 not more than five thousand dollars for each and every act or
30 violation, but not to exceed an aggregate penalty of fifty
31 thousand dollars in any one six-month period. The commissioner
32 shall, if it finds the violations of this section were
33 directed, encouraged, condoned, ignored, or ratified by the
34 employer of such person, assess such penalty to the employer
35 and not such person. Any civil penalties collected under this

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1 subsection shall be deposited as provided in [section 505.7](#).

2 ~~2.~~ b. Suspension or revocation of the license of a person,
3 if the person knew or reasonably should have known the person
4 was in violation of [this section](#).

5 Sec. 11. Section 523C.15, Code 2019, is amended to read as
6 follows:

7 **523C.15 Annual report.**

8 A licensed service company that does not demonstrate
9 financial responsibility by insuring service contracts under a
10 reimbursement insurance policy as provided in section 523C.5,
11 subsection 1, shall file with the commissioner an annual
12 report ~~within ninety days of the close of its fiscal~~ no later
13 than August 31 of each year. The annual report shall be in
14 a form prescribed by the commissioner and contain all of the
15 following:

16 1. A current financial statement including a balance
17 sheet and statement of operations prepared in accordance with
18 generally accepted accounting principles and certified by an
19 independent certified public accountant.

20 ~~2. The number of residential service contracts issued~~
21 ~~during the preceding fiscal year, the number canceled or~~
22 ~~expired during the year, the number in effect at year end and~~
23 ~~the amount of residential service contract fees received.~~

24 ~~3.~~ 2. Any other information relating to the performance
25 and solvency of the ~~residential~~ service company required by the
26 commissioner.

27 Sec. 12. Section 523C.16, Code 2019, is amended to read as
28 follows:

29 **523C.16 Exclusions.**

30 This chapter does not apply to any of the following:

31 1. A performance guarantee given by a builder of a residence
32 or the manufacturer or seller or lessor of residential property
33 if no identifiable charge is made for the guarantee.

34 2. A residential service contract, guarantee or warranty
35 between a residential customer and a service company which will

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1 perform the work itself and not through subcontractors for
2 the service, repair or replacement of residential property,
3 appliances, or electrical, plumbing, heating, cooling or
4 air-conditioning systems.

5 3. A contract between a service company issuing residential
6 service contracts and a person who actually performs the
7 maintenance, repairs, or replacements of structural components,
8 or appliances, or electrical, plumbing, heating, cooling, or
9 air-conditioning systems, if someone other than the service
10 company actually performs these functions.

11 4. A residential service contract, guarantee or warranty
12 issued by a retail merchant to a retail customer, guaranteeing
13 or warranting the repair, service or replacement of appliances
14 or electrical, plumbing, heating, cooling or air-conditioning
15 systems sold by said retail merchant.

16 5. A residential service contract, guarantee, or warranty
17 issued by a manufacturer, third party, or retail company,
18 covering the repair, maintenance, or replacement of residential
19 property, individual appliances, and other individual items
20 of merchandise marketed and sold by a retail company, in the
21 ordinary course of business.

22 6. A motor vehicle service contract issued by the
23 manufacturer or importer of the motor vehicle covered by
24 the service contract or to any third party acting in an
25 administrative capacity on the manufacturer's behalf in
26 connection with that service contract.

27 7. A residential service contract involving residential
28 property containing more than four dwelling units.

29 8. A warranty.

30 9. A motor vehicle service contract issued, offered for
31 sale, or sold to any person other than a consumer.

32 10. A maintenance agreement.

33 Sec. 13. Section 523C.17, Code 2019, is amended to read as
34 follows:

35 523C.17 ~~Lending institutions, service companies, and~~

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1 ~~insurance companies.~~

2 A bank, savings association, insurance company, or other
3 lending institution shall not require the purchase of a motor
4 vehicle service contract or residential service contract as a
5 condition of a loan or the sale of any property. A service
6 company or an insurer, either directly or indirectly, as a
7 part of any real property transaction in which a residential
8 service contract will be issued, purchased, or acquired, shall
9 not require that a residential service contract be issued,
10 purchased, or acquired in conjunction with or as a condition
11 precedent to the issuance, purchase, or acquisition, by any
12 person, of a policy of insurance. A lending institution shall
13 not sell a residential service contract to a borrower unless
14 the borrower signs an affidavit acknowledging that the purchase
15 is not required. Violation of this section is punishable as
16 provided in section 523C.13.

17 Sec. 14. Section 523C.22, Code 2019, is amended to read as
18 follows:

19 **523C.22 Claim procedures.**

20 A licensed service company shall promptly provide a written
21 explanation to the residential customer service contract
22 holder, describing the reasons for denying a claim or for the
23 offer of a compromise settlement, based on all relevant facts
24 or legal requirements and referring to applicable provisions of
25 the residential service contract.

26 Sec. 15. NEW SECTION. **523C.24 Service company oversight**
27 **fund.**

28 1. A service company oversight fund is created in the
29 state treasury as a separate fund under the control of the
30 commissioner. The fund shall consist of all moneys deposited
31 in the fund pursuant to subsection 2.

32 2. The commissioner shall deposit in the service company
33 oversight fund an amount equal to one-third of all licensing,
34 examination, renewal, and inspection fees collected under this
35 chapter, provided that the maximum amount of fees deposited

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1 in the fund each fiscal year shall not exceed five hundred
2 thousand dollars. Any remaining fees collected under this
3 chapter and not deposited in the service company oversight fund
4 shall be deposited as provided in section 505.7.

5 3. Moneys in the service company oversight fund are
6 appropriated to the commissioner for the administration and
7 enforcement of this chapter, and for establishing service
8 contract consumer complaint, education, and outreach programs.

9 4. Notwithstanding section 12C.7, subsection 2, interest or
10 earnings on moneys deposited in the service company oversight
11 fund shall be credited to the fund. Notwithstanding section
12 8.33, moneys credited to the fund shall not revert at the close
13 of a fiscal year.

14 Sec. 16. REPEAL. Chapter 516E, Code 2019, is repealed.

15 Sec. 17. REPEAL. Sections 523C.8, 523C.8A, 523C.11,
16 523C.14, and 523C.18, Code 2019, are repealed.

17 Sec. 18. EMERGENCY RULES. The commissioner of insurance
18 may adopt emergency rules under section 17A.4, subsection 3,
19 and section 17A.5, subsection 2, paragraph "b", to implement
20 the provisions of this Act and the rules shall be effective
21 immediately upon filing unless a later date is specified in the
22 rules. Any rules adopted in accordance with this section shall
23 also be published as a notice of intended action as provided
24 in section 17A.4.

25 Sec. 19. EFFECTIVE DATE. This Act, being deemed of
26 immediate importance, takes effect upon enactment.

27 EXPLANATION

28 The inclusion of this explanation does not constitute agreement with
29 the explanation's substance by the members of the general assembly.

30 This bill modifies provisions applicable to certain service
31 contract providers regulated by the commissioner of insurance.

32 Current Code chapter 516E requires service contract
33 providers, or service companies, that offer motor vehicle
34 service contracts for sale in Iowa to register annually
35 with the commissioner, whereas service companies that offer

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1 residential service contracts must become licensed annually by
2 the commissioner under Code chapter 523C.

3 The bill repeals Code chapter 516E, incorporates certain
4 provisions regarding service companies offering motor vehicle
5 service contracts in Code chapter 523C, thereby requiring any
6 service company that sells motor vehicle service contracts
7 or residential service contracts in Iowa to obtain an annual
8 license from the commissioner under Code chapter 523C, and
9 makes other changes to provisions in Code chapter 523C.

10 The bill makes several changes to the definitions in Code
11 section 523C.1. The bill removes definitions for "custodial
12 account", "custodial agreement", "custodian", "depository",
13 and "reserve account agreement". The bill adds definitions
14 for "maintenance agreement", "motor vehicle", "motor vehicle
15 manufacturer", "motor vehicle service contract", "premium",
16 "reimbursement insurance policy", "service contract", and
17 "warranty", and modifies existing definitions for "residential
18 service contract" and "service contract", as described in the
19 bill.

20 The bill provides that a person shall not issue, offer for
21 sale, or sell a motor vehicle service contract or residential
22 service contract in Iowa unless the person is licensed as
23 a service company under Code chapter 523C. The licensure
24 requirements do not apply to any person who provides support
25 services or works under the direction of a licensed service
26 company, including but not limited to a person who provides
27 marketing, administrative, or technical support.

28 The bill specifies the information required in an
29 application for a license under Code chapter 523C. In addition
30 to such information, an application shall be accompanied
31 by a license fee of \$500 and a fee of \$50 for each motor
32 vehicle service contract form submitted in an application,
33 if applicable. The commissioner shall issue a license if
34 an application contains the required information and is
35 accompanied by the required fees.

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1 The bill provides that each license issued under Code
2 chapter 523C shall be valid for a period of one year and shall
3 be renewed by August 31 of each year following the date of
4 issuance. An application for renewal shall require the same
5 information required in an initial application, a \$500 license
6 renewal fee, other fees described in the bill that apply to
7 certain service companies, and other information described in
8 the bill regarding a service company's operations during the
9 preceding fiscal year. In addition to such requirements, a
10 service company must report to the commissioner any material
11 change in information provided in the initial application which
12 has not been reported to the commissioner.

13 The bill replaces Code section 523C.5, which provides a
14 surety bond requirement, with a new Code section which requires
15 a service company to demonstrate financial responsibility to
16 the commissioner. The service company shall satisfy this
17 requirement by either insuring all of its service contracts
18 offered for sale in Iowa under a reimbursement insurance
19 policy that complies with the bill, maintaining a funded
20 reserve account and placing in trust with the commissioner a
21 financial security deposit, or maintaining a minimum net worth
22 or stockholders' equity and providing certain information to
23 the commissioner upon request, as described in the bill.

24 The bill replaces Code section 523C.6, which provides a net
25 worth requirement, with a new Code section which establishes
26 certain requirements for reimbursement insurance policies
27 that insure service contracts offered for sale in Iowa. The
28 requirements include provisions regarding insurer obligations,
29 service contract holder rights, termination, indemnification
30 or subrogation, insurance premium tax liability, and insurer
31 qualifications, as described in the bill.

32 The bill replaces Code section 523C.7, which provides
33 service contract filing and form requirements, with a new
34 Code section which establishes certain requirements regarding
35 disclosure to service contract holders, service contract forms,

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1 and provisions included in service contracts, as described in
2 the bill.

3 The bill provides that the commissioner may suspend or
4 revoke or refuse to renew the license of a service company if
5 the service company violates a lawful order of the commissioner
6 or any provision of Code chapter 523C, fails to pay a final
7 judgment in Iowa within 60 days, indicates negligence,
8 incompetence, or a refusal to perform services, performs any
9 prohibited acts or practices described in the bill, fails to
10 demonstrate financial responsibility as provided in the bill,
11 or fails to maintain its corporate certificate of good standing
12 with the secretary of state.

13 The bill provides that the costs of a service company
14 examination conducted at the discretion of the commissioner,
15 which is paid by the service company, shall not exceed an
16 amount equal to 10 percent of the service company's reported
17 net income in the previous fiscal year.

18 The bill prohibits a licensed service company offering
19 for sale in Iowa motor vehicle service contracts, or its
20 representatives, from directly or indirectly representing a
21 false, deceptive, or misleading statement with respect to
22 certain statements regarding its affiliation with a motor
23 vehicle manufacturer or importer, the validity or expiration
24 of a warranty, or a service contract holder's coverage
25 under a service contract, as described in the bill. The
26 bill also allows the commissioner to adopt rules regulating
27 service contract practices, any violation of which allows the
28 commissioner to assess certain civil penalties or suspend or
29 revoke a license, as described in the bill.

30 The bill provides that annual reporting requirements
31 shall apply only to licensed service companies which do not
32 demonstrate financial responsibility by insuring their service
33 contracts under a reimbursement insurance policy. The annual
34 report shall be filed with the commissioner no later than
35 August 31 of each year and shall contain certain information

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1 described in the bill.

2 The bill excludes from regulation under Code chapter 523C,
3 in addition to residential service contracts currently excluded
4 under Code section 523C.16, certain motor vehicle service
5 contracts currently excluded from regulation under Code chapter
6 516E, residential service contracts involving residential
7 property containing more than four dwelling units, warranties,
8 motor vehicle service contracts issued or sold to any person
9 other than a consumer, and maintenance agreements.

10 The bill prohibits a lending institution from requiring the
11 purchase of a motor vehicle service contract or residential
12 service contract as a condition of a loan or the sale of
13 any property. A violation of this provision allows the
14 commissioner to assess certain civil penalties or suspend or
15 revoke a license, as described in the bill.

16 The bill establishes new Code section 523C.24, which
17 creates a service company oversight fund under the control
18 of the commissioner. The fund shall consist of all moneys
19 deposited in the fund pursuant to the bill. The bill directs
20 the commissioner to deposit in the fund an amount equal
21 to one-third of all licensing, examination, renewal, and
22 inspection fees collected under Code chapter 523C, provided
23 that the maximum amount deposited each fiscal year shall
24 not exceed \$500,000. Any remaining fees collected and not
25 deposited in the fund shall be deposited in the department
26 of commerce revolving fund, pursuant to Code section
27 505.7. Moneys in the oversight fund are appropriated to the
28 commissioner for the administration and enforcement of Code
29 chapter 523C, and for establishing service contract consumer
30 complaint, education, and outreach programs. Interest or
31 earnings on moneys deposited in the fund shall be credited to
32 the fund. Moneys deposited in the fund shall not revert at the
33 close of a fiscal year.

34 In addition to repealing Code chapter 516E, the bill
35 repeals the following Code sections: 523C.8 (provisions

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1 regarding rebates and commissions), 523C.8A (prohibition
2 against the issuance of residential service contracts without
3 consideration), 523C.11 (reserve account requirements), 523C.14
4 (provisions regarding rate review), and 523C.18 (criminal
5 penalty no longer applicable). The bill makes conforming
6 changes throughout Code chapter 523C.

7 The bill allows the commissioner to adopt emergency rules
8 to implement the provisions of the bill. Any such rules shall
9 be effective immediately upon filing unless a later date is
10 specified and shall be published as a notice of intended
11 action.

12 The bill takes effect upon enactment.

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Senate Resolution 10 - Introduced

SENATE RESOLUTION NO. 10

BY NUNN

1 A Resolution honoring the peaceful kinship between
2 the peoples of Japan and the United States and
3 recognizing March 14, 2019, as Japan Day at the Iowa
4 State Capitol.

5 WHEREAS, Japan and the United States share an
6 economic partnership which is grounded in mutual
7 security and prosperity, balanced and fair, and which
8 supports thousands of jobs in both countries; and

9 WHEREAS, Japan and the United States share
10 a commitment to joint security and defense
11 partnerships; and

12 WHEREAS, the economic relationship between Japan and
13 the State of Iowa is especially vibrant as Japan is
14 Iowa's third-largest export market; and

15 WHEREAS, the State of Iowa enjoys a strong
16 sister-state relationship with Yamanashi Prefecture
17 dating back to Iowa's response to a devastating typhoon
18 that affected the prefecture in 1959; and

19 WHEREAS, Japan and the State of Iowa enjoy robust
20 and expanding ties based upon relationships and
21 exchanges in such areas as agriculture, innovation,
22 culture, sport, and academia; NOW THEREFORE,

23 BE IT RESOLVED BY THE SENATE, That the Senate honors
24 the long and rich history of friendship and economic
25 partnership between the citizens of the State of Iowa
26 and Japan; and

27 BE IT FURTHER RESOLVED, That in honor of our strong
28 and growing relationship, the Senate recognizes

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1 Thursday, March 14, 2019, as Japan Day at the Iowa
2 State Capitol.

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Senate Resolution 9 - Introduced

SENATE RESOLUTION NO. 9

BY NUNN, EDLER, KAPUCIAN, JOHNSON, DOTZLER, KINNEY,
and BEHN

1 A Resolution in support of strengthening and deepening
2 the relationship between Taiwan and the State of
3 Iowa.

4 WHEREAS, the State of Iowa is proud of the
5 sister-state relationship it has enjoyed with Taiwan
6 since 1989, which is marked by strong bilateral trade,
7 educational and cultural exchanges, and tourism; and

8 WHEREAS, Taiwan shares with the United States
9 and the State of Iowa the common values of freedom,
10 democracy, and human rights, and a commitment to the
11 rule of law; and

12 WHEREAS, the United States ranks as Taiwan's
13 third-largest importer, and Taiwan is the United
14 States' 15th largest export destination, making Taiwan
15 the United States' 11th largest trading partner, with
16 total bilateral trade reaching \$68.8 billion as of
17 November 2018; and

18 WHEREAS, the United States Congress passed the
19 Taiwan Relations Act (TRA) in 1979 to sustain a close
20 bilateral relationship between the United States and
21 Taiwan, as well as to advance mutual security and
22 commercial interests, and the TRA has served as the
23 cornerstone of U.S.-Taiwan relations and has helped to
24 preserve peace and stability in the Taiwan Strait; and

25 WHEREAS, Taiwan and the State of Iowa have enjoyed
26 a long and mutually beneficial relationship and
27 anticipate continuing growth, with Taiwan ranking

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1 the Senate is hereby directed to send copies of this
2 Resolution to the members of Iowa's congressional
3 delegation and to the Taipei Economic and Cultural
4 Office in Chicago, Illinois.